

LAW ON DOMESTIC VIOLENCE PROTECTION

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Law on Domestic Violence Protection

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I GENERAL PROVISIONS

Subject

Article 1

This Act shall govern the provision of protection from domestic violence ('protection').

Domestic violence

Article 2

Domestic violence ('violence'), as used in this act, shall mean omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.

Family members

Article 3

Family members, as used in this act, shall mean any of the following:

- 1) spouses or former spouses, children they have in common, and their stepchildren;
- 2) consensual partners or former consensual partners irrespective of the duration of consensual union, children they have in common, and their stepchildren;
- 3) persons related by consanguinity and relatives by full adoption, in the direct line of descent with no limitation and in collateral line of descent up to the fourth degree;
- 4) relatives by incomplete adoption;
- 5) relatives on the side of wife/consensual partner up to the second degree in a married or consensual union;
- 6) persons sharing the same household irrespective of the nature of their relationship;
- 7) persons who have a child in common or who have conceived a child.

Right to assistance and protection

Article 4

A victim of violence ('victim') has the right to psycho-social support, legal aid,

social and medical care, in accordance with law.

Victim protection is provided by, but is not limited to, issuance of order of protection.

Special assistance and protection is provided to a victim who is a minor child, elderly, person with a disability, and person who cannot take care of himself/herself, in accordance with law.

Institutions providing protection

Article 5

The public administration agency in charge of police affairs ('Police'), misdemeanour body, public prosecution service, social work centre or other social and child protection agency, health care institution, and other agency or institution acting as care provider, have the duty to provide victim with full and coordinated protection, within their respective powers and depending on the severity of violation.

A non-governmental organization, other legal or natural person, may provide protection in accordance with law.

Bodies and institutions from para. 1 of this article shall act in accordance with law in setting incidences of violence in the order of priority, and shall ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victim in regaining security in life.

Expedited procedure

Article 6

Any procedure for protection taken by the bodies and institutions from article 5, para. 1 of this act shall be expedited procedure always bearing in mind, where victim is a minor child, elderly, a person with a disability, or a person who cannot take care of himself/herself, that the interest and wellbeing of victim must be given priority in such procedure.

Use of gender sensitive language

Article 7

Terms used in this act to refer to natural persons of male gender shall also include such persons of female gender.

II VICTIM PROTECTION

1. AVAILABLE ASSISTANCE AND PROTECTION

Forms of violence

Article 8

Specially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or attempts to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with.

Also considered as constituting violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be insufficient care by a family member to provide any of the following:

- 1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglect his duties concerning child development and education;
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report (hiding) family member with special needs.

*Duty to report violence***Article 9**

A state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities.

Under the duty to report violence to the police is the head of the agency or institution from para. 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and other person who learns of violence in the discharge of his affairs.

A misdemeanour body and the police are under the duty to notify the social work centre of such incidence of violence where victim is a minor child.

*Emergency intervention***Article 10**

Upon receipt of report on the incidence of violence, police will immediately take action and measures to protect victim, in accordance with this act and other legislation governing police, misdemeanour procedure, criminal procedure and witness protection.

A social work centre, or other social and child protection institution, and other body and institution in charge of such protection must immediately provide protection and assistance to victim in line with their respective powers.

The bodies and institutions from para. 2 of this article shall take care of all victim's needs and allow victim access to all forms of assistance and protection.

*Victim assistance plan***Article 11**

A social work centre may set up an expert team composed of its representatives as well as representatives of local government bodies and service agencies, police, non-governmental organizations and experts for family issues. The team will design victim assistance plan and coordinate victim assistance activities, in accordance with victim's needs and choice.

Victim assistance plan includes measures to be taken in accordance with the law governing social and child protection. Where victim is a minor child, victim assistance plan must also include child protection measures in accordance with the law governing family relations.

For the conduct of activities from para 1 of this article, an expert team may be organized by other body, institution or organization in charge of protection.

Social care

Article 12

Victim social care includes provision of material and non-material assistance, accommodation and social work services, in accordance with the law governing social and child care.

Social care centers shall obligatory establish precise record of children and persons with special needs existing on their territory of competence.

In order to provide protection from violence over persons referred to in paragraph 2 herein, centers are obliged to form special teams that shall, at least one time per month, pay visits to families where children and persons with special needs resides or live, control conducting with these persons, and, on basis of determined conditions, these teams shall prepare report in written form.

Social care centers shall obligatory, at least one time in six months, deliver report in written form to the ministry competent for social care affairs, which shall contain data on level of realization of social care for children and persons with special needs.

Legal aid

Article 13

Victim of violence has the right to free legal aid, in accordance with the special law.

Victim security

Article 14

A police officer has the duty to accompany victim to victim's place of residence or other premises to remove necessary personal belongings and possessions, unless where victim strongly objects to being accompanied.

Action from para. 1 can also be taken where victim is provided with temporary residence and care.

Confidentiality of procedure

Article 15

Bodies, institutions, organizations and other legal and natural persons from article 5 of this act shall protect data confidentiality and ensure personal data

protection, in accordance with law.

No information may be disclosed on either victim or the family member who committed violence ('abuser') where such information would lead to identification of victim or victim's family member, unless adult victim has explicitly consented to it.

Confidant

Article 16

Victim may select a person to attend all protection procedures and actions ('confidant').

Eligible to be confidant is a family member, a person from a body, institution, non-governmental organization or other legal person or other person that victim confides in.

Abuser is not eligible to act as confidant.

Victim may select confidant before or during protection procedures and actions.

Line bodies have the duty to ensure presence of confidant in all procedures and actions that involve victim and are related to family relations.

Multidisciplinary team and principle of cooperation

Article 17

For the purpose of organizing, monitoring and promoting a coordinated and efficient protection, the body or institution from article 5, para. 1 of this act may set up a team composed of experts in social and child care, health care, judiciary, police protection, human rights and freedoms, as well as representatives of non-governmental organizations dealing with protection.

Protection strategy

Article 18

Protection is provided in accordance with the strategy for protection from domestic violence ('strategy'), which includes:

- 3) situation analysis and identification of key problems in social care and other forms of care;
- 4) objectives and measures to be taken to promote social care and other forms of care, particularly in relation to the following: awareness raising among citizens of the phenomenon of violence and developing attitudes to violence as an unacceptable form of behaviour; development of

programmes for the prevention of violence; family support in violence prevention; further development of the legislative framework for protection issues; strengthening cooperation among bodies, institutions, organizations and other legal and natural persons in charge of protection; developing new knowledge and skills in any person involved in protection; improvement of the system for data collection and analysis and of the system for reporting incidence of violence.

Activities for implementation of objectives and measures from para. 1, subparagraph 2 of this article are to be set forth in the action plan for strategy implementation.

The strategy and action plan for its implementation are adopted by the Government of Montenegro.

2. ORDERS OF PROTECTION

Purpose of orders of protection

Article 19

Orders of protection are issued to prevent and suppress violence, remove its consequences and take efficient measures to reform abuser and eliminate circumstances that may make him susceptible to or encourage reoffending.

Types of orders of protection

Article 20

Abuser may be issued one or more of the following orders of protection:

- 1) order of removal from place of residence or other premises ('removal from residence');
- 2) restraining order;
- 3) prohibition of harassment and stalking;
- 4) mandatory addiction treatment;
- 5) mandatory psycho-social therapy.

Bodies and institutions from article 5, para. 1 have the duty to inform the abuser of his rights.

Removal from residence

Article 21

Removal from residence may be ordered to abuser who is sharing a place of

residence or other premises with victim, irrespective of the title and other rights that abuser and victim may have to the place of residence or other premises, if there is risk of reoffending.

Abuser who is ordered removal from residence shall immediately leave the residence or other premises.

Removal from residence is ordered for minimum thirty days and maximum six months.

Restraining order

Article 22

Restraining order may be issued to abuser if there is risk of reoffending or where victim undergoes suffering the severity of which has prevented victim's regular psychological activities for a short or longer period of time.

A misdemeanour body shall clearly indicate in the restraining order the location or area within which abuser must not come close to victim.

Restraining order is issued for minimum thirty days and maximum one year.

Order prohibiting harassment and stalking

Article 23

Prohibition of harassment and stalking may be ordered to abuser where there is risk of re-offending.

The protection order from para. 1 of this article is issued for a period of minimum thirty days and maximum one year.

Mandatory addiction treatment

Article 24

Mandatory addiction treatment may be ordered to abuser who commits violence under the influence of alcohol, addictive substances or psychotropic substances, and where due to such addiction there is risk of reoffending.

The protection order from para. 1 of this article may last for as long there is need for treatment, limited to one year.

Mandatory psycho-social therapy

Article 25

Mandatory psycho-social therapy may be issued to abuser to eliminate the

cause of violent behaviour and reform abuser, and to diminish or eliminate risk of reoffending.

The protection order from para. 1 of this article lasts for as long as reasons for which it was ordered are present, limited to six months.

Mandatory psycho-social therapy is enforced in accordance with the law governing treatment and rehabilitation of persons addicted to psychoactive substances (alcoholics and drug addicts) and persons with other behavioural disorders.

3. PROCEDURE OF ISSUING ORDERS OF PROTECTION

Issuance of order of protection

Article 26

An order of protection may be issued either in addition to a sanction or as a sanction in itself.

A misdemeanour body may issue one or several orders of protection to abuser provided pre-requisites for such orders as set by this act are satisfied.

A misdemeanour body may decide to prolong duration of protection measures imposed referred to in Articles 21-25 of this Law, if reasons for measures imposing still exist, but no longer than for period of two years.

Persons eligible to filing petition

Article 27

Petition for grant of order of protection ('petition') may be filed by victim or his representative, social work centre, or other social and child care institution, police or public prosecutor.

An order of protection may be granted by a misdemeanour body *ex officio*.

Order

Article 28

In order to eliminate risk to victim's physical integrity, police officer may order abuser to leave residence or other premises or prohibit his return to residence or other premises. The order is issued for maximum three days.

The written order to leave or not return to residence or other premises must be served by police officer on abuser and victim immediately, within maximum two hours, in the presence of an adult, who may be another police officer, but may not be a family member.

The written order from para. 2 of this article must include: date and hour of removal or prohibition of return to residence or other premises; boundaries of the area within which abuser must not move, reside or come close to victim, and the address of residence where abuser is staying while the order of removal or prohibition of return is in effect.

When leaving residence or other premises, abuser has the right to take with him necessary personal belongings and possessions and must hand over to police officer his key to residence or other premises.

Police officer encloses the written order from para. 2 of this article to the official report on the incidence and immediately, within maximum 12 hours, notifies of the incidence a misdemeanour body and social work centre.

A detailed description of the content and layout of the form for the written order from para. 2 of this article is to be set by the ministry in charge of internal affairs.

Grant of order of protection before and during the proceeding

Article 29

If a misdemeanour body finds it necessary to immediately protect victim, it may grant an order of protection before and during the proceeding, within maximum 48 hours of the receipt of petition.

A misdemeanour body may request assistance from social work centres or other social and child care institution in collecting evidence and presenting the opinion on the purpose of the order sought.

If the petition is filed before the proceeding starts and the petitioner does not file application to initiate the proceeding within five days, the misdemeanour body shall suspend the order of protection granted.

The misdemeanour body shall warn the petitioner of the consequences of his failing to file the application from para. 3 of this article.

Appeal

Article 30

The decision to grant an order of protection is subject to appeal within three days of its service.

The appeal is subject to the decision of the second instance body within three days of receipt of appeal.

The appeal shall not stay the enforcement of decision granting an order of protection.

*Extension, expiry and replacement of an order of protection
granted before and during the proceeding*

Article 31

An order of protection granted before and during the proceeding may last for as long as the reasons for which it was granted are present, limited by the end of proceeding.

Before the proceeding ends, a misdemeanour body may replace the order of protection granted before and during the proceeding with another order of protection.

Duty to comply with order of protection

Article 32

Abuser must comply with the order of protection issued.

A person who is informed during discharge of his affairs that abuser does not comply with the order of protection must notify of that a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor.

Enforcement of order

Article 33

The decision granting an order of protection must be immediately served by a misdemeanour body to the body or institution in charge of enforcement, within maximum three days of the delivery of decision.

The decision granting the order of protection from articles 21, 22 and 23 of this act shall be furnished to the police for enforcement.

The decision granting the order of protection from article 24 and 25 of this act shall be furnished to the body or institution in charge of enforcing orders in accordance with the law governing treatment and rehabilitation of addicts to psycho-active substances (alcoholics and drug addicts) and persons with other behavioural disorders.

More detailed description of enforcement of the decision granting the order of protection from articles 21, 22 and 23 of this act shall be set by the ministry in charge of internal affairs, while more detailed description of enforcement of the decision granting the order of protection from articles 24 and 25 of this act shall be set by the ministry in charge of health care.

*Service of decision and the register***Article 34**

The decision granting an order of protection must be furnished to the social work centre on whose territory victim and abuser reside, either permanently or temporarily.

The register of reported incidences of violence, victims, abusers, orders of protection granted as well as of other protection and assistance measures is maintained by the bodies and institutions from article 5, para. 1 of this act, in line with their respective powers, and deliver it to the ministry competent for human and minority rights protection

*Application of other laws***Article 35**

The procedure by which orders of protection are granted and enforced is subject to provisions of the law governing police, misdemeanour procedure, criminal procedure, criminal sanctions and their implementation and enforcement, unless otherwise provided for by this act.

III PENALTY PROVISIONS

Misdemeanour liability of a family member

Article 36

A fine amounting to minimum three-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser if he does any of the following:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or makes an attempt to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with (article 8, para.1).

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum twenty days shall be imposed for the offence on an adult family member who commits violence from para. 1 of this act in the presence of a minor child.

A fine of minimum ten-fold minimum salary in Montenegro or a prison term of minimum thirty days shall be imposed for the offence on a family member who commits violence from para. 1 of this act and victim is a minor child.

A fine of minimum twenty-fold minimum salary in Montenegro or a prison term of minimum sixty days shall be imposed for the offence on a family member who fails to report (hides) family member with special needs (article 8, para.1).

Misdemeanour liability for neglect

Article 37

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser who does not take sufficient action

to provide the following:

- 1) food, personal hygiene, clothing, medical care or ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglects his duties concerning child development and education (Article 8, paragraph 2, subparagraph 1);
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself (Article 8, paragraph 2, subparagraph 2).

Liability for violation of order

Article 38

A fine of minimum fifteen-fold minimum salary in Montenegro or a prison term for minimum forty days shall be imposed on abuser for violation of the police order to leave place or the order prohibiting return to place of residence or other premises (article 28, paras. 1 and 2).

Misdemeanour liability of a third person

Article 39

A fine ranging from two-fold to ten-fold minimum salary in Montenegro shall be imposed on:

- 1) the head of a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person for not reporting to the police an incidence of violence he learns of in the discharge of his affairs (article 9, para. 2);
- 2) a person who is informed in the discharge of his affairs that the abuser does not comply with the order of protection issued but does not report this to a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor (article 32, para. 2).

IV TRANSITIONAL AND FINAL PROVISIONS

Adoption of secondary legislation

Article 40

Secondary legislation governing implementation of this act shall be adopted within six months of the effective date of this act.

Effective date

Article 41

This act shall take effect on the eighth date after its publication in the “Official Gazette of Montenegro”.

