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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

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

by  
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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. According to the draft law, prevention of torture would be explicitly mentioned in Art. 1 as one of the responsibilities of the Protector. Furthermore, a new article (Art. 28a) would deal with prevention of torture and the rights of persons deprived of liberty in general. The proposed provisions would emphasize the importance of a central function of the Protector and are to be endorsed.
2. Another new provision in Art. 1 would lay down that “the Protector deals with the issues of discrimination and other general issues relevant for the protection and promotion of human rights and freedoms”. The relation of such a general provision to Art. 1(2), also phrased in general terms, is unclear.
3. According to the draft law, articles 2 and 3 of the law in force, which lay down the principles of autonomy and independence, and constitutionality and legality, would be repealed. Such a change could create misinterpretations with regard to the significance of these principles and can therefore not be endorsed.
4. Amendments to Art. 6 would strengthen the territorial organization of the Protector’s office and is to be welcomed.
5. According to a new paragraph in Art. 7, the Protector could collect “additional revenue for its activities by means of donations”. However, extra-budgetary funding can be problematic from the point of view of the Protector’s independence. The proposed amendment should be reconsidered.
6. Amendments to Art. 8 would change the procedure for the appointment of the Protector. According to the new procedure, the Parliament would appoint the Protector on the proposal of the President of Montenegro. The present provisions which aim to ensure the influence of civil society and give the right of nomination to a parliamentary body would be repealed. The proposed amendments can be regarded as a set-back from the point of view of the transparency of the procedure. Instead of the proposed amendments, a provision on a qualified majority in the Parliament is recommendable.
7. The amendments proposed to Art. 9 and 10 are premised on a division of labour between the Deputy Protectors and an adequate representation of national minorities among them. They are to be welcomed.

8. The proposed provisions on the budgetary procedure (Arts. 50 and 50a) as well as the staff of the Protector (Art. 51 and 51a) aim to secure the financial and personnel means necessary for the effective functioning of the Prosecutor's office and are therefore welcome. The same goes for the provisions in Art. 52 on the rights and obligations of the staff, pertaining to the independence of the personnel.