GOVERNMENT OF MONTENEGRO
Mr. Milojko Spajić, Prime Minister

Podgorica, 25 July 2025

Subject: URGENT – Withdraw the Draft Law on the National Security Agency from Parliamentary Procedure as it Contravenes the Constitution and International Human Rights Standards

Dear Prime Minister,

We are writing to express our concerns regarding the Draft Law on the National Security Agency (NSA), which the Government adopted during an electronic session on the evening of July 23rd and urgently submitted for parliamentary consideration.

We are compelled to protest, primarily because the Draft was adopted without conducting a public consultation and without ensuring its alignment with the international treaties binding upon Montenegro, as well as with European Union legislation, which Montenegro aspires to adopt.

The reasoning provided for the Draft does not explain why the public consultation was omitted nor why alignment with international human rights standards was not pursued.

Such an approach to lawmaking, which hinders adequate expert discussion, undermines citizens' trust in institutions and the democratic process. As a result, it often leads to solutions that are contrary to both constitutional and international guarantees of human rights.

We propose that the Draft Law be withdrawn from parliamentary consideration, that a comprehensive and inclusive public consultation be conducted, and that its alignment with the Constitution of Montenegro, EU legislation, and international obligations concerning privacy, personal data protection, and the fundamental rights of citizens be ensured

Below, we outline our criticisms of the Draft, based on an analysis of its shortcomings within the limited timeframe available to us.

1) The NSA's authorization under Article 13 of the Draft to access data from the written and electronic records of state bodies, state administration bodies, local self-governments, legal entities, and other entities maintaining such records without a court order raises serious concerns.

For an entire decade (since 2015), civil society has been advocating for amendments to the current Law on the National Security Agency to ensure that NSA officers do not have unlimited access to citizens' personal data. It is essential that access to databases and records is controlled by a court order and permitted only under clearly defined conditions pertaining to national security protection.

These demands were explicitly echoed in April this year by the UN Human Rights Committee, which criticized the current Article 8 of the NSA Law. This article permits access to databases held by legal entities, including banks and NGOs, without court authorization (para. 40). The Committee explicitly warned the state that it contravenes Article 17 of the International Covenant on Civil and Political Rights, to which Montenegro is a party, and recommended that the new law incorporate necessary legal and procedural safeguards to prevent abuses and align with international standards.

Instead, the Government not only failed to introduce judicial oversight of access to databases held by legal entities, but Article 13 of the Draft proposes a solution that eliminates even the minimal existing non-judicial controls. This includes the removal of the obligation for the Agency to submit a written request for data access, as well as the requirement that access to data in registers and collections held by authorities and legal entities can only occur based on a written agreement concluded with the head of the authority or the responsible person in the legal entity, incorporating prior opinion from the administration body responsible for classified data protection and the independent supervisory body for personal data protection, as outlined in Article 8 of the current NSA Law.

In practical terms, according to the Draft, state bodies, legal entities, and other subjects are obliged to provide electronic access to all data from the records, registers, and collections they maintain at the Agency's request, without a court warrant, without a written agreement, without prior opinion of the body responsible for classified data protection, and without any possibility for citizens to object or seek judicial protection.

Consequently, any NSA officer could gain access to extensive personal data of citizens, including medical records, banking data, and all other information held by legal entities in the country.

In addition to the standards highlighted by the UN Human Rights Committee, the European Court of Human Rights (ECtHR) has established through its interpretation of Article 8 of the European Convention on Human Rights (the right to respect for private and family life), that appropriate and effective safeguards against abuse and arbitrariness in searches or equivalent actions—such as accessing electronic databases—must be in place. This necessitates oversight by an independent and impartial body, such as a court (Grande Oriente d'Italia v. Italy, 2024, §§88,107).

However, the proposed law fails to prescribe even a basic requirement for a reasonable suspicion that an individual has committed a criminal offense to justify an infringement on their rights. Furthermore, legal entities are deprived of any means of protection if they believe that an authorized officer should not have access to the registers or data collections they maintain.

The Draft does not include any appeal mechanism that could suspend the execution of an oral order from an NSA officer granting access to data.

According to the Draft, the sole protective measure anticipated is that bodies, legal entities, and other subjects are required to keep records of the data they provided to the Agency or the direct insights or electronic access granted to the Agency, stating the date and time of the commencement and conclusion of such access (Article 13).

Notably, the existing requirement for these records to include the official identification numbers of authorized Agency officers who accessed the data (Art. 8, para. 9 of the current NSA Law) has been removed. This change effectively abolishes the obligation to identify specifically who accessed citizens' personal data.

2) The NSA's authorization to covertly collect users' electronic communication data without a court order—including traffic and location data, as well as data on unsuccessful attempts to establish electronic communication (Art. 15, para. 1, point 4(b))—raises significant constitutional concerns.

In 2014, the Constitutional Court of Montenegro, in response to an initiative from MANS, deemed unconstitutional a provision of the Criminal Procedure Code (CPC) that allowed the police to obtain so-called telephone listings from telecommunications service providers without a court order. In its judgment, the Court emphasized that, according to the views of the European Court of Human Rights (ECtHR), as adopted by the Constitutional Court, verifying telecommunication addresses and the times they were established—essentially the information regarding dialed numbers and call durations—is an integral part of a telephone conversation. This information enjoys constitutional protection concerning the confidentiality of communication, relating to both content and the associated data of electronic communications.

The Court highlighted that the right to privacy encompasses not only the written and spoken word but also information pertaining to who communicated, when, for how long, and how often, as well as the locations from which communications occurred.

Article 42 of the Constitution of Montenegro guarantees the inviolability of the secrecy of letters, telephone conversations, and other means of communication (para. 1) and stipulates that this right may be derogated from exclusively based on a court decision for criminal proceedings or for state security reasons (para. 2). Consequently, the Constitutional Court concluded that judicial oversight implies that only a court can authorize measures that interfere with communication secrecy. Thus, such authorization cannot be delegated solely to the approval of the NSA director, as stated in Article 23 of the Draft Law.

In light of this Constitutional Court decision, the provision of the Criminal Procedure Code that enabled police to obtain telephone listings without a court order was annulled, precisely because it was found to violate the Constitution.

3) The NSA's authority to collect data from the information and communication systems of state bodies without judicial oversight (Article 15, item 5) raises significant concerns. Such a measure constitutes a serious and indiscriminate intrusion into the right to privacy, as it empowers the NSA to access all electronic records without judicial supervision.

This includes sensitive data such as medical records, social welfare information, tax and financial data, child protection information, and other data governed by state administration bodies and local self-governments.

Article 43 of the Constitution of Montenegro guarantees the right to the protection of personal data. It also stipulates that individuals have the right to be informed about the data collected concerning them and the right to judicial protection in cases of misuse. Without judicial oversight of such measures, the practical realization of these constitutional rights becomes impossible.

Furthermore, in addition to the objections raised above, we recall that in 2015, 22 NGOs requested that:

- The NSA's authority to access databases be restricted exclusively to cases approved by the President of the Supreme Court, and only when national security is endangered under clearly defined circumstances.

- The law include a prohibition on retaining "collaterally" collected data that is not relevant to security, as the permanent storage of such personal data in secret files would violate the right to respect for private life. In this context, a procedure should be established for the destruction of such data at the conclusion of the measures.

- An obligation be imposed on the NSA to notify citizens—without their prior written request—of any measures taken against them after the closure of the case, in accordance with their constitutional rights.

None of these requests were addressed in the Draft Law, which additionally compels us to demand that the Draft Law be withdrawn from parliamentary procedure. We also call for a comprehensive and inclusive public consultation to be conducted regarding this matter.

Tea Gorjanc-Prelević, Executive Director of Human Rights Action (HRA)
Daliborka Uljarević, Executive Director of the Centre for Civic Education (CCE)
Maja Raičević, Executive Director of the Women's Rights Centre (WRC)