

3. IMPLEMENTATION OF THE LAW ON CONFLICT OF INTERESTS

"The Law allows the highest-ranking politicians, members of the government and other high-ranking officials to serve on the board of companies with predominant state or municipal capital and to simultaneously negotiate the privatisation of state property on behalf of the state. In the view of the GRECO Evaluation Team, this situation can give rise to serious conflict of interests. The GRECO Evaluation Team recommends that legislative and other measures be taken to ensure that all public officials and civil servants are prohibited from acquiring inappropriate benefits for themselves or their relatives through holding a position as member of the board of the State owned companies."

The Report of Council of Europe Group of States against corruption (GRECO) on the evaluation of anti-corruption measures and activities in Montenegro

This section sets out to expose the fact, through a series of case studies, that indeed – as many parliamentarians who voted for the law agreed – that the current Law on Conflict of Interest is seriously flawed and that the Commission, whose role is to implement the law, does not appear to do so on an impartial or objective bases.

The case studies range from issues related to incompatibility of the function of a Government member as well as judges and other public positions up to and including the Prime Minister, to inaccurate reports on incomes, property and gifts, and engagement of public officials in business. It exposes a more worrying underlying trend and that is that a group of “trusted individuals” are being given key roles in multiple functions. The reason for this approach to membership of bodies can only be speculated about though the potential for extreme conflict of interest and a “closed shop” approach to key bodies is of great concern.

3.1. Incompatibility of the function of a Government member and other public functions

Initially adopted the Law on Conflict of interests was allowing members of the Government, i.e. Prime Minister and Ministers to be members of one management board each.



As soon as the Law was adopted, MANS submitted an initiative for constitutionality assessment of the Article 15 of the Law on Conflict of Interest by which the Government members were allowed to remain in one management board.

The initiative stated that this Article was directly contrary to the Constitution which states the incompatibility of function and bans the Government members to perform the any other public functions.

The initiative was submitted on July 14th 2004 and the Constitutional Court made a decision six months later, on January 26th 2005.

By a verdict of the Constitutional Court it was determined that the disputable provision is contrary to the Constitution and it was nullified, so **Government members were banned from performing other public functions, including the functions of members of management boards of public and private companies.**

This paragraph of the Law is directly contrary to Article 93 of the Constitution of the Republic of Montenegro which speaks about incompatibility of functions and states: „A Government member cannot perform the function of an MP or some other public function, nor perform professionally some other activity

Consequently, the Government members, as public officials cannot perform professionally public functions and other activities, which definitely include the performance of the function of the management body member of a company owned by the state or the local government.

Initiative to the Constitutional Court from July 14th 2004

Excerpts from the Decision of the Constitutional Court of the Republic of Montenegro from 26 January 2005 which determines that the provision of Article 15 paragraph 2 of the Law on Conflict of Interest is not in compliance with the Constitution and becomes null and void on the day when the decision is published¹

Parliament of the Republic of Montenegro, as the body adopting the disputed enactment, did not submit in the determined time limit an answer to the statements contained in the decision to initiate the proceedings.

After considering the content of the disputed provision of the Law, the Constitutional Court determined that it does not comply with the Constitution of the Republic of Montenegro.

The disputed provision of the Law, prescribes that exceptionally, a public official can be a member of the body of one company owned by the state or the local government.

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From the quoted provisions of the Constitution it follows that the law in accordance with the Constitution regulates the manner in which freedoms and rights are exercised, if that is necessary for their exercising, that the Government is bound by the Constitution and the law, that everyone is obliged to adhere to the Constitution and the Law, that a Government member, a judge, a state prosecutor, as well as the President and a judge of the Constitutional Court cannot perform the function of an MP or perform professionally some other public function.

* * *

The exception prescribed by the disputed provision of the Law, that a public official can be a member of the body of one company owned by the state or the local government, must be interpreted in the context of the entirety in which these relations are regulated. Namely, it follows from the Law on Conflict of Interest that a public function implies, in the sense of this law, jobs performed by a person elected by direct or secret vote, a person elected or appointed by the Parliament of the Republic of Montenegro, a person appointed or nominated by the Government of the Republic of Montenegro and a person elected or named by the local self-government.

Consequently, the disputed provision of the Law refers to all the public officials, although the Constitution bans a second function, i.e. professional activity only to certain proponents of public function. Namely, the incompatibility of the functions prescribed by the Constitution refers to the Government members, judges, the State Prosecutor, the President and the judges of the Constitutional Court. The Constitution, in this sense, explicitly prescribes the incompatibility of the function for these public officials, while for other public officials defined by the Law, there is no such constitutional constraint.

Since the Companies Act ("Official Gazette of the Republic of Montenegro ", number 6/02) prescribes that the assembly of shareholders and the board of directors are bodies of a company, and that provision of Article 15 paragraph 1 of the law on Conflict of Interest prescribes that a public official can be a member of the assembly of shareholders, this means that the disputed provision refers to membership in the board of directors, which is the management and governing body of a company. Starting from the above, the Constitutional Court determined that the disputed provision of the Law does not comply with the Constitution of the Republic of Montenegro, because this provision violates the constitutional principle of incompatibility of function from Art. 93, 106 and 111 of the Constitution of the Republic of Montenegro.

¹ Decision of the Constitutional Court of the Republic of Montenegro no. 66/04 from 26 January 2005

Since the Law and the Constitutional Court Decision came into effect and after the initiative of MANS was submitted, all four Deputy Prime Ministers and seven Ministers submitted their resignations to the 22 functions that they in total had in various management boards of companies.

In practice, numerous problems occur in the interpretation of the notion of a public function, particularly when it comes to the participation of Government members in the advisory and executive bodies established by the Government.

According to the Law on Conflict of interests, a public functionary is a person appointed by the Government i.e. Parliament or local government. However, in practice, without a proper basis in the Law the Commission for Conflict of Interests gave different interpretations to the notion of public office or function.

Case studies show that the Commission adopted a double standard, simultaneously claiming that membership in a body is a public function but that the same function is not public if it is held by Government members, judges or prosecutors, stating that such persons only perform duties within their competences, although all the members of these bodies are appointed in the same way.

The most drastic examples of different interpretations of the Law by the Commission are related to the former Prime Minister, Milo Đukanović and they are presented in several case studies given in this Chapter. While he was the Prime Minister, Đukanović simultaneously held five other offices: Minister of Defense, President of the Privatization Council, President of the National Council for Sustainable Development, member of the European Integration Council and President of the Management Board of the Agency for Promotion of Foreign Investments.

3.1.1. Case study 3: Government members in management boards of companies

The Constitutional Court Decision² which prohibits the Government members to hold any other public function came into effect on March 7th, 2005. A month later, on April 12th MANS submitted the initiative against the members of the then Government of Montenegro who according to the official data still held the functions as members of certain management boards.

According to the Business Organization Law, the Commercial Court is in charge of keeping records of companies, including the data on the members of the boards of directors and every company is obliged to register every change. Before it is registered in the Central Register of the Commercial Court no change has legal effect, including the change in the management structure of the company.

On the same day when the above initiatives were submitted the Government PR Bureau announced that the Ministers referred to in the initiatives resigned the disputable positions in the boards of directors but that it was *„the matter of the management bodies to decide when they will accept the resignations of the Government members”*³. This attitude was also to be found later in the decisions of the Commission which expressed the opinion that *„the day of submitting one's resignation and not participating in the management body of a company is the action which eliminates the behaviour which is contrary to the Law on Conflict of interests and not the formal statement of the resignation and its registration in the Central register, because these actions and the time of making them do not depend on the functionary whose behavior is in compliance with the Law.”*

² More details about the proceedings at the Constitutional Court and excerpts from the Decision are given in the Chapter 1.5.

³ Daily Newspaper "Dan" – April 13th 2005

On June 8th, 2005 the Commission decided that none of the Ministers were violating the Law. They provided the following explanation:

„In terms of the Law on Conflict of interests, a conflict of interest occurs when a public functionary puts his private interests before the public interest, in order to gain material benefit or privilege for him or persons related to him. The initiatives do not indicate to any action or behaviour which would mean that any conflict of interest occurred. Membership of the Government members in the management bodies of certain companies is a behaviour contrary to the Law on Conflict of interests but not a conflict of interest as such in terms of the Article 4, paragraph 1, item 1 of the Law.“

All the ten Ministers that these initiatives referred to violated the Law in one aspect or another:

- Two or them resigned only after the initiative was submitted
- Seven of them resigned only after a certain period of time after the Law on Conflict of interests prohibited them from performing more than one public function (after the Decision of the Constitutional Court came into effect)
- Five of them performed functions in more than one management board even after the Law that prohibited them from doing so came into effect (before the Decision of the Constitutional Court)

Government member	Management board	Decision of the Commission	Resignation
Darko Uskoković, Minister of economy	<i>Montenegro bonus</i>	Does not violate the Law ⁴	Resigned on April 21, 2005 45 days after the Constitutional Court Decision 9 days after the initiative was submitted
Milutin Simović, Minister of Agriculture, forestry and water industry	<i>Plantaže</i>	Does not violate the Law ⁵	Resigned on April 1, 2005 23 days after the Constitutional Court Decision 11 days before the initiative was submitted
	<i>Montenegro bonus</i>		Resigned on July 5, 2005 49 days after the Constitutional Court Decision 23 days after the initiative was submitted
	<i>Mljekara Zora</i>		Resigned in early 2003 Before the Constitutional Court Decision and before the Law came into effect
Branimir Gvozdenović, Deputy Prime Minister	<i>Elektroprivreda CG</i>	Does not violate the Law ⁶	Resigned on March 31, 2005. 24 days after the Constitutional Court Decision and 12 days before the initiative was submitted
Dragan Đurović, Deputy Prime Minister and Minister of interior	<i>Budvanska rivijera</i>	Does not violate the Law ⁷	Resigned on March 30, 2005. 23 days after the Constitutional Court Decision and 13 days before the initiative was submitted

⁴ Decision No 1160/71 as of July 7, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Darko.htm>

⁵ Decision No 1160/72 as of July 6, 2005, www.konfliktinteresa.cg.yu/rjesenja/Milutin.htm

⁶ Decision No 1168/59, as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/Gvozdenovic.htm

⁷ Decision No 1160/61 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Dragan.htm>

Government member	Management board	Decision of the Commission	Resignation
Miroslav Ivanišević, Deputy Prime Minister	<i>Luka Bar</i>	Does not violate the Law ⁸ .	Resigned on March 25, 2005. 18 days after the Constitutional Court Decision and 18 days before the initiative was submitted
Jusuf Kalamperović, Deputy Prime Minister	<i>Montenegro airlines</i>	Does not violate the Law ⁹	Resigned on March 24, 2005. 17 days after the Constitutional Court Decision and 19 days before the initiative was submitted
	<i>Centrojadrán</i>		Resigned on October 13, 2004 Before the Constitutional Court Decision 135 days after the Law came into effect
	<i>Merkur & Co</i>		Resigned on October 13, 2004 135 days after the Law came into effect
Slavoljub Stijepović, Minister of labour and social welfare	<i>Centar Zeta</i>	Does not violate the Law ¹⁰	Resigned on February 14, 2005 Before the Constitutional Court Decision 225 days after the Law came into effect
	<i>Sindikalni fond za solidarnu stambenu izgradnju</i>		Resigned on September 10, 2004 Before the Constitutional Court Decision 90 days after the Law came into effect
Boro Vučinić, Minister of physical development	<i>13. jul</i>		Resigned on January 28, 2005 Before the Constitutional Court Decision 210 days after the Law came into effect
	<i>Sindikalni fond za solidarnu stambenu izgradnju</i>	Does not violate the Law ¹¹	Resigned on July 23, 2004 Before the Constitutional Court Decision 23 days after the Law came into effect
Predrag Nenezić, Minister of tourism	<i>Montenegro airlines</i>	Does not violate the Law ¹²	Resigned on December 27, 2004 Before the Constitutional Court Decision 180 days after the Law came into effect
Andrija Lompar, Minister of transportation	<i>"Izgradnja"</i>	Does not violate the Law ¹³	Resigned on July 23, 2004 Before the Constitutional Court Decision 23 days after the Law came into effect

⁸ Decision No 1160/58 as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/Miroslav.htm

⁹ Decision No 1160/60 as of June 8, 2005, www.konfliktinteresa.cg.yu/rjesenja/kalaperovic.htm

¹⁰ Decision No 1160/62 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Stijepovic.htm>

¹¹ Decision No 1160/65 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Vucinic.htm>

¹² Decision No 1160/36 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/Nenezic.htm>

¹³ Decision No 1160/64 as of June 8, 2005, <http://www.konfliktinteresa.cg.yu/rjesenja/lompar.htm>

3.1.2. Case study 4: Privatization Council

The Government of Montenegro established by a Decision the Privatization Council with the task to manage, control and ensure implementation of privatization as the body which in the privatization procedure represents the interests of the state and has the executive authority. The Privatization Council reports to the Government in relation to its work and proposes privatization plans.

According to the Government Decision, President of the Privatization Council is the Prime Minister and the majority of the Council members are from the Government¹⁴, which means that they report to themselves and that they, somewhat implausibly, supervise their own work.

The Law on Conflict of Interests defines public officers as persons that are appointed or nominated by the Government and on that basis MANS submitted a number of initiatives in order to prove that the Privatization Council members are public officers and that therefore Government members may not hold such functions.

Upon these initiatives of MANS the Commission for determination of conflict of interests passed a **number of contradictory opinions and decisions:**

- On April 28, 2005, upon the request of the Vice-president of the Council, Veselin Vukotic, the Commission gave its opinion that the position of a member of the Privatization Council **is not a public function.**
- As a response to the initiative of MANS, on December 12, 2005 the Commission stated again that **it is not a public function.**
- However, on March 20, 2006, after a new initiative of MANS, the Commission passed a contradictory decision to its two earlier rulings stating that the position of membership of the Privatization Council **is a public function.**
- In the new Decision made on April 27, 2006 the Commission stated that **for the Government members the position in the Privatization Council is not a public function:**

„It is logical and necessary that the Privatization Council, just like other Government working bodies comprises a number of Government members and therefore their participation in the governmental operational and advisory working bodies is not a behavior contrary to the Article 93 of the Constitution, or a conflict of interest. This means it is not a violation of the Law on Conflict of interests, because when they are appointed members of the Privatization Council, Government members do not take a new public function. They only perform their duties within the competencies of the Government and within the Government organization. This kind of interpretation is not contrary to the decision passed earlier by the Commission stating that the persons appointed to the Privatization Council are to be considered public functionaries. The attitude from that decision and this attitude are complementary. The opinion of the Commission referred at that time to persons that are appointed members of the Privatization Council and are not Government members. Being appointed to the position where they perform duties within the Government bodies, i.e. within the Government competencies, and being appointed by the Government, these persons are considered to be public functionaries in terms of the Article 2, paragraph 2 of the Law on Conflict of interests, primarily due to the status they achieved by being appointed.“

¹⁴ In the period when this initiative was submitted, the president of the Council was the Prime Minister Milo Đukanović and the members were the Minister of economy, Predrag Bošković, Minister of tourism Predrag Nenezic and the Minister of finance, Igor Lukšić.

The Commission claims that for the Vice-president of the Council, Veselin Vukotic, the position of a Council member is a public function, while for the Prime Minister and Ministers it is not, although they are all appointed in the same way – by a Government decision.

On the basis of the Article in the Constitution of Montenegro which prohibits Government members from holding other public offices, MANS submitted another initiative to the Constitutional Court on June 30th, 2007. This time it was the initiative to examine constitutionality of the Decision on establishing the Privatization Council in which members of the Government are appointed members of the Council.

On December 1st, 2005 Constitutional Court rejected the above initiative claiming that it did not have the jurisdiction to examine constitutionality of the concerned Government Decision since the Decision is not an enactment defining rights and obligations for an indefinite number of people which means it is not a general legal norm, but an individual legal enactment.

Examining constitutionality of individual legal enactments is not within the jurisdiction of any institution and therefore it means that the Government can freely pass and enforce any individual legal enactment which is in collision with the Constitution¹⁵.

Ustavom Republike Crne Gore propisano je da zakon mora biti saglasan sa Ustavom, a drugi propis i opšti akt sa Ustavom i zakonom (član 107) i da Ustavni sud odlučuje o saglasnosti drugih propisa i opštih akata sa Ustavom i zakonom (član 113 stav 1

The quoted provision of the Article 113, paragraph 1, item 2 of the Constitution of the Republic of Montenegro leads to the conclusion that it is the Constitutional Court that has the jurisdiction to decide on whether a regulation or a general enactment is in compliance with the Constitution. Insight into the disputed Decision made the Constitutional Court conclude and decide that it is not competent to give any judgment on constitutionality and legality of that Decision. The disputed enactment, namely, although it was passed in the form of a decision, does not contain provisions of general character, nor does it regulate any relations in general manner. These are individual provisions for appointment of the ten members of the Privatization Council and for replacement of the two members of the Council by new members whose names are given. The contents of the disputed provisions also show that they do not determine rights and obligations for an indefinite number of persons, which means that in their contents, scope of their effect and legal nature these provisions are not general legal provisions constitutionality and legality of which the Constitutional Court could examine in a constitutional-court proceedings according to the Article 113, paragraph 1 of the Constitution of the Republic of Montenegro. Due to the above reasons the Constitutional Court is of the opinion that it does not have the jurisdiction to examine constitutionality and legality of the disputed Decision.

ZAMJENJUJE PREDSEDNIKA
USTAVNOG SUDA REPUBLIKE CRNE GORE
SUDIJA,
Oras Smolović


¹⁵ In case that the individual legal enactment violates rights of citizens, they can submit a constitutional complaint for protection of their rights guaranteed by the Constitution. However, neither the old Constitution, nor the new one provide for the examination of constitutionality of individual enactments that violate other provisions of the Constitution.

3.1.3. Case study 5: Agency for Promotion of Foreign Investments

In the Decision on the appointment of the Management Board of the Agency of Montenegro for Promotion of Foreign Investments the Government appointed the following Government members as members of the Board: Milo Đukanović, Prime Minister and the Ministers Gordana Đurović, Predrag Nenezić and Boro Vučinić.

In relation to this Decision MANS submitted the initiative for determination of conflict of interests in these cases. However, the Commission decided that the Government members do not violate the Law on Conflict of interests because the concerned Agency is a kind of a government body, and therefore the function of a member in the management board of the Agency is not treated as a public function if it is held by a Government member.

Starting from the provisions of the Law on Public Administration („Official Gazette of the Republic of Montenegro“ No 38/03) and the Ordinance on the organization and manner of operation of public administration („Official Gazette of the Republic of Montenegro“ No 54/04, 78/04 and 6/05) that refer to the activities, establishment and operation of public administration, the Commission is of the opinion that the activities and affairs of the Agency fall within the competences of the Government and that the Agency is a kind of a working body of the Government.

Having in mind the status and the activities the Agency does, the Commission is of the opinion that a position of a member of the Government in the board of the Agency is not the second public function and it is not a violation of the Article 93 of the Constitution of the Republic of Montenegro and the Law on Conflict of interests if a Government member is a member of the management board of the Agency. The issue of constitutionality of the Decision on establishment of the Agency in terms of the Article 93 of the Constitution is not within the jurisdiction of the Commission and therefore the Commission did not address it.

President of the Management Board of the Agency does not receive any fee for working in the Management Board and therefore he could not have reported any income on that basis.

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

Pouka o pravnom lijeku: Protiv
ove odluke nezadovoljna stranka može,
u roku od osam dana od dana dostavljanja

PREDSJEDNIK
Slobodan Leković

On June 8th, 2006 MANS submitted an initiative to the Constitutional Court and on March 11th, 2007 the **Constitutional Court** passed the decision determining that the Decision on establishing the Agency gives the status of a public institution to the Agency and not the status of a working body of the Government. Therefore the Constitutional Court decided that **the provision appointing Government members to the positions of the members of the Management board of the Agency was not in compliance with the Constitution and the law.**

In spite of the Decision of the Constitutional Court, (before publishing of this publication) the Government has not enforced the Constitutional Court Decision and has not appointed other persons to the positions of the members of the Management Board of the Agency¹⁶.

¹⁶ http://www.crps.cg.yu/home.php?akcija=registar&akcija2=reg_det&ID=10000072

3.1.4. Case Study 6: National Commission for fight against Corruption & Organized Crime

О Д Л У К У

О ОБРАЗОВАЊУ НАЦИОНАЛНЕ КОМИСИЈЕ ЗА ИМПЛЕМЕНТАЦИЈУ АКЦИОНОГ ПЛАНА ЗА СПРОВОЂЕЊЕ ПРОГРАМА БОРБЕ ПРОТИВ КОРУПЦИЈЕ И ОРГАНИЗОВАНОГ КРИМИНАЛА

I образује се Национална комисија за имплементацију Акционог плана за спровођење Програма борбе против корупције и организованог криминала (у даљем тексту: Национална комисија).

II У Националну комисију именују се:

председник
проф. др ГОРДАНА ЂУРОВИЋ, потпредседник Владе Републике Црне Горе

замјеник председника
ЈУСУФ КАЛАМПЕРОВИЋ, министар унутрашњих послова и јавне управе

чланови:
др ИГОР ЛУКШИЋ, министар финансија
МИРАШ РАДОВИЋ, министар правде
ДРАГИША ПЕШИЋ, председник Одбора за економију, финансије и буџет у Скупштини Републике Црне Горе
ЏАВИД ШАБОВИЋ, председник Одбора за политички систем, правосудје и управу у Скупштини Републике Црне Горе
РАТКО ВУКОТИЋ, председник Врховног суда Републике Црне Горе
ВЕСНА МЕДЕНИЦА, Врховни државни тужилац
ВЕСЕЛИН ВЕЉОВИЋ, директор Управе полиције
ВЕСНА РАТКОВИЋ, директор Управе за антикорупцијску иницијативу
ВАЊА ЂАЛОВИЋ, извршни директор Мреже за афирмацију невладиног сектора

Members of the National Commission for the implementation of the Action Plan for the enforcement of the Programme for Combating Corruption and Organized Crime were appointed in a Government Decision.

National Commission is monitoring the implementation of the Action plan, which means that they are supervising the implementation of measures implemented by the institutions the managers of which are members of the Commission. Thus they are supervising and evaluating their own work.

The Commission for Determination of Conflict of Interests first adopted the Opinion that the members of the National Commission are public functionaries and then decided that for Government members, judges and prosecutors the function of a member of the National Commission is not a public function.

As a member of the National Commission for the implementation of the Action plan for the enforcement of the Programme for combating corruption and organized crime, Vanja Čalović applied to the Commission for Determination of Conflict of interests on March 20, 2007 with the request asking them to express their opinion on whether as a member of the National Commission for the implementation of the Action plan for the enforcement of the Programme for Combating Corruption and Organized Crime she is a public functionary or not.

It is a public function: On March 30th, 2007 the Commission adopted the Opinion that a person appointed a member of the National Commission is a public functionary „particularly due to the competences of the National Commission and the fact that the Government appointed the National Commission members, the Commission is of the opinion that Vanja Čalović, as the National Commission member is a public functionary in terms of the Article 2, paragraph 2 of the Law, because she was appointed to the position of the member of the National Commission by the Government.

Subsequently MANS submitted the initiative for initiating a procedure in the Commission for Determination of Conflict of interests against Gordana Đurović, Deputy Prime Minister, Igor Lukšić, Minister of finance, Jusuf Kalamperović, Minister of interior and public administration, Miraš Radović, Minister of justice, Vesna Medenica, Supreme State Prosecutor and Ratko Vukotić, President of the Supreme Court, because apart from these functions they also hold the functions of the President and members of the National Commission for the Implementation of the Action Plan for the Enforcement of the Programme for Combating Corruption and Organized Crime. The functionaries were appointed to these functions in the National Commission by the Government.

It is not a public function: On April 27th, 2007 the Commission made the Decision stating that the Ministers did not violate the Law because the National Commission is a working body of the Government and its task is to manage, organize and synchronize activities of the public administration bodies, state bodies and other competent institutions in the implementation of the Programme for combating Corruption and Organized Crime and therefore the position of a member in the National Commission is not his second public function. In the Decisions related to the Supreme State Prosecutor Vesna Medenica and the President of the Supreme Court Ratko Vukotić the Commission was of the opinion that their membership in the National Commission was not the second public function either, but that it was the obligation of the Supreme State Prosecutor and President of the Supreme Court to do the activities within their competences in fighting corruption & organized crime.

On May 10th, 2007 MANS submitted the request for reexamination of the first instance Decision emphasizing that the Government members, the Supreme State Prosecutor and the President of the Supreme Court were appointed to the positions of members in the National Commission in a Government Decision and that they thus obtained the status of public functionaries. In the request it was stated that although appointed in the same way, other members of the National Commission were proclaimed public functionaries, and that therefore the subject Decision represented a violation of the constitutional right to equal treatment in the eyes of law.

It is not a public function: On May 25th the Commission rejected the request and confirmed its earlier decision.

On May 11th Vanja Čalović asked the Commission to reexamine their Decision indicating that her constitutional right of equal treatment of citizens in the eyes of law was violated when as a member of the National Commission she was proclaimed to be a public functionary, while other members of the same Commission did not obtain the same status.

It is a public function: On May 25th the Commission rejected the request for reexamination and confirmed its earlier opinion with the following explanation:

„The Commission is of the opinion that the request for reexamination of the concerned Decision is not aimed at changing the Decision, in terms that the subject person is not a public functionary. The person submitting the request insists on saying that due to the manner of appointment in the National Commission the members of the Government are violating the Law on Conflict of interests because they have other public functions. She relates this to her status of a public functionary which she obtained on the basis of the manner of appointment. The Commission for determination of conflict of interests, upon the Initiative and request of the NGO MANS, in both first instance and second instance procedure, gave its opinion that for the Government members this is not the second and prohibited public function, but a duty that they have within Government institutions and bodies.“

On April 2nd, 2007 Vanja Čalović applied to the Commission again asking for the opinion about whether she as a member of the National Commission had to resign from her duty of the Executive Director of the NGO MANS:

„According to the Article 16 I should resign from the position of the Executive Director of MANS because as a public functionary I can be only a member of an NGO. On the other side, I was appointed to the position of a member of the National Commission in my capacity of the Executive Director of MANS. If I resign from the function of the Executive Director of MANS I automatically cease to be a member of the National Commission, because I was appointed to that function as the Executive Director, i.e. I cease to be a public functionary. On the other side, if I am not a public functionary then I can be the Executive Director of MANS, but thus I meet the condition again to be appointed member to the National Commission as the Executive Director of MANS which brings us back to the beginning.“

It is not a public function and it is: On April 27th the Commission expressed the opinion that membership of Vanja Čalović as a public functionary in the National Commission was not incompatible with her duty of the Executive Director of the NGO MANS and that it was not a behaviour contrary to the Law. Željka Vuksanović, member of the Commission for conflict of interests expressed a different opinion:

"The opinion of the Commission that membership in the National Commission for Vanja Čalović is a public function and that it is not for the other members is unsustainable and therefore it is necessary that the Commission reexamines its opinion."

3.2. Incompatibility of the function of a judge and other public functions

According to the Constitution of Montenegro judges may not perform any other public function nor can they professionally perform any other activity.

The definition of a public functionary, and thus of a public function as well, is given only in the Law on Conflict of interests and according to that definition a public functionary is the person elected by direct and secret vote, person elected or appointed by the Parliament, person appointed or nominated by the Government and a person elected or appointed by local government.

Case studies show that **in spite of the constitutionally defined incompatibility of the function of a judge and other public functions, executive and legislative authorities appoint judges to other public functions.**

3.2.1. Case study 7: President of the Commercial Court

At its session held on August 1st, 2007 **the Government** of Montenegro passed the Decision on establishing the Commission for concession and BOT arrangements **appointing** Dragan Rakočević, President of the Commercial Court to be the president of this Commission "which represents the Government of the Republic of Montenegro"¹⁷.

MANS submitted an initiative to the Commission for conflict of interests indicating that Dragan Rakočević, as a judge, cannot be appointed to any other public function by the executive authorities and that in his report of incomes and property he did not report his membership in the Commission for concessions and BOT arrangements, neither did he report the incomes he earned on that basis.

The Commission for conflict of interests made the decision that Dragan Rakočević **did violate the Law** on conflict of interests by not stating in the report of his incomes and property for 2005 the exact data and therefore the income he earned on the basis of being a member in the Commission for concessions & BOT arrangements that he did not report was to be considered illegally earned income.

„The Commission decided that Rakočević **did not violate the law** by being a member of the Commission for concessions and BOT arrangements because the Law on participation of private sector in performing public functions (Article 129) defines that one of the four permanent members of the body – the chairman and representative of the Government is to be a judge or a former judge. The provision of the Constitution that "a judge cannot hold an MP or other public function" can be applied only after the Constitutional Court decides on whether the provision of the Law on participation of the private sector in performing public functions is unconstitutional." As early as on April 5th, 2007 MANS submitted the initiative to the Constitutional Court to examine the constitutionality of the disputable Article of the Law and the Decision on appointment of the members of the Commission but the decision upon that initiative has not yet been passed. Therefore the President of the Commercial Court still freely performs the second public function in which he represents the executive branch of power.

On the same day, April 5th, the Government passed new Decision, **appointing again** President of the Commercial Court to position of the President of Commission for concessions & BOT arrangements.

¹⁷ According to the Law on participation of private sector in performing public services, authorities of the Commission are: to issue licenses for concessions, to approve privileges for BOT agreements, to determine the allowed increases, reductions or no changes in the tariffs, to define and control standards of the quality of public services provided, improving operational efficiency of investments of private investors, supervising performance of private companies and compliance with the agreements; ensuring clients satisfaction and receiving complaints, solving disputes with consumers in arbitration and providing for adequate responses in relation to the needs of end users, imposing sanctions on private investors if they do not meet the required quality standards, ensuring that the funds can be serviced and organizing and supervising public discussions.

3.2.2. Case Study 8: President of the Administrative Court

The Parliament appointed the President of the Administrative Court, Branislav Radulović to the position of the President of the Republic Election Commission (RIK).

In the first decision of the Parliament passed on September 11, 2002 the judge Radulović was elected for the President of the Commission as a representative of the ruling party, DPS.

After the Law on election of councilors and MPs was changed, members of the Republic Election Commission formally do not represent political parties. The Parliament passed a new decision in December 2003 appointing Radulović again to the position of the President of the Commission and confirming the office for the majority of other members of the Commission.

На основу чл. 15 и 16 Закона о измјенама и допунама Закона о избору одборника и посланика ("Службени лист РЦГ", број 46/2002), Скупштина Републике Црне Горе, на сједници првог ванредног засиједања у 2002. години, дана 11. септембра 2002. године, доијела је

О Д Л У К У О ИМЕНОВАЊУ РЕПУБЛИЧКЕ ИЗБОРНЕ КОМИСИЈЕ

У стални састав Републичке изборне комисије именују се:

- а) За предсједника **БРАНИСЛАВ РАДУЛОВИЋ**, дипл. правник (ДПС),
-**БРАНКА ЈАКОЧЕВИЋ**, дипл.правник, за замјеника (ДПС).
- б) За секретара **НЕВЕН ГОШОВИЋ**, дипл. правник (СНП).
- в) За чланове:
 1. Владимир Вујовић, дипл. правник (СНП),
-Миомир Вулић, дипл.правник, за замјеника (СНП).
 2. Радмила Штурановић, дипл. правник (ДПС),
-Слободан Драговић, дипл. правник, за замјеника (ДПС).
 3. Никола Мелојевић, дипл. правник (СНС),
-Радош Зечевић, дипл.правник, за замјеника (СНС).
 4. проф.др Веселин Павићевић (СДП),
-Ружица Ивановић, дипл.правник, за замјеника (СДП).
 5. Владимир Бошковић, дипл.правник (ЈСЦГ),
-Мирјана Кнежевић, дипл.правник, за замјеника (ЈСЦГ).
 6. Родољуб Пејовић, дипл.правник, (НС),
-Бранислав Ђупић, дипл.правник, за замјеника (НС).
 7. Мехмет Аљоја, дипл.правник (ДУА),
-Бећир Ђокај, дипл.правник, за замјеника (ДУА).
 8. Ибрахим Перезај, дипл.правник (ДС у ЦГ),
-Мухарем Авдију, дипл.правник, за замјеника (ДС у ЦГ).

Број 02-2916/2
Подгорица, 11. септембра 2002. године
Скупштина Републике Црне Горе
Предсједник,
Весна Перовић, с.р.

Decision of the Parliament from 2002

На основу чл. 29 и 30 Закона о избору одборника и посланика ("Службени лист РЦГ", бр. 4/98, 17/98, 14/00, 9/01, 41/02 и 46/02), Скупштина Републике Црне Горе, на другој сједници другог редовног засиједања у 2003. години, дана 18. децембра 2003. године, доијела је

О Д Л У К У О ИМЕНОВАЊУ РЕПУБЛИЧКЕ ИЗБОРНЕ КОМИСИЈЕ

У стални састав Републичке изборне комисије именују се:

1. **БРАНИСЛАВ РАДУЛОВИЋ**, предсједник Комисије, **БРАНКА ЈАКОЧЕВИЋ**, замјеник предсједника
2. **СЛОВОДАН ДРАГОВИЋ**, секретар Комисије.
3. За чланове и замјенике:
 - 1) **РАДМИЛА ШТУРАНОВИЋ**, члан,
ЉИЉАНА РАДОЊИЋ замјеник члана,
 - 2) проф. др. **ВЕСЕЛИН ПАВИЋЕВИЋ**, члан,
РУЖИЦА ИВАНОВИЋ, замјеник члана,
 - 3) **БОРБИЗЕ ВУКЧЕВИЋ**, члан,
МИРЈАНА БАРОВИЋ, замјеник члана,
 - 4) **ДРАГИЊА ПЕРОЧ**, члан,
ХАСРЕФ РАДОНЧИЋ, замјеник члана,
 - 5) **ТАРИК ГАЦОВИЋ**, члан,
ОМЕР МАНЏУКИЋ, замјеник члана,
 - 6) **МЕХМЕТ АЉОЈА**, члан,
БЕЋИР ЂОКАЈ, замјеник члана,
 - 7) **ИБРАХИМ ПЕРЕЗАЈ**, члан,
МУХАРЕМ АВДИЈУ, замјеник члана.

Број 02 -2741/2
Подгорица, 18. децембра 2003. године

Скупштина Републике Црне Горе
Предсједник,
Ранко Кривокапић, с.р.

Decision of the Parliament from 2003

Upon an initiative of MANS the Commission passed the decision on August 15 stating the following: „considering the status and activities of the Republic Election Commission we are of the opinion that the membership of the President of the Administrative Court of the Republic of Montenegro in this Commission is not contrary to the Law on Conflict of interests“.

According to the statements of the Commission for conflict of interests „Republic Election Commission is an expert body that conducts the procedure of election of councilors and MPs, and therefore, considering the nature of their task as well as the fact that the function in this Commission is not a professional one the Commission for conflict of interests is of the opinion that being a member in the Republic Election Commission is not incompatible with the function of a judge. On the basis of the provisions of the Law on election of councilors and MPs it can be said that the members of election commissions, including the Republic Election Commission, due to the nature of the activities they perform, are not functionaries and they do not perform these activities professionally. These are the persons that by their expertise are to ensure legality of the elections.“

On August 24th, 2006 MANS submitted the request for reexamining the decision of the Commission emphasizing the following:

"In the positive legislation it is only the Law on Conflict of interests that defines the notion of the public function and this notion is defined solely on the basis of the manner of appointment to the function and the Law does not give any basis for differentiating professional from unprofessional performing of the function, i.e. non-expert performing of the function.

Thus, the Article 2, paragraph 2 provides for only one criterion for establishing the status of a public functionary and it is the manner of being appointed to the function and not the nature of the authority or the manner in which the public function is performed.

Explanation of the Commission stating that Branislav Radulović as the President of the Republic Election Commission does not have a public function because his function is the function of an expert and it is not done professionally is contrary to the Law on Conflict of interests. If we accept this interpretation of the Commission it would mean that MPs and councilors who do not perform their functions professionally but are employed somewhere else are not public functionaries while judges could hold the functions of a prosecutor or a Minister of justice where, also certain level of expertise is required.

The Commission is obliged to ensure implementation of the Law on Conflict of interests the scope of which is defined in the Article 2 of the Law which also gives the definition of the public functionary notion. Therefore, according to the Law, the Commission is not authorized to interpret the nature of authorities of job descriptions in certain institutions or bodies in its decisions. It is obliged to determine if a person is a public functionary in terms of the manner of election or appointment.

Since in both of the above cases the fact that a person is appointed by the Parliament is defined as the manner of obtaining a public function and since this is the only criteria provided for in the Law for determining whether something is a public function or not, the Decision of the Commission stating that by being appointed by the Parliament means obtaining a public function in one case, while it does not mean obtaining a public function in other cases is therefore contrary to the Law.

According to the above it is undisputable that Branislav Radulović, President of the Administrative Court violates the Constitution and the Law on Conflict of interests because he has the public function of the President of the Republic Election Commission regardless of whether he holds that function as a profession or not, since the function of the President of the Republic Election Commission is unambiguously a public function due to the manner of appointment to the function."

The Commission rejected the request to reexamine and they confirmed their first instance Decision. MANS submitted an action against the Decision of the Commission to the Administrative Court, which rejected the action and made the judgment that MANS is not entitled to start the procedure, and that such a right can belong only to the public functionary the Decision of the Commission refers to.

Supreme Court overturned the judgment of the Administrative Court and stated that MANS is entitled to a second instance procedure.¹⁸ The case is pending.

¹⁸ More details can be found in the Chapter 3.6 Case Law

3.3. Reports on income and property

According to the Law on Conflict of interests it is the public functionary that is responsible for the accuracy of their data in the report¹⁹, and the property acquired by the functionary or a member of his household during the term of office of the functionary which is not reported to the Commission or for which there is no legal basis is considered illegally acquired income or property and the Commission has the duty to inform the Public Prosecutor thereof²⁰.

Each public functionary is obliged to inform the Commission of any change in his property in the amount exceeding 2,000 € and he is obliged to do so within 15 days from the occurrence of the change. The public functionary with the ownership rights in a company is obliged to transfer the right of management to another person or to a special body within 15 days from the day of taking a public function²¹.

Case studies show that the Commission for conflict of interests applies the Law in different ways depending on the public functionary their decision refers to.

3.3.1. Case study 9: He is not proceeding according to the Law, but he is not violating the Law

On August 9th, 2007 MANS submitted the initiative for determining conflict of interests for the MP Milo Đukanović who did not report in his disclosure of property and incomes that his son was the owner of business premises of the surface of 412 m².

The fact that Milo Đukanović's son became the owner of the above business premises and the fact that this change in the property was not reported to the Commission were confirmed in the Commission Decision:

Date of acquiring ownership over the property	May 24, 2007
Date of registration of the ownership in his son's name	June 1, 2007
Deadline for reporting the change in the property	June 16, 2007
Date of MANS initiative	August 9, 2007
Date of reporting the change in the property	August 9, 2007

Milo Đukanović reported the changes in the property on the same day on which the MANS initiative was submitted.

In the response to MANS initiative, Đukanović highlighted that he *„had overlooked the fact that, apart from the annual Report on incomes and property he is required to submit the Report on changes in the property and that is why he failed to inform the Commission of the change in the provided term. ”*

In its Decision the Commission stated that the subject business premises are registered to the name of Blažo Đukanović and that *“Milo Đukanović reported to the Commission on August 9th, 2007 the change in property which occurred on June 1st, 2007, which means he did so within 15 days – conclusion is that he did comply with the Law, however not within the term required in the Law.”*

¹⁹ Article 9, paragraph 2 of the Law on Conflict of Interests

²⁰ Article 11 of the Law on Conflict of Interests

²¹ Law on Conflict of Interests, Article 8, paragraph 3 and Article 15, paragraph 3

In the end the Commission passed the decision that Milo Đukanović

- Did not violate the Law in the way stated in the MANS initiative (failed to report property) but
- He did not comply with the Article 8, paragraph 3 of the Law (he violated the term provided for reporting the change)

UTVRDJUJE SE:

1) da Milo Đukanović, kao javni funkcioner, nije prekršio Zakon o konfliktu interesa na način naveden u Inicijativi MANS-a da u Izvještaju o prihodima i imovini za 2006. godinu nije dao tačne podatke;

2) da Milo Đukanović, kao javni funkcioner, nije postupio u smislu člana 8 stav 3 Zakona o konfliktu interesa da u promjeni u imovini za člana porodice obavijesti Komisiju u roku od 15 dana od dana nastanka promjene.

Obrazloženje

NVO Mreža za afirmaciju nevladinog sektora – MANS podnijela je 10. avgusta 2007. godine Komisiji za

Blažo Đukanović, the son of Milo Đukanović got the business premises of 412 m² in Podgorica in "Vektra" building, as a present from his uncle Aco Đukanović which is registered in the Deed of gift Certificate No 17612/07 as of May 24th, 2007 and it was registered in his name on June 1st, 2007.

On August 9th, 2007 Milo Đukanović reported to the Commission that there was a change in the property of a member of his family – son Blažo i.e. that he became the owner of the business premises of the surface of 412 m².

In his response to the Initiative of the NGO MANS Milo Đukanović stated that his son Blažo got as a present from his uncle the business premises of the surface of 412 m² which is stated in the Deed of gift as of May 24th, 2007 but that he had overlooked that, apart from the annual Report on incomes and property he is required to submit the Report on changes in property and that is why he failed to inform the Commission of the change in the provided term.

The business premises of the surface of 412 m² was neither in the possession nor in the ownership of Blažo Đukanović at the time when his father Milo Đukanović submitted his Report on incomes and property for the year 2006 and therefore he could not have reported that property.

Article 8, paragraph 3 of the Law on Conflict of Interests stipulates that a public functionary is obliged to inform the Commission of every change exceeding the amount of 2,000 € within 15 days from the day of such a change.

The change in the property, occurred on June 1st, 2007 was reported to the Commission by Milo Đukanović on August 9th, 2007, i.e. 15 days after the change in the property occurred. In such a way he complied with the Law however not within the term required by the Law.

On the basis of the above we made our decision.

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

 **PREDSJEDNIK**
Slobodan Lakošević


3.3.2. Case study 10: Everyone is equal but some are more equal than others

On August 29th MANS submitted to the Commission the initiative for establishing that Milo Djukanovic, member of the Montenegrin Parliament violated the Law on Conflict of Interests performing the office of executive director, founder and authorized representative of Capital Invest DOO as well as not transferring management rights on the basis of his ownership rights in this company to another person.

Registration date	February 23. 2007.
Deadline for transfer of ownership rights	March 10. 2007.
Date of submission of initiative by MANS	August 28. 2007.
Date of transfer of ownership rights	September 19. 2007.

The Commission passed again the Decision that Milo Djukanovic

- Did not violate the Law in the way specified in MANS initiative (omitted to transfer ownership rights to another person)
- Did not act according Article 8 Paragraph 3 of the Law (missed the deadline for transfer of ownership rights).

Commission found in its Decision that Milo Djukanovic registered the transfer of management rights on September 19 2007 and doing so "acted according to the Article 15 Paragraph 3 of the Law on Conflict of Interest but not meeting the deadline stipulated by the Article of the Law".

In the separate opinion the member of the Commission, Zeljka Vuksanovic, found that "the position of Commission articulated in Paragraph 1 of the Decision that the public official did not violate the Law on Conflict of Interest is untenable" and that by passing such decision the "**Commission differed from adopted position in other cases that previously decided upon**".

In the case of a representative in the local parliament of Danilovgrad Veselin Mitrovic, the Commission decided that he violated the law because he did not transfer management rights on other persons during 15 days of deadline. Mitrovic requested from the Commission to review its decision because he was not well informed on the duty to transfer management rights to another persons, and in addition he also had health problems and that he fulfilled the duty after the first instance decision of the Commission.

The Commission found out that Veselin Mitrovic afterwards transferred management rights but reconfirmed its first instance decision that Mitrovic as a public official violated the Law on Conflict of Interests by the fact that taking the public office did not transfer management rights in company to another unrelated person in the stipulated deadline.

Three months later the Commission found that Milo Djukanovic did not violate the Law but transferred management rights beyond the deadline established by the Law.

In his answer Djukanovic says that he as executive director of DOO "Capital invest" did not receive salary and Commission found that there was no ground to inform State Prosecutor on illegal income.

The Company Law stipulates that executive director has to receive compensation for his work. In addition Milo Djukanovic is founder and sole owner of the company that during the period he was executive director made business deal that produced 8 million euros for the company.

MANS submitted appeal against the Decision of the Commission.

The case is still in the procedure.

Interview of Milo Đukanović in the show "On Sunday at 2PM" of Croatian National TV broadcasted on March 13. 2005.

Question: *What are your possessions, are you a rich man?*

Đukanović's answer: *I am going to tell you following: certainly I am not a poor man and I am a man who has ever been poor. That means as I said at the beginning of my career I was atypical for that time when someone's reference was the origin from a poor, peasant family. I did not come from such family, because my parents, both of them, were quite rich persons from quite rich families, and what we did as a family when we were growing up was not to dissipate money on all kind of things, but to save it and increase it. I can say that I am not poor, although...*

Answer: *What that means, how many, let's say, fixed properties or movables do you have?*

Djukanovic's answer: *Fixed properties, fixed properties I do not have. Therefore, I have what is...*

Question: *Where are you living?*

Djukanovic's answer: *Well, I have, I have the apartment in which I live and that's all, what I have as a fixed property. However, as I said, my family is a family for sure above Montenegrin average. Fortunately my father and mother are still alive. So, what I have from possessions are their possessions and that is going to be like that until the end of their life, and certainly I am not today, not in the future a poor man. I will be even less poor when I go to the business. I am fully confident, because I will know how to valorize my experience from political life for the period that is going to be my future.*

Question: *What are your savings?*

Djukanovic's answer: *I do not have savings neither in domestic nor in foreign banks.*

Question: *What about your relatives?*

Djukanovic's answer: *My relatives do not have it.... Those relatives I know and who I can have conversation with on that topic. Well, we are not people that would peek in wallets of others but if you think that my assets can be found on the account of my wife, my son, my brother or my sister, you are wrong, because there is neither my nor their possession....*

Monte Nova, Podgorica company owned by Aco Djukanovic, brother of Milo Djukanovic purchased on November 1 2006 30 percent of shares of Niksicka Banka (The Bank of Niksic) for app. 2.3 million euros. Although one third of ownership of that last state remaining bank was offered on public auction, only Djukanovic's company submitted a bid. The day after Aco Djukanovic became the largest shareowner of the Bank of Niksic the assembly of shareholders passed the decision to increase the capital of the bank for 90 percent i.e. to 14.4 million euros. According to the analysis of business accounts for 2006, carried out by the Central Bank of Montenegro 'Monte Nova' is the most profitable Montenegrin domestically owned company that in 2006 scored the profit of 8.1 million euros.²².

The company DOO „Capital Invest" was registered on February 23 2007, and its sole owner, executive director and legal representative was Milo Djukanovic. "Capital invest DOO" acquired 7 percent of share of the Bank of NIksic in August²³. The shares were bought for 1.5 million euros but by the end of 2007 their stock market value was more than 8 million euros. During the same capitalization one of the owners became the sister of Djukanovic brothers, barrister Ana Kolarevic who purchased 1% of shares for 240.000 euros. Agency for Prevention of Money Laundering claimed that the company of Milo Djukanovic took the loan "from a London bank" and that the transaction was regular²⁴.

²² Daily "Vijesti", 02 Nov 2006, Daily "Vijesti", 03 Nov2006, Daily "Vijesti", 15 Nov2007

²³ The Bank of Niksic after Aco Djukanovic purchased the shares changed its name to "Prva banka Crne Gore"

²⁴ Daily "Vijesti", 15 Aug 2007 Daily "Vijesti", 18 Aug 2007

Question: *How is it possible that you did not make any savings in the last 15 years?*

Djukanovic's answer: *Why do you think it was necessary?*

Question: *Usually people save, you did not?*

Djukanovic's answer: *Everything I have been acquiring, during all my life I have also been spending.*

Question: *At the same time you say that you are not poor. So, you have one apartment; nothing on the account; don't you find it a little bit paradoxical?*

Djukanovic's answer: *I can assure you, when I start the business, the last thing I am going to be interested in is to pile up real estates and pile up the money. The quality of the life is what I am interested in. I have quality life, I have quality flat, I have living standard that can satisfy my needs. Tomorrow, when I start the business and when I start earning what I really think my knowledge is worth on the market which is not the case today I will do very little investments in real estates, and I will do my best to visit some world destinations that I have not visited yet, to live in a quality manner with my family. I do not at all belong to the people who are in politics in order to greedily make up what they missed in their youth. I did not miss anything.*

Question: *Only the flat, nothing more?*

Djukanovic's answer: *Well, I did not miss the flat either. I had very comfortable life in the flat with my parents and when I made my own family, logically I got the flat.*

Question: *No, I refer here to your previous statement when you said I am not poor and I have only a flat. That is even for the countries that are less developed than Montenegro relatively poor status...*

Djukanovic's answer: *It is the question what people consider as rich... Let's say it sounds a little bit illogical that someone who comes from Podgorica, who holds such office, does not have holiday house at the seaside. No. I do not have intention at all to have it because my life philosophy is different. Everyday in less than thirty minutes I can be at the seaside and I do not want to make commitment that I spend every summer holiday in Budva, because I might have a wish to spend it in Marbella.*

According to the Income and Assets Report Milo Djukanovic in 2005 and 2006 had monthly income of 456 euros, the salary of his wife was 500 euros; in 2007 his monthly salary was 765 euros and the income of his wife 712 euros.

Year	2005	2006	2007			
The type of the report	Annual Report	Annual report	Annual report	On the Day of change when amount is larger than 2000 E	On the Day of change when amount is larger than 2000 euros	On the Day of change when amount is larger than 2000 euros
Functionary	Milo Đukanović					
Function	Prime Minister	PRIME MINISTER	MEMBER OF THE PARLIAMENT	-	-	-
Fixed property	FLAT IN PODGORICA -GORICA C (114 M2 + ATTIC) – GIVEN BY MNE GOVERNMENT (BOUGHT UP) – SUBSEQUENT RECONSTRUCTION INTEGRATED IT WITH NEIGHBOURING FLAT OF 73 M2 WHOSE OWNER IS ACO DJUKANOVIC. THE OWNER OF THE FLAT ARE MILO AND ACO DJUKANOVIC			BY CONTRACT ON GIFT ACO ĐUKANOVIĆ TRANSFERED HIS OWNERSHIP SHARE TO MILO ĐUKANOVIĆ	-	-
Fixed Property	-	-	-	-	-	-
Company ownership	-	-	"UNIVERZITATS" (25 % - FOUNDING SHARE) PODGORICA DOO" CAPITAL INVEST" – INFORMATION	-	-	DOO PRIMARY INVEST (OSNIVAČ: MILO ĐUKANOVIĆ)
Monthly property	456 EUROS	456 EUROS	765 EUROS	-	-	-
Other income	-	-	-	-	-	-
Spouse	Lidija Đukanović					
Fixed Property	-	-	-	-	-	-
Movable property	" Peugeot 306 "- 1996		AUDI A- 3- 2006 GOD. (LOAN) PEAGAUT - 1996. (SOLD)	-	-	-
Monthly salary	500 EUROS	500 EUROS	712 EUROS	-	-	-
Other incomes	-	-	-	-	-	-
CHILD	Blažo Đukanović					
Fixed property	-	-	-	BUSINESS PREMISES IN NON INDUSTRIAL AREA- 412 M2 - PODGORICA (THE ORIGIN OF ACQUISITION – THE CONTRACT ON GIFT)	BUSINESS PREMISES IN NON INDUSTRIAL AREA - 47 M2 (THE ORIGIN OF ACQUISITION – THE CONTRACT ON GIFT)	-
Movable property	-	-	-	-	-	-
Monthly salary	-	-	-	-	-	-
Other incomes	-	-	-	-	-	-

3.3.3. Case study 11: Four walls and the roof

On August 9, MANS submitted the initiative against MP Svetozar Marović, (Vice President of the Ruling Coalition DPS political board and former President of SCG) who did not mention in his Income and Assets Report neither his business nor accommodation space of 98m², 100m² and 90 m² and 18m², owned by his daughter.

ODBLJA SE kao neosnovana i nedozvoljena Inicijativa NVO Mreža za afirmaciju nevladinog sektora - MANS, od 10. avgusta 2007. godine, za utvrđivanje da je Svetozar Marović, bivši poslanik u Skupštini Republike Crne Gore prekršio Zakon o konfliktu interesa.

Obrazloženje

REJECTED IS the Initiative of the NGO "Network for Promotion of NGO Sector" – MANS as of 10 August 2007 submitted for the purpose of establishment whether Svetozar Marovic, a former MP of the Parliament of Montenegro, has violated the Law on Conflict of Interests, due to finding the Initiative ungrounded and contrary to the law.

postupku pred Komisijom za utvrđivanje konflikta interesa, u cilju utvrđivanja činjenica o okolnosti potrebnih za donošenje odluke, a na sjednici održanoj 17. septembra 2007. godine izvela dokaze uvidom u:

- Odgovor (izjašnjenje) Svetozara Marovića od 15. avgusta 2007. godine;
- Izvještaj o prihodima i imovini Svetozara Marovića za 2006. godinu;

Based on the evidences derived, the Commission has found that at the time when Svetozar Marovic, as an MP, submitted his Income and Assets Report, his daughter Milena Marovic was not the owner of real estate (housing and business premises) and that is why he could not have reported that property in his Report. Since Svetozar Marovic has not been a public official as of 4 April 2007, and having in mind the fact that the Initiative as of 10 August 2007 initiates the procedure against a former public official, the Commission has decided in line with the previously taken stand from the Final Decision No. 1688/6 as of 25 May 2007, to reject the Initiative as ungrounded and contrary to the law, instead of establishing retroactively whether or not a public official has violated the Law on Conflict of Interests.

Broj 2011/4
Podgorica, 17. septembar 2007. godine

KOMISIJA ZA UTVRĐIVANJE KONFLIKTA INTERESA

Pouka o pravnom lijeku:

 **PREDSJEDNIK**
Slobodan Leković

In the Decision the Commission states that at the time when Svetozar Marović, as an MP, submitted the Income and Assets Report, his daughter was not the owner of a disputable fixed property any more, since she sold it to the same person she bought it from in the first place about a month after the initial purchase.

In the meantime, Marović did not report changes referring to his property after he had bought flats, neither income changes which were the result of sale of those flats, neither has he reported savings that he would use to finance purchase of disputable real estate.

Date of acquiring property ownership	26 July 2006
Deadline for reporting property changes	10 August 2006
Date of sale of real estate	1 September 2006
Deadline for reporting income changes	15 September 2006

The Commission states that Svetozar Marović has not been a public official as of 4 April 2007 and thus the Commission rejects the Initiative as ungrounded and contrary to the Law "instead of establishing retroactively whether or not a public official has violated the Law on Conflict of Interests".

Extract from the interview with Svetozar Marović in the TV show "Naked truth" broadcasted in TV "IN"

Question: *The Law says that public officials should report their assets. If the truth is what we read in the newspapers, then you have forgotten to report, neither more nor less than three flats and a business premises officially owned by one of the members of your family, and even Aristotle would agree that in the country where average salary is 350 €, to have three flats and a business premises is almost a fortune.*

Svetozar Marović's answer: *I am glad that you have asked me that. I have to say that it is not true, not right, I have already responded in written and explained that unfortunately those flats do not exist. I would like to have them, really I would. I hope to have them soon, to have them legally, to register them, to pay taxes for a year, or two, I'll see, if I decide to invest my money and capital in flats, even though I think that is stupid.*

First, it is true that in one part of Budva there are four walls and one roof, there is nothing else but the beginning of construction works of a unique construction object which could maybe have, if I may say, a kitchen, several rooms, and maybe in some square meters it may be such. But that was mine for some ... not mine, but my daughters, it was registered to her for several, about ten days.

We have bought it maybe about two years ago, year and a half ago, and then when we thought of how much we should invest, since I have still been living in the flat of 82 m2, you can all come ... I am inviting all the ones who do not believe to come with me, to see, I can also take them to this object too.

Article from daily "Vijesti", 27 October 2007:

A popular citizen of Budva has bought through his company Moninvest 2.2 percent of shares of "Prva banka" (the First Bank) for half a million euros:

Marović earned 3 million per day

Podgorica – Company "Moninvest" from Budva whose partner in ownership is a Vice President of DPS Svetozar Marović, has bought 2.2 percent of shares of the First Bank for a half a million euros - "Vijesti" have learnt.

Business was made in the so called closed issue of shares (recapitalization) that do not go to the stock market, and data are not publicly available.

In the case of closed recapitalization, a buyer is known in advance and shares are transferred to his/her name after the complete amount is paid to the bank account, which is allowed according to Montenegrin regulations.

The company "Moninvest" with head offices in Budva, owned by Marović and Dragan Sekulić, has bought 3.920 shares of the First Bank for a half a million euros, or 127 euros per share, which is the face value. "Moninvest" was founded in 2002, and Marović has formally become a partner in the first half of this year.

At the same time the object that we have bought from a concrete previous owner , maybe just one month later, we have turned back for the same amount of money since we have estimated that it is not profitable to invest money to make this object functional. This means that that Purchase Contract and that Contract of Purchase Contract Termination were submitted to the Commission for Establishment of Conflict of Interests and I believe that the Commission will explain it timely, that is when it comes to its agenda.

I do not want to compete in newspapers, to contradict all those who invent new truths every day or interpret those truths wrongly , if I may say so. I think that our duty is to say the truth and I have submitted that truth to the Commission for Establishment of Conflict of Interests. ...

Question: *Did you register data about value of your son's car?*

Svetozar Marović's answer: *My son has a car. That car is a Mercedes, jeep Mercedes that was bought on leasing. He was a volleyball player, he had his own income, today he runs his own business, has its business and his income and he is an adult man. He is twenty and something years old, 24-5, and he is not living with me neither with my wife, nor with my daughter.*

He has his own life, his business, but about his car, since that is probably interesting, that is so. This means that anyone can check it, anyone can go, to see how the car was bought, what is the installment, how much he paid, just like hundreds of other people that buy such cars in a similar way. Why did he buy that very car, well I have to admit that this is probably the matter of his personal choice, personal taste, no matter if other people like it or not. He played volleyball and he decided to stop playing it because he considered those tens thousands of euros that he earned a year by playing volleyball as insufficient for what he can do.

Today he has a group of his own friends, of his generation, and friends a little bit older than him, that are in construction business and I think that I will recognize in him very soon a good lender for some of my businesses.

Value of shares of the First Bank in the stock market is about 900 euros, which means that every participant in recapitalization process is a winner in advance.

In that way Marovic's company has according to the market price of shares earned immediately about three million euros.

Vice President of DPS is also a member of the Board of Directors of "HTP Budvanska rivijera" (hotel and tourist company) and "Barska plovidba" (a company that deals with maritime affairs) from Bar.

Apart from Marović, in the closed process of recapitalization, shares of the First Bank were bought by two companies and several physical entities among which there are the members of the Board of Directors, Vuk Rajković and Goran Rakočević, but in much lower amounts.

Several months before the Vice President of DPS did it, leader of that party, Milo Đukanović, through the company "Capital invest" became the owner of about seven percent of shares of the First Bank and he bought his shares in the amount of 1.500.000 € through the process of recapitalization.

Đukanović's share, according to the actual prices on the stock market, is about 10 million €.

The majority shares owner of the First Bank is company "Monte nova" owned by Aco Đukanović, with about 30 percent of shares.

Shareholders of the First Bank are the companies "Elektroprivreda", "Lovćen osiguranje", "Maprenat", "Global", "Stadion", "HTP Fjord", "Comersa", "Rudnici boksita", "Monte adria broker"...

3.4. Doing other business

The Law on Conflict of Interests stipulates that a public official may be engaged in another job if the Commission has previously determined that such engagement will not generate any conflict of interests, and with consent of the body that has elected him/her, that is, appointed him/her, and the public official is obliged to report gaining of income coming from that engagement.

The Law allows public officials, except the members of government, judges and prosecutors to be members of the Board of Directors of only one business company owner by the state, that is, by a unit of local self governance, and they are obliged to report their office and income they gain based on it to the Commission for Establishment of Conflict of Interests.

3.4.1. Case study 12: Membership in the Board of Directors of the "non-existing" company

On June 21, 2006, MANS submitted the initiative against dr Radonja Minić, Assistant to the Minister of Economy for mining and geology because he was performing duties that are contrary to his public office. Minić was at that time a member of the Board of Directors of "AD Željezara" Nikšić and "AD Boksiti" Cetinje, a company that deals with exploitation of bauxite and he was also a member of a tender commission for privatization of the competitive company "AD Boksiti" Nikšić.

Being the Assistant to the Minister, Minić makes decisions that can directly influence financial interests of "AD Boksiti" – Cetinje whose Board of Directors member he is, by giving concessions and control, and by elimination of competitive companies. He participates in processing of the requests for granting concessions and he proposes to the Government to make decisions and sign contracts on concessions for exploitation of mine, he monitors realization of contracts on concessions and makes the annual accrual of the concession fee as well as the operations of the inspection surveillance over execution of the law in the area of mining industry.

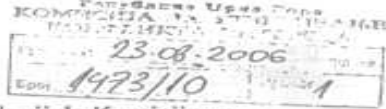
Minić has reported to the Commission for Establishment of Conflict of Interests only his membership in the Board of Directors in "Željezara" Nikšić, in which he has shares, and he has hid the fact that he is a President of the Board of Directors of "AD Boksiti" Cetinje. Apart from that, Minić has "forgotten" to report incomes he gains on these grounds.

Since the Law on Conflict of Interests treats every income of public officials that have not been reported to the Commission as illegally acquired, MANS has requested the Commission to inform the Supreme Public Prosecutor about illegal gaining of income.

Commission for Establishment of Conflict of Interests reached a decision on 15 August that dr Radonja Minić has violated the Law on Conflict of Interests, by performing duties of the member of Board of Directors in "AD Boksiti" Cetinje. The Commission also states that for membership in that Board of Directors Minić did not receive any fee so could not have reported any income earned on those basis. Radonja Minić, nezadovoljan odlukom Komisije, podnosi zahtjev za njeno preispitivanje u kome ističe Radonja Minić, unsatisfied with the decision of the Commission submits the request for reexamination of the decision and he states that he has not been violating the Law since:

- "the company "AD Boksiti" is in a way "non-existing" and it is only formally registered
- "the company "AD Boksiti" has no instruments of labour, no facilities, no workers employed (only two registered), it is without any income and performs no activities at all, not only now, but for the last eighteen years, and according to some present scientific and specialist knowledge, the question is whether and when it will be sold. The company owns only the land that is pure rocks and bushes ..."

ŽALBA



Podnosim žalbu na ODLUKU br.1473/8 koju je donijela Komisija za

I am accused to have been a member of the Board of Directors of the Company "Boksiti" Cetinje that is in a way the "non-existing" company that has only formally been registered. I would like to remind the Commission that it has not taken into consideration the following facts: the company "Boksiti" has no instruments of labor in its possession, no facilities, no workers employed (only two registered) , it is without any income and it doesn't do anything at all not only now but for the last 18 years and according to some present scientific and specialist knowledge, the question is whether and when it will be sold. The company owns only the land that is pure rocks and bushes in the region of Bijele Poljanje and in dept at some points some bauxite has been found but it has not been examined properly yet, and according to the researches conducted so far, it is not of a good quality. Until the beginning of this year the company was in bankruptcy. So can it be that membership in the Board of Directors of such company is a conflict of interests? The only reason why I was interested in "Boksiti" Cetinje is because of specialist - professional reasons.

stosava javnog interesiranja da se i to kvantifikuje kao konflikt interesa. Imajući u vidu to i Odluku koju ste Vi donjeli neshvatljivo mi je da je takvo moje shvatanje i razumjevanje zabluda.

Komisija je morala cijeniti i činjenicu da se zakon o konfliktu interesa primjenjuje odnečavno, a i njegovo tumačenje je u djelu nejasno pa i u djelu funkcije pomoćnika ministra, a kvalifikacija "bio je u konfliktu interesa" je selektivno tendocijозна ako se ima u vidu od početka primjene zakona.

Ako sam i bio u konfliktu interesa, kao što je okvalifikovala Vaša Komisija u svojoj Odluci, morali ste cijeniti i činjenicu da sam odmah podnio ostavku kada sam saznao da se moje učešće u odboru direktora i takvog preduzeća tumači kao

konflikt interesa. Komisija je takođe morala cijeniti i činjenice: da sam bio član odbora direktora tog preduzeća svega tri mjeseca i da za to nijesam dobio nikakvu materijalnu naknadu, i činjenicu da u vrijeme postupka i donošenja Vaše Odluke ja nijesam bio član odbora direktora "Boksita" Cetinje niti u konfliktu interesa.

Očekujem da će te s pažnjom razmotriti ovu žalbu i po mom ubjeđenju ovaj moj jedinstven slučaj, a uvažavajući činjenice i stvarno stanje poništiti Odluku ranije donešenu.

Podgorica, 21.08.2006 godine

PODNOŠILAC ŽALBE

Prilog: Ostavka na članstvo
u odboru direktora

Dr Radonja Minić

Ministry of Economy, whose Assistant to the Minister Minić is, had a year before bringing up the initiative signed the contract with the Company for which Minić says it is "non-existing" on extension of validity of right to exploit bauxite.

Република Црна Гора
МИНИСТАРСТВО ЕКОНОМИЈЕ

Број: 01.993,

Подгорица, 20.03.2006 год.

2006 20 03
04-00

1. Vlada Republike Crne Gore – Ministarstvo ekonomije (u daljem tekstu "Davalac koncesije") koje zastupa ministar mr Predrag Bošković, s jedne strane

2. Akcionarsko društvo "Boksiti" – Cetinje (u daljem tekstu "Koncesionar"), koje zastupa izvršni direktor Dragoljub Rađonjić, s druge strane

Dana _____ 2006. godine, u Podgorici, zaključili su

UGOVOR

o produženju prava na eksploataciju bijelog hoksita na ležištima "Ravna aluga", "Trebovinski pod" i "Poljane", Opština Cetinje

Član 22

Ovaj ugovor stupa na snagu danom potpisivanja, a primjenjivaće se od 01.01.2006. godine.



ДАВАОЦА КОНЦЕСИЈЕ

mr Predrag Bošković

ЗА КОНЦЕСИНАРА

Dragoljub Rađonjić

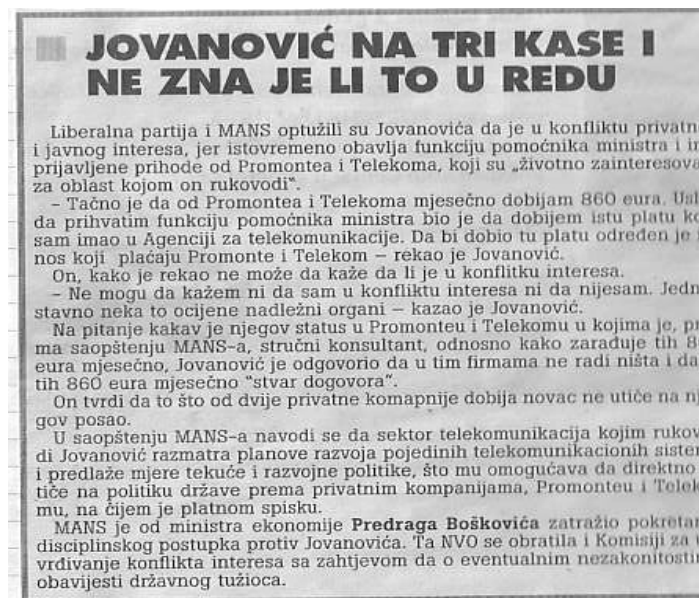
The Commission for Establishment of Conflict of Interests adopts the request for reexamination and reaches a decision that Minić has violated the Law until 22 June 2006, one day after MANS had submitted its initiative when he resigned from the position of the member of the Board of Directors of "AD Boksiti" Cetinje, which thus makes his actions in line with the Law on Conflict of Interests.

The Commission states that for membership in that Board of Directors Minić did not officially receive any fee and he could not thus report any income based on these grounds.

3.4.2. Case study 13: Sponsors without an account

MANS has submitted to the Commission for Establishment of Conflict of Interests the initiative against Dejan Jovanović, Assistant to the Minister of Economy for the Department of Telecommunication, who is at the same time an Expert Advisor in telecommunication companies, "Promonte" and "Telekom" and he is paid a fee in the amount of 860 euros per month for these services.

Department for telecommunication, run by Jovanović, among other things had been considering the plans of development of some telecommunication systems and proposed measures for the current and development policy which enabled him to influence the state policy towards private companies, "Promonte" and "Telekom", whose payroll list he was on, and whose economic interest is undisputedly contrary to the interests of citizens as consumers.



In his comment to the Initiative, Dejan Jovanović says:

"It is true that from "Promonte" and "Telekom" I receive 860 € per month. Condition to accept this position of the Assistant to the Minister was to be paid the same salary I had in the Agency for Telecommunications. In order to be paid that salary, the amounts paid by "Promonte" and "Telekom" were taken as a basis.

I cannot say I neither was nor was not making conflict of interests. This should simply be evaluated by the authorized bodies.

In those companies I do nothing and those 860 € per month is the matter of the agreement. The fact that I receive money from two private companies does not influence the way I do my job ."²⁵

Commission for Establishment of Conflict of Interests makes a decision that Jovanović is not violating the Law and states the following:

„The Commission has evaluated the proofs derived, and has established that Dejan Jovanović, Assistant to the Minister of Economy as a public official is not violating the Law on Conflict of Interests by receiving a fee for Expert Advisor services from the telecommunication operators "Promonte" and "Telekom". The Law on Conflict of Interests does not foresee the ban, that is, actions contrary to the Law which would enable him/her to perform another job and to receive fees based on those grounds, but he/she is obliged to report the fee as his/her income, which the above mentioned person has done."

²⁵ Dnevni list „Vijesti“, 05.12.2007

3.5. Reporting gifts

According to the Law on Conflict of Interests public official is obliged to report within 15 days the gift s/he received, whose value is above 50 euros, which shall remain the property of the state.

Property that the public official gained during the term of his/her office, which has never been reported to the Commission for Establishment of Conflict of Interests, shall be considered illegally acquired and the Commission shall inform the Public Prosecutor about it.

As of the time this Law came into force, until 2007, out of more than 1800 public officials, only nine reported the gifts whose value was above 50 euros.

Name and position	Reporting date	Number and type of presents reported
Kankaraš Miodrag, Mayor of Tivat	14 Nov 2006	1, fountain pen
Vesna Medenica, Supreme Public Prosecutor	24 Jan 2007	1, table watch
Filip Vujanović, President of the Republic	- 09 Nov 2007	21, - 6, -
Slobodan Leković, President of the Commission for Conflict of Interests	15 Jan 2007 01 Oct 2007	1, painting 1, piece of art work in frame
Rajko Kuljača, Mayor of Budva	28 Feb 2007	1, wrist watch
Ljubiša Krgović, President of the Council of The Central Bank	28 Feb 2007	1, painting
Ranko Krivokapić, President of the Constitutional Assembly	25 May 2007	2, painting
Željko Šturanović, Prime Minister	13 Sept 2007	1, sculpture
Predrag Sekulić, Minister of Culture, Sport and Media	12 Oct 2007	9, -

3.5.1. Case study 14: I give you a company, and you give me what?

Mayor of Tivat, Dragan Kankaraš was the first public official who on November 14, 2006 reported to the Commission for Establishing of Conflict of Interests the gift of a bigger value. That is a golden fountain pen, "Cartier" that Kankaraš received as a gift from the Canadian billionaire Peter Monk at the event of signing of the contract on sale of Tivat company "Arsenal".

The Sale Contract of "Arsenal" to the company "PM Securities" owned by Peter Monk was signed on October 28, 2006, and apart from Kankaraš, other members of the tender commission, and at the time Prime Minister Milo Đukanović²⁶ also received the same type of watch as a gift, but they did not report their gifts by the end of 2007.



²⁶ Dnevni list „Vijesti“, 25.01.2007

3.5.2. Case study 15: Russian – Montenegrin friendly gifts



In a magazine "Index", a January issue, in the interview with Vesna Medenica, Supreme Public Prosecutor, supported with personal and family photos, there is a photo of a watch for which it is said that is a "gift from the Russian Prosecutor".

After the initiative brought to the Commission for Establishment of Conflict of Interests in order to examine the circumstances under which Medenica received her clock as a gift, where it is now, what is its value, and whether it was registered by the Commission, Vesna Medenica has said to the media that the clock she had received her Russian colleague is not a gift to the public official, but that it was a friendly clock that she would have reported to the Commission for Establishment of Conflict of Interests if it had had such a large value.

"That clock I got as Vesna Medenica, not as a Supreme Public Prosecutor. Russian Prosecutor has told me then: you will always have a sincere friend and this is a memory of me. The clock is not any brand, it is not neither golden nor silver, that is ordinary craftsman filigree and souvenir. If it had some big value, I would have reported it."²⁷

After the initiative submitted at the beginning of 2007, Medenica has submitted to the Commission for Establishment of Conflict of Interests the watch that Medenica got as a gift from her Russian colleague²⁸, and President of that Commission mentioned that he does not know how to establish the value of that clock²⁹.

The disputable clock is still in possession of the Commission which did not find the way to estimate its value.³⁰

²⁷ Daily "Vijesti", 19 January 2007

²⁸ Daily "Vijesti", 25 January 2007

²⁹ Daily "Vijesti", 26 January 2007

³⁰ Daily «Dan», 22 November 2007.