

Pursuant to Article 88 Paragraph 2 of the Constitution of the Republic of Montenegro I hereby issue

**THE DECREE
ON THE PROCLAMATION OF THE LAW ON THE NATIONAL SECURITY AGENCY**

(“Official Gazette of the Republic of Montenegro”, number 28/05 as of April 5th, 2005, “Official Gazette of Montenegro”, number 86/09 as of December 25th, 2009 and 20/11 as of April 15th, 2011)

We hereby proclaim the Law on the National Security Agency, adopted by the Parliament of Montenegro at its second sitting of the first regular session in 2005, held on April 26th, 2005.

No.: 01-457/2
Podgorica, April 27th, 2005

President of the Republic of Montenegro
Filip Vujanović, manu propria

**THE LAW
ON THE NATIONAL SECURITY AGENCY**

I GENERAL PROVISIONS

Article 1

The National Security Agency of Montenegro (hereinafter referred to as: the Agency) is responsible for the performance of national security activities aimed at the protection of the constitutional order, independence, sovereignty, territorial integrity and security of Montenegro, human rights and freedoms guaranteed by the Constitution, as well as other duties of interest for the national security of Montenegro.

The Agency is a security-intelligence service that forms an integral part of the security system of Montenegro.

Article 2

The Agency shall perform tasks and duties within its competence subject to the Constitution and the law.

Article 3

The Agency shall be politically and ideologically neutral in performing its activities.

Article 4

The Agency shall cooperate with state authorities, organizations and services of other countries and international organizations, in pursuance to the guidelines of the Government of Montenegro (hereinafter referred to as: the Government).

Article 5

The control of the work of the Agency shall be conducted through both the parliamentary and internal control.

II. COMPETENCIES OF THE AGENCY AND METHOD OF CARRYING OUT TASKS

Article 6

The Agency shall collect, record, analyze, assess, use, exchange, maintain and protect data:

- 1) on activities directed against the independence, sovereignty, territorial integrity, security and constitutional order of Montenegro;
- 2) of significance for defence interests of Montenegro and fulfilment of strategic security aims and interests (intelligence and counterintelligence activities in defence);
- 3) on terrorist activities;
- 4) on activities of organized crime;
- 5) on serious crimes against humanity and other values protected by the international law,
- 6) on activities of intelligence officers of other states, of importance for the national security;
- 7) on potential threats to economic well-being of Montenegro;
- 8) on threats to international security;
- 9) other possible threats against national security.

The Agency shall be responsible for the counterintelligence protection of the Parliament, the Government of Montenegro, the President of Montenegro and other state authorities, ministries and state administration bodies, including the activities of importance for the security of specific persons and working places in these institutions, as well as facilities, equipment and premises used by them.

The Agency shall perform security checks, as well as other tasks of significance for national security, subject to the law.

The Agency shall report to the President of Montenegro, the Prime Minister of Montenegro and the Speaker of the Parliament of Montenegro on the information listed under par. 1 of this Article.

The Agency shall report to the Defence and Security Council, as well as Minister of Defence and the Chief of Staff of Montenegro's Army about the information listed under par. 1 of this Article, in line with the law.

The Agency shall report to the other bodies in Montenegro about data relating to their competences, when reasons of national security demand so.

The method of performing counterintelligence protection given under par. 2 of this Article shall be stipulated by the Government's decree.

Article 7

Data collecting shall be performed by means and methods set forth by the present Law.

The manner to apply means and methods of data collection and the manner to conduct operational work shall be stipulated under the Rules of Operational Procedure, passed by the Director of the Agency, with the Government's approval.

Article 7a

The Agency shall protect the confidentiality of information related to exercising of jurisdiction in line with the law that establishes the confidentiality of data.

1. Means and Methods of Data Collection

Article 8

The Agency shall be authorized to collect data of significance for performing national security activities, by using publically available sources.

The Agency shall be authorized to gather information and ask for professional assistance from citizens, subject to their prior consent.

State administration authorities, local governance bodies and local governances and legal persons maintaining registers and data records shall be bound to allow access to the information contained within registers and data records they maintain, to the Authorized representatives of the Agency.

Authorities and legal persons under par. 3 of this Article shall be bound to deliver wanted information upon written request of the Agency.

Obligations under par. 3 and 4 of this Article shall be applied to other legal persons with residing address in Montenegro, as well as legal persons without the residing address in Montenegro, provided that the equipment for processing of personal data is located at Montenegro.

The application of the Agency to access records maintained in registers and data collections, i.e. the submission of the same, shall represent confidential data, confidentiality of which shall be stipulated by the law that establishes data confidentiality.

State administration bodies and legal persons that have public competences shall, ex officio, inform the Agency about the data of importance for the national security, obtained in performing their competences.

2. Covert Data Collection

Article 9

The Agency shall be authorized to collect data in a covert manner by the following means and methods:

1. in cooperation with citizens of Montenegro and foreign nationals,
2. by tracking and surveillance with the use of technical means for documentation,
3. by purchasing documents and objects,
4. by interception of electronic communication and mail deliveries,
5. by surveillance of facility's interior, closed spaces and objects, with the use of technical means.

While implementing the means and methods under par. 1 of this Article, the Agency's employees shall be authorized to employ official documents or marks serving to work undercover, as well as to conceal the identity of persons they cooperate with undercover.

The authorized body shall issue the document or mark upon the request of the Agency Director, and shall be in charge of keeping special records thereof.

Upon cessation of reasons due to which the use of the above documents and signs has been approved, the body in charge of their issuance shall revoke and deliver them to the Agency for keeping.

Article 10

The Agency shall collect data in cooperation with citizens of Montenegro and foreign nationals.

The cooperation shall be based on the principles of voluntariness and confidentiality.

Article 11

Should it be impossible to obtain data and information referred to in Article 6 of this Law in

the manner set forth by Articles 8 and 10 of this Law, or should the collection of such data cause major difficulties, the Agency Director shall, on the basis of a special act, approve tracking and surveillance with the use of technical means for documentary recording.

The act referred to in par. 1 above, shall contain data on the person such measures are to be applied to, including duration of such measures and reasonable grounds for the implementation thereof.

Article 12

The Agency shall collect data and information by purchasing documents and objects (secret plans, reports, drawings and other documentation and objects) of relevance for the national security.

The Agency Director shall approve the purchase of documents and objects in pursuance of par. 1 above.

The approval of the purchase of documents and objects shall be granted to one-time purchases only.

Article 13

Should the performance of a task on the basis of competencies referred to in Article 8 and Article 9, par. 1, items 1, 2 and 3 above be not possible or should the performance of a task require a considerable risk or threat to the life and health of people, the Agency may, exceptionally, on the basis of a prior decision of the court, carry out surveillance under Article 9, paragraph 1 items 4 and 5 of the present Law.

Article 14

Surveillance under Article 9, par. 1 item 4 of this Law, upon written proposal of the Agency Director, with an adequate explanation thereof, shall be approved for each specific case by the Chief Justice of the Supreme Court of Montenegro, should there exist a well-founded suspicion of any threat to the national security, such as:

1. armed attack prepared against the Montenegro,
2. secret activities targeted against the territorial integrity of Montenegro,
3. secret activities, as well as planning and preparation of national or international terrorist attacks and other violent actions against state authorities and holders of public functions in Montenegro and abroad,
4. delivery of covert data to unauthorized persons,
5. intelligence and subversive activities of individuals, groups and organizations in favour of other countries, and
6. organized criminal activities.

Surveillance stipulated under Article 9, par. 1 item 5 of the present Law, upon written proposal of the Agency Director, for each individual case, shall be approved by the decision of the Panel of Judges of the Supreme Court of Montenegro, provided there is reasonable ground to suspect the national security has been threatened by activities given under par. 1 items 1 to 6 above.

The Decision under par. 1 and 2 above shall be passed within 48 hours from the submission of the proposal.

Article 15

The proposal for surveillance over electronic communication and mail deliveries shall contain: data on a person subject to surveillance measures; including reasonable grounds for the implementation thereof; mode of implementation; extent and duration, as well as electronic communication means and circumstances urging the implementation of this mode of data collection.

Proposal to survey interior of facilities, closed premises and objects shall contain data on: person/s such measures are applied to; facility, space or object under surveillance; the way surveillance is performed; volume and duration; type of technical means used to survey and circumstances urging the implementation of this mode of data collection.

Surveillance under Article 9 par. 1 items 4 and 5 may last for three months and, should there exist any important reasons, it may be extended each time for another three months, but no longer than 24 months.

Extension of the time limits referred to in Article 9 par. 1 item 4 above shall be approved by the Chief Justice of the Supreme Court of Montenegro, and in case of absence or inability, the replacing judge. The extension of surveillance under Article 9 paragraph 1 item t of the present Law shall be approved by the Panel of Judges of the Supreme Court of Montenegro.

Surveillance under Article 9 paragraph 1 items 4 and 5 shall be revoked immediately after cessation of reasons urging the implementation thereof.

The Agency Director shall inform in writing the Chief Justice of the Supreme Court of Montenegro, i.e. Panel of Judges of the Supreme Court of Montenegro, on the cessation of reasons urging the implementation of measures of surveillance.

Telecommunication operators and enterprises involved in electronic communications, as well as courier services, shall be bound to provide for and guarantee to the Agency the conditions for surveillance under Article 9 par. 1 item 4 of the present Law, approved by the Chief Justice of the Supreme Court of Montenegro, or a replacing judge.

2a. International Cooperation of the Agency

Article 15a

Cooperation of the Agency with authorities, organizations and services of other states and international organizations, shall be implemented through exchange of data and joint performance of activities under the competence of the Agency, subject to the law.

While exchanging data the Agency is free to present personal data from Montenegro, i.e. submit them to the authorities, organizations and services under par. 1 above, provided that:

- 1) the state to which the data is to be presented, has regulated protection of personal data and
- 2) the information is obtained that the person, whose personal data are requested, is threatening the national security of Montenegro, security of the country the data is delivered to or values protected by the international law.

Data under par. 1 and 2 of the Article shall be used for purposes they have been submitted for only.

The records of data under par.2 above shall be maintained by the Agency.

3. Recording, Using and Maintaining data

Article 16

The Agency shall establish and maintain registries and files of personal and other data collected by the Agency in the discharge of its functions, as well as documents related to such data, and organize their proper use and storage.

Registries and files under par.1 above, Article, shall be deemed to represent confidential data, secrecy of which shall be determined in line with the law establishing confidentiality of data.

Registries and files may not comprise any data on persons, the collection of which is not within the competencies of the Agency.

Should the Agency come into possession of data under par. 3 above, it is obliged to destroy it without delay.

Article 17

Collection, processing, utilization and protection of personal and other data related to the discharging of functions of the Agency, shall be performed in line with the present Law.

The Government shall, upon the proposal of the Agency Director, prescribe the type of records and data collections, their contents, mode of recording, maintenance, usage and protection.

Article 18

The Agency shall be bound to inform a citizen, upon his/her written request, whether personal data of which that individual is the data subject are being processed and maintained by the Agency, and at his/her request, make such records available to him/her. Such records allowed to be accessed may not contain any data on officers of the Agency who collected such data or on sources of information and personal data on third persons.

The Agency shall provide the required information or allow access to the records referred to in par.1 above within 30 days of the receipt of the request.

The Agency shall not be obliged to proceed in line with par. 2 of this Article, if any such information could jeopardize the discharge of the Agency's functions or pose danger to the security of other persons, and it shall inform in writing the applicant thereof within 15 days.

Upon cessation of reasons referred to in par. 3 of this Article, the Agency shall proceed pursuant to the provisions of par. 2 of this Article.

Article 19

The Agency shall cooperate with state authorities, ministries and state administration bodies in line with the security standards.

Article 20

Bodies referred to in Article 19 above shall furnish the Agency upon its request with the data and information of relevance for the security of Montenegro.

The Agency shall forward specific data and information to the police and other competent authorities regarding the activities within their competence.

Article 21

To be deleted ("Official Gazette of Montenegro", number 20/11 as of April 15th, 2011)

Article 22

The Agency shall inform the public about its activities through media or in any other appropriate manner.

The public should be informed so as not to encroach on the citizens' rights and endanger the interests and security of Montenegro.

Article 23

To be deleted ("Official Gazette of Montenegro", number 20/11 as of April 15th, 2011)

III ORGANIZATION

Article 24

The type of internal organizational units of the Agency and titles of officers shall be determined by the Government, upon proposal of the Agency Director.

The act on internal organization and systematization in the Agency shall be adopted by the Agency Director with Government's consent.

Article 25

The Agency shall be administered by the Director of the Agency.

The Director of the Agency shall be appointed and relieved of office by the Government upon the proposal of the Prime Minister.

The Government shall submit the proposal for the appointment of the Agency Director to the Parliament of Montenegro (hereinafter: Parliament), for its opinion.

The Parliament, after the discussion within the competent working body, shall provide the opinion.

The Agency Director shall vacate office for a period of five years and shall be eligible for reappointment.

The Agency Director shall be responsible to the Government for his work and for the work of the Agency.

The Agency Director may not be a member of any political party nor shall his political engagement be allowed.

Article 26

The Agency Director shall be empowered to:

- 1) take care of the protection of means, methods and sources of information from unauthorized access;
- 2) give instructions and orders for work to organizational units and Agency's employees;
- 3) be responsible for the purposeful use of the budget and other resources of the Agency;
- 4) pass general and other acts necessary for Agency's discharge of functions;
- 5) determine criteria to recruit people in the Agency;
- 6) submit proposals to the Government to free employees of the Agency from confidentiality in proceedings before the competent state authorities;
- 7) to submit Agency's work report to the Government;
- 8) perform other tasks as determined by the present law.

IV THE RIGHTS AND DUTIES OF THE AGENCY'S OFFICIALS

Article 27

The Agency's employees shall be independent in their work and personally responsible for the work conduct.

The Agency's employees shall perform tasks and duties imposed to them, subject to the law, other regulations and general acts.

Article 27a

Labor contract in the Agency shall be awarded to a person, who, in addition to fulfilling the general conditions for employment, also fulfills the following conditions:

- 1) he/she is not a citizen of another state;
- 2) he/she has not been sentenced for a criminal offense;

- 3) there is no safety risk for employment in the Agency;
- 4) he possesses psychophysical capacities, if necessary, to perform specific jobs in line with the act on internal organization and systematization.

The existence of safety risk shall be determined by safety checks.

Safety checks under par. 2 of this Article shall be conducted by the Agency, with previous approval of the candidate for employment.

The Agency shall not be obliged to inform the candidates about the existence of safety risks.

Psychophysical capacities under par. 1 item 4 of this Article shall be determined in line with the decree of the Agency Director.

Conditions under par. 1, items 1, 2 and 3 of this Article shall be also fulfilled by persons employed in the Agency as apprentices.

Article 28

Employment within the Agency shall be approved without publication of the vacancy notice. Positions not subject to vacancy notices shall be set forth by the act on internal organization and systematization of working places within the Agency.

Decision on employment in the Agency shall be deliberated by the Agency Director.

Article 29

Agency's employees shall not be members of any political party, nor shall they be allowed to engage in any political activities.

Article 29a

Agency's employees, in addition to restrictions as regards discharge of their duties determined by the law that establishes the position of civil servants and state employees, shall not perform any other jobs, i.e. activities without previous approval of the Agency Director.

Article 30

Agency's employees shall not exercise any powers of police, except for powers established by the present Law.

Article 31

Agency's employees, who may, while performing their job, be exposed to danger for personal safety, health and life danger, and who are recruited by the Agency Director, as well as employees who perform counterintelligence and security protection activities, shall have the right to carry and hold official weapons.

Employees under par. 1 of this Article are entitled to use official weapons only in self-defense and under conditions of extreme necessity, as laid down by the Criminal Code.

Employees under par. 1 of this Article shall be specially trained to carry, hold and use official weapons.

Training program and the assessment of knowledge to proceed while carrying, holding and using the official weapons shall be determined by the Agency Director.

Holding, carrying and method to proceed with the official weapons shall be closely regulated by the Government.

Article 32

Employees who discharge duties under article 6 of the present Law shall be authorized officers of the Agency.

Authorized officers referred to in par. 1 of this Article shall be issued official Identity cards.

The form and contents of the official ID shall be determined by the Agency Director.

Article 33

An employee of the Agency may, if necessary, be reassigned to another workplace, either within the same or another organizational unit, to the same or other working place.

The decision on reassignment shall be made by the Agency Director.

Based on the agreement between the Agency Director and head of another state authority, an employee of the Agency may be temporarily reassigned to the other state body.

Article 33a

An employee of the Agency, in order to perform tasks assigned by the Agency, may temporarily be designated to work abroad, within the cooperation with bodies, organizations and services of other states and international organizations.

The rights and obligations of employees given under par. 1 of this Article shall be stipulated by the act passed by the Agency Director, with previous approval of the Government.

Article 34

Salaries and other remunerations of the Agency's employees shall be set forth by a special act passed by the Agency Director, with the consent of the Government, in accordance with specific characteristics of the national security activities.

Due to special nature of jobs, working conditions and responsibilities, Agency's employees are entitled to additions to salaries.

The entitlement of the Agency's officials to a special addition to salary shall be determined in pursuance of the Act referred to in par. 1 of this Article.

The decision on salary, additions to salary, fees and other earnings of Agency's employees, shall be passed by the Agency Director.

Article 34a

Employees of the Agency, depending on the nature of the work they perform, shall be indexed the years of service with accelerated rate, in line with the special Act.

Article 35

To be deleted ("Official Gazette of Montenegro", number 86/09 as of December 25th, 2009)

Article 36

Agency's employees shall be obliged to keep the data confidential while discharging their duties and after they cease to work for the Agency, subject to the law establishing the data confidentiality.

Article 36a

An employee of the Agency shall bear disciplinary responsibility for violations of duties, being light or more serious disciplinary violations.

Article 36b

In addition to more serious disciplinary violations stipulated by the law that establishes the position of civil servants and state employees, and the law establishing the position of police officers, the more serious disciplinary offenses shall be:

- 1) a behavior damaging the Agency's reputation;
- 2) discharge of other jobs, i.e. activities without the prior approval of the Agency Director.

Article 36c

Disciplinary measure for light disciplinary offenses shall be a fee amounting to 15% of the salary paid for the month when the offense was made.

Disciplinary measures for more serious disciplinary offenses shall be as follows:

- 1) fine amounting from 20 to 30% of the salary for the month when the offense was made;
- 2) termination of employment.

Article 36d

Disciplinary measures for disciplinary offenses, upon proposal of the disciplinary commission, shall be imposed by the Agency Director.

Should not the disciplinary procedure be set forth by the present law, the law establishing the position of the civil servants and state employees shall be applied.

Article 37

Montenegro is obliged to provide legal and material aid to the employees of the Agency and members of their families, in the event they have been detained, arrested or sentenced outside the territory of Montenegro, while performing their duties.

The Agency is also obliged to provide the assistance referred to in par. 1 above, as well as other kinds of protection to the Agency's employees, former employees and members of their families, should they be brought into any danger by virtue of their official engagement.

Employees of the Agency shall not exercise the rights referred to in par. 1 and 2 above in the event of any transgression of competences or abuse of their official positions in the Agency.

Article 37a

The Agency shall maintain human resources records and salary records that shall, in addition to data determined by the law establishing the position and earnings of civil servants and state employees also contain other data related to specific activities of the agency.

The Agency shall also maintain the property records of employees. The contents of the property records shall be prescribed by the Agency Director.

Article 38

Positions, rights, duties and responsibilities of the Agency's employees stemming from their employment shall be governed accordingly by the Law on Police and general acts on public servants, unless otherwise prescribed by this Law.

V INTERNAL CONTROL

Article 39

The internal control of the Agency's operations shall be conducted in respect to:

- 1) data protection;
- 2) efficiency in implementation of programs and action plans;
- 3) application and transgression of competences;
- 4) financial operations;
- 5) efficiency in performing other jobs and duties under Agency's competences.

Article 40

Internal control of the Agency's operations shall be performed by the Inspector General.

The Inspector General shall be appointed and relieved of office by the Government.

The Inspector General shall be appointed for the period of five years, and shall be eligible for reappointment.

The Inspector General shall be responsible to the Government for his work.

Article 41

The Inspector General shall report to the Agency Director about all issues of importance for Agency's operations, breaches of the law and other regulations, as well as other findings in the control procedure and give recommendations and specify time limits to remove deficiencies.

Should within time limits prescribed under par. 1 of this Article, all observed deficiencies, irregularities or illegitimate acts not be eliminated, the Inspector General shall be bound to inform the Government thereof.

Inspector General shall report on the inspection to the Agency Director and the Government.

Article 42

The Agency Director may temporarily suspend or prohibit the Inspector General to perform the control, on the grounds of the protection of the national security interests.

The Agency Director shall, without any delay, inform the Prime Minister about the measures referred under par. 1 of this Article.

VI PARLIAMENTARY CONTROL

Article 43

Parliamentary control of the Agency's operations shall be conducted by the Parliament, through a competent working body.

The Agency shall submit annual action report to the competent working body.

Upon request of the working body referred to in par. 1 of this Article, the Agency shall submit special report on individual activities from within its scope of work.

The Agency shall, upon request of the working body referred to in par. 1 of this Article, allow access to the surveillance procedures given under Article 9 par. 1 items 4 and 5 of the present Law, unless the same present a threat to the national security.

The Agency shall not disclose information about the identity of the Agency's associates, Agency's employees with undercover and other persons to whom disclosure of such information may inflict any damage, or any information about security and intelligence sources and ongoing actions.

Article 44

Members of the competent working body and people involved in the work of the working body shall proceed with confidential data as stipulated by the law establishing the data confidentiality.

Article 45

Sessions of the working body shall be closed for public.

Chairman of the competent working body shall inform the public about its work according to the decisions of this body.

Article 46

Competent working body shall submit action reports to the Parliament, at least once a year.

The Parliament shall decide to hold a session without the presence of the public, depending on the contents of the report referred to in par.1 of this Article.

VII FINANCING

Article 47

Financial resources for the work of the Agency shall be provided within the budget of Montenegro.

Additional resources for special purposes, when defending interests of the national security, shall be provided by the Government, upon proposal of the Agency.

Article 48

Regulations governing public procurement procedures shall not apply to acquiring of special equipment, official weapons, and premises used in the Agency's operations.

The method and procurement procedure under par.1 of this Article shall be closely defined by the decision of the Agency Director.

VIII TRANSITIONAL AND FINAL PROVISIONS

Article 49

Subordinate legislation for enforcement of this law shall be enacted within six months as of the effective day of this law.

Regulations valid until the enforcement of the present Law shall be applied until the legislation under par.1 of this Article is passed, if not inconsistent with the present Law.

Article 49a

Acts for the enforcement of this Law shall be passed within 12 months as of the effective day.

Article 50

The Agency Director shall be appointed thirty days of the day of enforcement of the present Law.

Act given under article 23 par. 2 of the present Law shall be passed within three months of the appointment of the Agency Director.

Article 51

The Agency shall take over official premises, case files, archive, equipment, funds for work and other means used by the State Security Service of the Ministry of the Interior Affairs on the effective date of the present law.

Article 52

The Agency shall retain all employees of the State Security Service of the Ministry of the Interior Affairs.

Assignment of officers under par. 1 of this Article shall be conducted in line with the act on internal organization and systematization of working places within the Agency.

Agency's employees who are not assigned to positions in line with the act under par.2 of this Article shall have employment rights prescribed by the Law on civil servants and state employees.

Article 52a

The employment contract with Agency's employees who, within two years as of the enforcement of the present law, do not get a release from citizenship in another country, shall be terminated.

Article 53

To be deleted.

Article 53a

This Law shall come into force on the eight day of its publication in the "Official Gazette of Montenegro".