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

**DRAFT LAW**  
**ON PROHIBITION OF DISCRIMINATION**  
**of MONTENEGRO**

## **I GENERAL PROVISION**

### **Article 1 - Subject of the Law**

This Law regulates general prohibition of discrimination, prohibition of various forms of discrimination, prohibition of special cases of discrimination, institutional framework for prohibition of discrimination, procedure for protection against discrimination, as well as other issues important for implementation of this law.

### **Article 2 - Purpose of the Law**

The purpose of the Law is prevention and fighting discrimination and achieving equality in rights and by laws.

### **Article 3 - Definition of discrimination**

Discrimination in the spirit of this Law is any legal or physical distinction, giving preference, exclusion or restriction made on the basis on race, national or ethnic origin, language, religion or confession, political conviction, opinion, birth, sex, sexual orientation, material status, social background, health condition, disability, marital status, parenthood or any other personal trait on the basis of which the recognition, enjoyment or exercise of someone's human rights are impaired or nullified in civic, political, economic, social, educational, cultural, sports or any other field of life.

Special measures, adopted solely for the sake of providing for adequate progress of certain national, racial or ethnic groups or persons who need protection, deemed necessary for the sake of guaranteeing, enjoying and exercising human rights and fundamental freedoms under equal terms shall not be considered as discriminatory measures so long as they do not result in persistence of different rights for different groups and that they do not persist after the objectives for which the measures were undertaken are achieved.

All terms that are used in this Law in masculine form shall refer likewise to the same terms in feminine form.

### **Article 4 - Consent**

Consent of a person who is considered a victim of discrimination to a discriminatory treatment shall not relieve the discriminator of liability.

### **Article 5 - Protected persons**

In compliance with the Constitution, law and international treaty, the provisions of this Law shall apply to any individual who stays in the territory that falls within jurisdiction of Montenegro, irrespective of whether the individual thereof is a citizen of Montenegro, some other state or s/he does not have citizenship at all.

A foreigner in Montenegro, within the limits determined by the Constitution, law and international treaty shall have the same legal status as a citizen of Montenegro.

Everyone is entitled to protection from all forms of discrimination before competent courts and other state authorities.

## **II - PROHIBITION OF DISCRIMINATION AND FORMS OF DISCRIMINATION**

### **Article 6 Principle of equality**

Everyone is equal and enjoys equal status and equal legal protection, irrespective of personal traits.

Everyone is obliged to respect the principle of equality or prohibition of discrimination.

### **Article 7 - Prohibition of discrimination**

Any form of discrimination on any grounds whatsoever is prohibited.

Any promotion, incitement or invocation to discrimination is prohibited.

Prohibition of discrimination cannot be restricted or suspended even times of war or emergency.

### **Article 8 - Direct and indirect discrimination**

Direct discrimination, in the spirit of this law, exists if an individual or a group of individuals, in the same or similar situation, are put or have been put in unfavorable position by any act, action, absence of act or action due to his/her or their personal trait.

Indirect discrimination, in the spirit of this law, exists if a person or a group of persons due to their personal trait are put into unfavorable position by passing an act, by is performing or failure to perform an action that is nominally based on the principle of equality and non-discrimination except if that act or action is justified by a legitimate aim and the means for achieving the goal thereof were appropriate and necessary.

### **Article 9 - Harassment and sexual harassment**

Harassment, in the spirit of this Law, is a form of discrimination that represents unwanted conduct and action related a personal trait of a person with the purpose or effect of violating dignity or causing the state of intimidation, inconvenience, aggression, humiliation or offending.

Sexual harassment, in the spirit of this Law, is any unwanted physical, verbal or non-verbal behavior of sexual character for the purpose or effect of inflicting harm to personal dignity or generating state of fear, inconvenience, aggression, humiliation or offending.

### **Article 10 - Mobbing**

Mobbing, in the spirit of this Law, is any physical abuse at work, or moral terror at work that leads to mental, psycho-somatic and social suffering of a victim and which is aimed at harming personal dignity or generating state of fear, inconvenience, aggression, humiliation or insult.

### **Article 11 - Grave forms of discrimination**

Grave forms of discrimination are:

- incitement and encouragement of inequality and intolerance that leads to serious consequences;
- incitement or encouragement of hatred and intolerance based on national, racial, religious or political background;

- promotion or practice of discrimination by state authorities, in procedures before the state authorities, by means of media and by writing and exhibition of materials and symbols with discriminatory contents in public places;
- slavery, human trafficking, apartheid, genocide, ethnic cleansing and their promotion.

Discrimination against a certain individual based on more than one ground stipulated in Article 3, paragraph 1 of this Law, discrimination committed several times (repeated discrimination) or discrimination committed over a long period of time (extended discrimination) shall each be considered a grave form of discrimination, in the spirit of this Law.

### **Article 12 - Segregation**

Segregation, in the spirit of this Law, represents a coercive and systemic separation of individuals in groups and putting them into disadvantaged position on the grounds of racial, ethnic, national, religious descent, sex, disability or other personal trait.

Segregation is considered to be discrimination, too, pursuant to Article 3, paragraph 1 of this Law.

### **Article 13 - Protection from victimization**

No one who by acting conscientiously reports a case of discrimination or in any capacity gives a deposition before a competent authority investigating a case of corruption shall suffer damaging consequences.

## **III - SPECIAL CASES OF DISCRIMINATION**

### **Article 14 - Discrimination in procedures before authorities of the state**

Everyone is entitled to equal access and equal protection of his/her rights and freedoms before the courts and other state authorities.

Discriminatory treatment towards a party in procedure before the court or other authority shall be considered the reason for remedial against the decision pertaining to his/her right or based on the statutory interest, in compliance with the law that stipulates that procedure.

Discriminatory action of a judge or a lay-judge shall be considered a neglectful performance of function in case of discrimination, while repeated discrimination shall be considered a more serious form of discriminatory action and more serious violation of duty at work.

Prosecutor's discriminatory action in relation to the selection of a defendant in criminal prosecution shall be considered a negligent performance of prosecutorial function.

### **Article 15 - Discrimination in field of public service delivery**

In the field of delivering public services, practices shall be considered discriminatory if an individual or a group solely or mostly due to their personal characteristics:

- is/are denied a service;
- is/are conditioned for receiving service with conditions that are not requested from other individuals or groups.
- a service is delivered later even though s/he/they requested it and met conditions for it before other individuals or groups.

An individual who is found to have acted in discriminatory way in delivering service shall be fined, and if s/he has acted in a discriminatory way at work or in relation to work, s/he shall also be called to disciplinary account for grave breach of duty.

Service, in the spirit of paragraph 1 of this Article is a service that a physical or legal person delivers as a part of his/her profession or occupation.

#### **Article 16 - Discrimination in use of facilities/buildings and areas in public use**

The construction of facilities/buildings for public use shall be done in a way that will enable unrestricted access, mobility, stay and work to individuals with reduced mobility or disabled persons, in compliance with special regulations.

The owner of a facility in public use is obliged to make adaptations to the facility thereof to the effect of meeting conditions laid down in paragraph 1 of this article provided that other legal and physical persons have managed to provide two thirds of funds required for adaptation thereof.

In the spirit of paragraph 1 of this Law, the facilities in field of education, health, social care, culture, sports, tourism, environmental protection, protection from natural disasters etc. are considered facilities in public use.

In the spirit of paragraph 1 of this Law, parks, public green spaces and recreational grounds, squares, streets, pedestrian crossings and other public roads are considered areas in public use.

#### **Article 17 - Discrimination on the grounds of condition of health**

Any forced detention in a health care facility, sheltering or undertaking any other forced medical measure, except in (special?) cases and in a manner prescribed by the law, shall be prohibited.

#### **Article 18 - Discrimination in field of education and vocational training**

Everyone has right to pre-school, elementary and secondary education and vocational training under equal terms in compliance with the law.

It is prohibited to make it difficult to or prevent any individual or a group of individuals on the grounds of their personal characteristics from enrolling into an educational institution or to disqualify/expel them from those institutions, make it more difficult or deprive them from possibility to attend teaching and participate into educational activities, classify students by their personal traits, harass them or in any other way make unjust differentiation and treating them unequally.

It is prohibited to discriminate against educational institutions that work by laws and other regulations and against persons that use or have used services of these institutions in compliance with the law.

#### **Article 19 - Discrimination in field of work**

Discrimination is prohibited in field of work i.e. it is prohibited to impair equal opportunities for employment or enjoyment on equal terms of all rights based on work – such as right to work, to free selection of employment, promotion in service, professional advancement and professional rehabilitation, equal pay for equal work, fair and satisfactory conditions for work, to break/leave from work, education, association in trade unions as well as to protection from unemployment.

Individuals who are employed, part-time working individuals or those who work by contract for services or by some other contract, a person who does a sideline work, public official, an individual looking for a job, a student or an apprentice, individuals who took training for professional advancement even though not employed, a volunteer and any other person who partook in work on any other terms are eligible to resort to protection from discrimination from paragraph 1 of this article.

#### **Article 20 - Discrimination of persons with disabilities**

Any practice contrary to the principle of respect of equal rights and freedoms of persons with disabilities in political, economic, cultural and other aspects of public, professional, private and family life shall be considered discrimination.

The way of exercise or and protection of rights of persons with disabilities shall be stipulated by a separate law.

#### **Article 21 - Discrimination on the basis of sex**

Discrimination on the grounds of sex is prohibited.

The manner in which the rights based on gender equality are to be provided as well as measures for eliminating discrimination on the basis of sex and creating equal opportunities for participation in all fields of social life shall be stipulated in a separate law.

#### **Article 22 - Discrimination on the basis of sexual identity and sexual orientation**

Sexual identity and sexual orientation is a private matter and no one can be called upon to publicly declare his/her sexual identity and sexual orientation.

Everyone has right to publicly declare his/her sexual identity and sexual orientation.

Discriminatory practice based on assumed or publicly declared sexual identity or sexual orientation is prohibited.

The rights that are recognized in paragraphs 1 and 2 of this article pertain likewise to the cases of transsexuals.

#### **Article 23 - Discrimination on the grounds of spousal and family relations**

Any action by which someone is deprived of right to marriage, given special conditions for getting married or for exercising parental rights, or rights to adoption in contravention to the law shall be considered discrimination in relation to spousal and family relations.

#### **Article 24 - Discrimination by religion**

Discrimination on the grounds of religion exists in case that there are practices contrary to the obligation of impartiality of the state towards religious communities, particularly if special rights and freedoms are unjustly provided to the individuals belonging to some religions or if it unjustly refuses to recognize certain religious communities.

Discrimination exists if actions are taken contrary to the principle of free exercise of religion, or if an individual or group are deprived of the right to acquire, keep, express and change religious beliefs as well as the right to act in compliance to their religious convictions.

## **Article 25 - Discrimination of minorities**

Discrimination of minority nations and other national communities and people belonging to them (hereinafter referred to as: minorities) on the grounds of national descent, ethnicity, religious belief, culture, language and ties to some national minority is prohibited.

The way in which the protection of rights of minorities is exercised and protected shall be regulated by law.

## **IV - INSTITUTIONAL FRAMEWORK AND SUPERVISION**

### **Article 26 - Mechanism for protection from discrimination**

Everyone who considers that s/he has been discriminated by an act, action or inaction of an authority can address the Protector of Human Rights and Freedoms by a complaint.

The complaint from paragraph 1 of this article is filed in compliance with the Law on the Protector of Human Rights and Freedoms.

### **Article 27 - Supervision of the enforcement of the Law**

The Ministry competent for protection of human and minority rights shall supervise the implementation of this law.

### **Article 28 - Juridical protection from discrimination**

Provisions of the laws that regulate civil litigation procedure shall accordingly regulate the procedure pertaining to any wrongs inflicted by discrimination, unless otherwise prescribed by this Law.

Any procedure thereof shall be expedient.

Deadline for complaint is 15 days.

### **Article 29 - Territorial jurisdiction**

In the procedure of protection from discrimination, apart from courts of general jurisdiction, the court in whose territory the seat or residence of a plaintiff is shall have territorial jurisdiction.

### **Article 30 - Initiating procedures**

The procedure in an action for protection from discrimination is instituted by an action for remedy *vis a vis* discrimination (hereinafter referred to as the: Action).

The action for remedy thereof can be brought by any individual who thinks that s/he is a victim of discrimination or his/her attorney or any other person who is eligible hereto by law.

If an act of discrimination against a certain group has been committed by means of media, at a public gathering or by a public authority, or if it has caused serious consequences, the action for protection from discrimination can be brought by organization that deals with the protection of freedoms and rights of humans and citizens or with the protection of a that specific group.

**Article 31 - Remedial action**

The action from Article 30, paragraph 1 of this law can be means to request:

1. Prohibition of execution of an activity that bears potential threat of discrimination, prohibition of further progress of a discriminatory activity, or bring the repetition of discrimination to an end;
2. Establishing the fact that the respondent has acted in wrongful way towards the plaintiff or other person;
3. Compensation for damage in compliance with the law.

If an action has been brought in compliance with the provision of the Article 30 of this law, it can also specify the request for compensation for damage inflicted.

For bringing action as of paragraphs 1 and 2 of this Article, the plaintiff has to prove that his/her legal interest is legitimate.

**Article 32 - Provisional order**

A plaintiff can enclose the request from Court to stay a certain act with the action paper against an individual act or action if the act's execution can inflict irreparable damage.

In the proposal to issue a provisional measure, the plaintiff has to provide arguments that the measure thereof is necessary to the effect of eliminating threat from violence based on discriminatory action, (and) preventing use of force or cause for irreparable damage.

The court has to decide about the motion for issuing provisional measure within three days as of the receipt of the motion thereof.

**Article 33 - Burden of proof**

If a plaintiff makes probable the facts that the respondent committed an act of discrimination, the burden of proof that that act did not affect the principle of equality or equal rights principle rests with the respondent thereof.

**Article 34 - Publishing of the verdict**

At the proposal of a plaintiff the court can request that the verdict from Article 31 of this Law is published at the respondent's cost.

The proposal of the paragraph 1 of this article can be lodged before the trial is completed.

**Article 35 - Revision**

In the action for protection against discrimination revision is allowed at all times.



#### **IV - TRANSITIONAL AND FINAL PROVISIONS**

##### **Article 36 - Acting Protector**

The Protector of Human Rights and Freedoms shall act in cases of discrimination that take place as of the day when this Law enters into force.

##### **Article 37 - Entering into force**

This Law shall enter into force on the eighth day as of the day when it is published in the "Official Gazette of Montenegro".