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DRAFT LAW

**ON AMENDMENTS TO THE LAW ON PROTECTOR OF
HUMAN RIGHTS AND FREEDOMS**

OF MONTENEGRO

MONTENEGRO
Government of Montenegro
Ministry for Human and Minority Rights Protection

LAW ON AMENDMENTS TO THE LAW ON PROTECTOR OF HUMAN RIGHTS AND
FREEDOMS

Podgorica, May 2009

Article 1

Article 1, paragraph 1 in the Law on the Protector of Human Rights and Freedoms are deleted.

In Article 1, paragraph 2 the following words are deleted: „shall protect human rights“ and the following words added: „undertakes measures for the protection of human rights and freedoms.“

A new paragraph - paragraph 2 - is added with the wording that reads:

„This Law establishes the Protector as the national mechanism for prevention from torture and other forms of inhuman treatment or punishment“.

A new paragraph – paragraph 3 – is added with the wording that reads:

„The Protector deals with the issues of discrimination and other general issues relevant for the protection and promotion of human rights and freedoms.“

Paragraph 3 in this Article becomes the new paragraph 4.

Article 2

Articles 2 and 3 are deleted.

Article 3

In Article 6, after paragraph 1 two new paragraphs are added and they read:

“The Protector can have organizational units in places other than its headquarters.

The decision on the number of organizational units shall be passed by the Parliament of Montenegro (hereinafter: the Parliament) upon the proposal given by the Protector”.

Paragraph 2 in this Article becomes paragraph 4.

Article 4

In Article 7 the word “Republic” is replaced with “state”.

In Article 7 a new paragraph is added and it reads:

“The Protector can collect additional revenue for its activities by means of donations”.

Article 5

Article 8, paragraph 1 is changed and it reads:

“The Parliament appoints the Protector at the proposal of the President of Montenegro.”

Paragraphs 2 and 3 are deleted.

Article 6

In Article 9, paragraph 1 the word “one” is replaced with “four”.

In paragraph 3, after the word “Protector”, the full stop is deleted and the following words added: “in compliance with internal assignment of tasks that is to provide special functions for the protection of persons deprived of liberty, protection of people belonging to minority nations and other minority national communities, protection of the rights of child, protection of gender equality, protection of disabled persons and protection form discrimination.”

In Article 9, paragraph 4 is deleted.

Article 7

In Article 10 a new paragraph is added and it reads:

“In proposing the candidates for deputy Protector, the Protector is obliged to give consideration to appropriate representation of people belonging to minority nations and other minority national communities.”

Article 8

In Article 12 the words “Republic of Montenegro” are deleted and after the word “elected as”, the word “Montenegrin” is added.

Article 9

Article 18 is changed and it reads:

“In case that the Protector is absent or s/he not able to perform his/her function, the deputy s/he designates shall replace him/her.”

In case of termination of the Protector’s office, and before a new one is appointed, the function of the Protector shall be carried out by the deputy protector designated in compliance with the paragraph 1 of this Article, who assumes rights and obligations of the Protector.”

Article 10

In Article 26, the words “the Republic of” are deleted.

Article 11

In Article 28, paragraph 1, after the word “the Protector”, a comma is added and the wording: “the Protector or an authorized researcher can without prior announcement and approval”.

In paragraph 2, after the word “the Protector”, a comma is added and the words: “the Protector or an authorized researcher”.

Article 12

After Article 28 two new articles are added.

Article 28a

“Prevention of torture” which reads as follows:

The Protector undertakes measures for prevention of torture, cruel, inhuman or degrading punishment or treatment.

For the purpose of exercising the function set forth in paragraph 1 of this article, the Protector establishes an advisory working body with multidisciplinary composition.

The body from paragraph 2 of this article, together with the representatives from the office of the Protector, makes checks on the respect for human rights of persons deprived of liberty.

Based on the report from paragraph 3 of this article the Protector gives opinion, proposals and recommendations for improving the status of persons deprived of liberty.

The manner and procedure for electing the members to the body from paragraph 2 and their remuneration shall be regulated by a separate act passed by the Protector.

Article 28b

The Protector is entitled to get an insight into the way in which care is provided for children who are temporarily placed in an institution or institutions based on the decision of a competent authority, as well as to get access to the premises where these persons are accommodated.

Article 13

Article 29 is changed and it reads:

“The President of Montenegro, Speaker of the Parliament, the Prime Minister and members of the Government, president of municipality, mayor, mayor of the capital city and mayor of the historical capital, shall without delay receive the Protector at his/his request.

Article 14

In Article 38, paragraph 2 is added and it reads:

“The Protector shall inform a complainant, as well as the authority whose act, action or inaction is the subject of the complaint about the commencement and conclusion of the procedure”.

Article 15

In Article 44, paragraph 3 the word “complaint” is replaced with “recommendation”.

Article 16

In Article 46, paragraphs 2 and 3, the word “the Republic of” is deleted in each.

Article 18

After Article 48, the new paragraph 48a is added reading:

“Rights after the expiry of office”

“The Protector and a deputy who had been appointed to a permanent office before appointment to his/her position, shall have right to resume the former function after his/her mandate expires.

In case of paragraph 1 of this article, the Protector or his/her deputy shall within 12 months as of the day when their mandates expired inform a competent body about their wish to resume his/her former function.

The Protector and a deputy whose function has expired and who cannot resume or work at his/her former function or previous full-time job is entitled to remuneration in the amount of the salary s/he would earn if s/he does the function or a full-time job thereof for not more than two years.

Article 19

In Article 49, the word “Republic” is replaced with “state”.

Article 20

Article 50 is changed and it reads:

“Financial means for the work of the Protector for Human Rights and Freedoms are appropriated by a separate item in the Budget of Montenegro.
The request for budgetary appropriations shall be submitted by a working body of the Parliament that is competent for finances on behalf of the Protector and upon the proposal of the Protector.

Article 21

After Article 50 a new article 50a is added, titled:

“The Protector’s participation in the sessions of the Parliament”, and it reads:

“The Protector has right to participate in a session of the Parliament deliberating the proposed Budget.”

Article 22

The title of the Chapter VII is changed and it reads:

“VII GENERAL SECRETARY, TEAM OF RESEARCHERS AND ADMINISTRATIVE UNIT”

Article 23

Article 51 is changed and it reads:

“The Protector has its General secretary, appointed by the Protector on a full-time basis.

The General secretary is the head of the team of researchers and of the administrative unit, s/he drafts the proposal for budgetary appropriation item for the office of the Protector, administers disbursements from its budget, looks after professional advancement matters and international cooperation of the Protector as well as other activities in compliance with this law and the Rules of procedure.

The General secretary is entitled to remuneration and other rights equivalent to those stipulated for the function of the General secretary of the Parliament.

The General secretary is accountable to the Protector”.

Article 24

After Article 51, new article 51a is added and it reads:

“The Protector sets up a team of researches for doing research about the violations, status, and conditions for exercise, protection and promotion of human rights.

The human rights researchers thereof are appointed by the Protector on full-time basis and they are assigned to salary grades three or four.

The Protector sets up the Administrative unit for providing administrative-technical activities and logistics.

The organization, scope and procedures relative to the team of researchers and for the administrative unit shall be regulated by a separate act to be passed by the Protector.”

Article 25

The title of Article 52 is changed and it reads: “**Rights and obligations of the staff**”.

Article 26

Article 52 is changed and it reads:

“The researchers can neither be members of a political party nor politically active persons.

The researchers cannot be held accountable for assessments and stands they presented in the course of their work.

The employees are obliged to keep in confidence information and personal data they have learned about in the course of their work while they are at work and after their employment terminates.

The employees shall have their official identification badge/document whose form and content shall be determined by the Protector in a separate act.

Financial means for the employees' salaries are to be increased for 30% in relation to the salary appropriations for the employees in other state authorities due to special gravity and nature of their work, their responsibilities and conditions for work.

The bonus on salary for the employees from paragraph 5 of this article shall be determined by the Protector in a separate act.”

Article 27

After Article 52, a new article 52a is added and it reads:

“All rights and obligations not regulated in this Law shall be regulated by regulations on civil servants and state employees accordingly”.

Article 28

The title of the Chapter is changed and it reads: “**ACTS PASSED BY THE PROTECTOR**”

Article 29

In Article 53, paragraph 1 after the word “procedure”, the following words are added: “and other acts from his/her competence.”

Article 30

This Law shall enter into force on the eighth day upon its publication in the “Official Gazette” of Montenegro.