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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON PROHIBITION OF DISCRIMINATION
OF MONTENEGRO

Podgorica, November 2009

Draft

LAW
ON PROHIBITION OF DISCRIMINATION

I GENERAL PROVISIONS

Subject of the Law

Article 1

Protection from discrimination shall be exercised pursuant this Law, as well as pursuant other laws regulating protection from discrimination on particular grounds or related to exercise of particular rights.

Protection from discrimination

Article 2

Protection from discrimination implies undertaking of measures and activities for suppression and prevention of discrimination, creation of equal possibilities and achieving the equality of all citizens in exercising rights and freedoms, as well as court protection.

Definition of discrimination

Article 3

Discrimination is any unjustified legal or physical, direct or indirect distinction or unequal treatment, or non-treatment of a person or a group of persons in comparison to other persons, as well as exclusion, restriction or giving preference to a person in comparison to other persons, based on sex, race, colour of skin, national affiliation, social or ethnic origin, affiliation to minority nation or minority national community, language, confession, political or other opinion, sexual orientation, health conditions, disability, age, material status, membership in a group or assumed membership in a group, as well as other personal characteristics.

Direct discrimination exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or have been brought into unfavourable position by any act, action, failure to act on any of the grounds referred to in paragraph 1 of this Article.

Indirect discrimination exists if an apparently neutral provision, criterion or practice is bringing or can bring a person or a group of persons into unfavourable position in respect to other person or group of persons, on any of the grounds referred to in paragraph 1 of this Article, except in the cases when that provision, criterion or practice is objectively and reasonably justified by a legitimate goal and achievable with the means appropriate and necessary to use for achieving that goal, or when they are acceptable and proportionate in relation to the goal to be achieved.

The incitement to discriminate certain person or a group of persons on any of the grounds referred to in paragraph 1 of this Article shall be deemed to be discrimination.

Protection from victimisation

Article 4

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

Causing a damaging consequences referred to in paragraph 1 of this Article shall be deemed to be discrimination.

Special measures for protection from discrimination

Article 5

Special measures, directed on providing conditions for realisation of national, gender and overall equality and protection of persons being in unequal position based on any of the grounds referred to in Article 3 paragraph 1 of this Law, may be imposed by state bodies, bodies of the state administration, bodies of the units of local self-government, public enterprises and other legal persons performing public powers (hereinafter referred to as: bodies), as well as other natural and legal persons.

Consent

Article 6

Consent of a person to be discriminated shall not relieve from liability the person performing discrimination or a person inciting discrimination.

Application of the Law

Article 7

Provisions of this Law are in effect for all natural persons whereon the legislation of Montenegro applies.

Protection from discrimination in accordance with this Law also can be achieved by legal persons being discriminated on any of the grounds referred to in Article 3 of this Law.

Use of gender sensitive language

Article 8

Expressions used in this Law referring to a natural person in masculine, consider the same expressions in feminine.

II SPECIAL FORMS OF DISCRIMINATION

Harassment

Article 9

Harassment, on any of the grounds referred to in Article 3 of this Law, represents unwanted conduct or action with the purpose or effect of violating a personal dignity, and which causes a state of intimidation, inconvenience, animosity, humiliation or offensiveness.

Mobbing

Article 10

Mobbing is a form of conduct at working place representing systematic, prolonged physical abuse or humiliation of one person conducted by other person or persons by the way of insulations, depreciation, harassment and other activities having for a goal a harm of his personal reputation and moral, human dignity and integrity and which can lead to the harmful consequences on his physical or mental health or compromise professional future of the employee the victim of mobbing.

Grave form of discrimination

Article 11

Discrimination causing, or that can cause, grave consequences for the victim of discrimination, represents a grave form of discrimination, what shall be considered by the court in occasion of deciding about the sanction or compensation of damage.

Segregation

Article 12

Segregation represents a separation of persons or a group of persons, on any of the grounds referred to in Article 3 paragraph 1 of this Law, under the condition that there is no objective and reasonable justification for such treatment.

Discrimination in procedures before public state authorities

Article 13

Any unjustified differentiation or unequal treatment before the state bodies, bodies of the local self-government, public services and other holders of public powers of a person or a group of persons, on any of the grounds referred to in Article 3 paragraph 1 of this Law, shall be deemed to be discrimination.

Discrimination in use of facilities/buildings and areas in public use

Article 14

Restricting or disabling the use of facilities/buildings and areas in public use to a person or a group of persons, on any of the grounds referred to in Article 3 paragraph 1 of this Law, shall be deemed to be discrimination.

Discrimination on the grounds of health conditions

Article 15

Disabling, restricting or making difficult for a person to work, to get employment, education or exercise other rights, shall be deemed to be discrimination.

Discrimination in the field of education and vocational training

Article 16

Discrimination in the field of education and vocational training is deemed to be complicating or preventing from enrolment in educational institution and institution for high education and selection of educational programme on all levels of education, expelling from mentioned institutions, making difficult or deny the possibility of attending classes and participate in other educational activities, classification of children, pupils, participants in education and students, abuse or in other way making unjust differentiation or unequally treating them, on any of the grounds referred to in Article 3 paragraph 1 of this Law.

Discrimination in field of labour

Article 17

In addition to the cases of discrimination prescribed by the law regulating the field of labour and employment, discrimination at work shall be deemed to be also payment of unequal salary or compensation amount for the work of equal value to a person or a group of persons, on any of the grounds referred to in Article 3 paragraph 1 of this Law.

Persons performing temporary or seasonal work or work by special agreement, students and pupils on practice, as well as other persons participating on any ground in the work for an employer, have the right on the protection from discrimination referred to in paragraph 1 of this Article.

Discrimination of persons with disabilities

Article 18

Under discrimination of a person with disability shall be especially deemed: preventing or making difficult the access to health care i.e. denial of the right to health care, regular medical treatment and medicines, rehabilitation means and measures, in accordance with his needs, denial of the right to marry, form a family and other rights from the field of matrimony and family relations, denial of the rights on schooling or education, denial of the right to work and the rights related to employment relations.

Discrimination of the person with disability exists also in the case when measures to remedy limitations or unequal position, this person is facing on the basis of disability, are not taken.

Discrimination on the basis of gender identity and sexual orientation

Article 19

Any differentiation, unequal treatment or bringing in unequal position of a person on the basis of gender identity or sexual orientation, shall be deemed to be discrimination in the spirit of this Law.

Everyone has the right to publicly declare his gender identity and sexual orientation.

Provisions referred to in paragraphs 1 and 2 of this Article relates also to transgender and transsexual persons.

Application of provisions regulating protection from discrimination

Article 20

On discrimination regulated by a separate law, i.e. by law regulating exercise of certain rights, are applied provisions of this law regulating protection from discrimination.

III COURT PROTECTION***Initiation of proceeding***

Article 21

Everyone who deems to be damaged by discriminatory treatment has the right to be protected before the court in accordance with the law.

Proceeding shall be initiated by filing an action.

Statement of claim

Article 22

By action referred to in Article 21 of this Law one can claim also:

1. establishment of the fact that the respondent has acted discriminatory towards the plaintiff;
2. prohibition of exercising the activity that bears potential treat of discrimination, i.e. prohibition of repetition of discrimination activity;
3. compensation of damage, in accordance with the law,
4. in case discrimination is performed by the way of media, publication in the media of the judgement establishing discrimination, on the expenses of respondent.

In cases referred to in paragraph 1, items 1 and 2 of this Article, the statement of claim shall be exert together with the requests for protection of the right to be decided in civil proceeding if those claims are correlated.

Action referred to in paragraph 1, items 1 and 2 of this Article, can be filed individually only if act or action of discrimination did not had as a consequence the lost or violation of some right.

On the acts and actions of discrimination committed by official persons during the court proceeding, can be pointed out only in legal remedies.

Deadline for filing the action

Article 23

Action referred to in the article 22 paragraph 3 of this Law can be filed within 60 days from the day of cognition for discrimination performed.

Burden of proof

Article 24

If the plaintiff makes probable the facts that the respondent committed an act of discrimination, the burden of proof, that that act did not violated equality in rights and equality before the law, passes on the respondent.

Paragraph 1 of this Article does not refer to misdemeanour and criminal proceedings.

IV INSTITUTIONAL FRAME

Protector of human rights and freedoms

Article 25

Anyone who considers that he has been discriminated by an act, action or failure to act of an authority can address the Protector of Human Rights and Freedoms by a complaint.

Procedure by the complaints referred to in the paragraph 1 of this article shall be conducted in compliance with the Law on the Protector of Human Rights and Freedoms.

Report of Protector of Human Rights and Liberties

Article 26

Protector of Human Rights and Freedoms, in separate part of the annual report, shall inform the Parliament of Montenegro on noted cases of discrimination and undertaken activities and give recommendations and propose measures for remedy of discrimination.

About noted cases of discrimination the Protector of Human Rights can submit to the Parliament of Montenegro a separate report, if evaluates the need for that according to the exceptionally important reasons.

V INSPECTION CONTROL

The role of inspection

Article 27

Inspection control over the implementation of this law in respect to discrimination in the field of labour and employment, protection at working place, health care, education, building and construction, traffic, tourism and other fields shall be performed by inspections competent for those fields, in accordance with the law.

VI FINAL PROVISION

Entering into force

Article 28

This Law shall enter into force on the eighth day as of the day of publication in the "Official Gazette of Montenegro"