

THE LAW ON PROHIBITION OF DISCRIMINATION

I GENERAL PROVISIONS

Subject of the Law

Article 1

The prohibition of and protection from discrimination shall be achieved, and the promotion of equality shall be carried out in accordance with this Law.

The prohibition of and protection from discrimination, as well as the promotion of equality shall be, also, exercised pursuant provisions of other laws regulating prohibition of and protection from discrimination on particular grounds or related to exercise of particular rights, as well as the promotion of equality if they are not contrary to this law.

Prohibition of Discrimination

Article 2

Any form of discrimination, on any ground, shall be prohibited.

Discrimination is any unjustified, legal or actual, direct or indirect distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender identity, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation 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 were brought, or may be brought in an unequal position by an act, action or failure to act, on any ground referred to in paragraph 2 of this Article.

Indirect discrimination exists if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into unequal position in respect to other person or group of persons, on any ground referred to in paragraph 2 of this Article, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

Inciting, helping, giving instructions as well as announced intent to discriminate specific person or group of persons on any ground referred to in paragraph 2 of this Article, shall be as well considered to be discrimination.

Protection from discrimination

Article 3

The right on protection from discrimination belongs to all natural and legal persons to which the Montenegrin legislation is applicable, if they are discriminated against on any ground referred to in Article 2, paragraph 2 of this Law.

This Law shall apply to public and private sector.

Persons reporting discrimination

Article 4

No one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination.

Persons are protected from any adverse treatment or effect as a reaction to reporting or a proceeding conducted for violation of the principle of non-discrimination.

Regulations and Special Measures

Article 5

Regulations and special measures aimed at creating conditions for the realisation of national, gender and overall equality and protection of persons being in unequal position on any ground, may be adopted, that is introduced and implemented, within its competences, by authorised state authorities, authorities of the state administration, authorities of the units of local self-government, public enterprises and other legal persons performing public powers (hereinafter referred to as: authorities), as well as other legal and natural persons.

The measures referred to in this Article shall be applied in proportion to the needs and possibilities and shall last until the goals established by those measures are achieved.

Consent

Article 6

Consent of a person to be discriminated against shall not relieve from responsibility the person exercising discrimination, giving instruction to discriminate or inciting discrimination.

II SPECIAL FORMS OF DISCRIMINATION

Harassment and Sexual Harassment

Article 7

Harassment of a person or group of persons on one or more grounds referred to in Article 2, paragraph 2 of this Law, when such behaviour has the purpose of or which consequence is violation of personal dignity, or causes intimidation, feelings of humiliation or offensiveness or creates hostile or degrading environment, shall be considered as discrimination in the sense of Article 2 of this Law.

Any unwanted verbal, nonverbal or physical behaviour of sexual nature which has the purpose to violate dignity of a person or group of persons, or which achieves such effect, and especially which causes intimidation, creates hostile and degrading environment, and

produces feelings of humiliation or offensiveness, shall also be considered as discrimination.

Mobbing

Article 8 Article removed

Segregation

Article 9

Segregation shall also be considered as discrimination in the sense of Article 2 of this Law.

Segregation is every act, activity or failure to perform an activity, whereby forced or systemic separation or differentiation of persons is carried out on any of the grounds from paragraph 2 of Article 2 of this Law.

Hate speech

Article 9a

Hate speech is any form of expression of ideas, statements, information and opinions that spreads, stirs up, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in form of nationalism, discrimination and hostility against minorities.

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

Article 10

Restricting or disabling the use of facilities/buildings and areas in public use to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law, shall be deemed to be discrimination.

The right to use the facilities/buildings and areas in public use may be restricted only in accordance with the law.

Discrimination in goods and service delivery

Article 11

Discrimination in the area of public and private goods and service delivery, on any ground referred to in Article 2, paragraph 2 of this Law shall be deemed to be:

- 1) Making goods and service delivery difficult or impossible,
- 2) Refusing goods and service delivery,
- 3) Conditioning of goods and service delivery with the conditions that are not required from other persons or group of persons,
- 4) Intentional delay or postponement of goods and service delivery, even though the person or group of persons requested and met the requirements for timely goods and service delivery before the other person or group of persons.

Discrimination based on health conditions

Article 12

Disabling, restricting or making difficult for a person or a group of persons to get employment, to work, to get education or any other unjustified differentiation or unequal treatment based on health conditions, shall be deemed to be discrimination.

Discrimination based on age

Article 13

Disabling or restricting the exercise of the rights or any other unjustified differentiation or unequal treatment of a person or a group of persons on the bases of age, shall be deemed to be discrimination.

Political discrimination

Article 14

The discrimination of individuals or groups of persons because of political belief, because of belonging or not belonging to a political party or other organization is prohibited.

Discrimination in the field

of education and vocational training

Article 15

Discrimination in the field of education and vocational training is considered to be making difficult or denying the enrolment into educational institution and institution of high education and the choice of educational programme at all levels of education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other educational activities, classification of children, pupils, participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law.

Discrimination in field of labour

Article 16

In addition to the cases of discrimination prescribed by the law regulating the field of labour and employment, discrimination in work shall also refer to the payment of unequal salary or remuneration for work of equal value to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law.

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

Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified and if the condition is proportionate, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 2 of this Article.

Racial discrimination and discrimination based on religion and belief

Article 17

Racial discrimination is any differentiation, unequal treatment or bringing in unequal position of persons with the belief that race, skin colour, language, nationality or national or ethnic origin, justify depreciation of person or group of persons, or justify the idea on superiority of a person or group of persons towards those who are not members of that group.

Discrimination on the basis of religion or belief is any treatment which is against the principle of freedom of religion, that is every unequal treatment, differentiation, or bringing in unequal position of persons on the basis of religion or personal belief, as well as on the basis of belonging or not belonging to a certain religious community.

Discrimination of persons with disability

Article 18

Entrance in facilities/buildings and areas in public use which are inaccessible to the persons with reduced mobility and persons with disability, that is making impossible, restricting or making difficult the use of mentioned facilities, in a way which is not disproportionate burden for a legal or natural person who is obliged to provide for that, shall be deemed to be discrimination within the meaning of Article 2 of this Law.

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

Discrimination on the basis of gender identity and sexual orientation

Article 19

Any differentiation, unequal treatment or bringing a person in an unequal position based on gender identity or sexual orientation, shall be deemed to be discrimination.

Everyone has the right to express its gender identity and sexual orientation.

No one may be called upon to publicly declare his/her gender identity and sexual orientation.

Gender identity refers to our own gender experience that does not have to depend on a sex given by birth. Gender identity is

relevant to every person and does not imply only a binary concept of male or female.

Sexual orientation refers to emotional and/or physical attraction or sympathy towards persons of the same and/or different sex.

Grave form of discrimination

Article 20

Grave form of discrimination, on any ground referred to in Article 2, paragraph 2 of this Law shall be deemed to be discrimination:

- 1) committed against the same person or the group of persons on multiple grounds referred to in the Article 2, paragraph 2 of this Law (multiple discrimination);
- 2) committed several times against the same person or the group of persons (repeated discrimination);
- 3) committed during longer period of time against the same person or the group of persons (extended discrimination);
- 4) by dissemination through public media, as well as by writing and displaying the materials and symbols of discriminatory content in public places;
- 5) which has particularly grave consequences for discriminated person, group of persons or their property.

III PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

Competency of the Protector

Article 21

The Protector of Human Rights and Freedoms of Montenegro (hereinafter referred to as: the Protector) is competent to:

- 1) act on complaints relating to discriminatory treatment committed by authority, business entity, other legal person, entrepreneur and natural person, and undertake measures and actions to eliminate discrimination and protect the rights of discriminated person, if the court proceeding is not initiated;
- 2) provide required information to the complainant who believes to be discriminated by authority, business entity, other legal

person, entrepreneur and natural person, about his/her rights and duties, as well as about possibilities of court and other protection;

3) conduct the conciliation proceeding between the person who believes to be discriminated, with his/her consent, and authority, business entity, other legal person, entrepreneur and natural person, referred to in the complaint on discrimination;

4) initiate the procedure for protection against discrimination in court or appear in that proceeding as an intervener if the party makes probable, and the Protector assess that respondent performed discrimination by the treatment on the same ground toward a group of persons with the same personal characteristics;

5) warn the public on appearances of severe forms of discrimination;

6) keep separate records of submitted complaints with regard to discrimination;

7) collect and analyse data on cases of discrimination;

8) undertake activities for promotion of equality;

9) submit to the Parliament of Montenegro, in a separate section within the annual report, the report on the activities conducted regarding protection from discrimination and promotion of equality;

10) perform other tasks related to protection from discrimination prescribed by the separate law governing the competences, powers, manner of operation and acting of the Protector.

Submitting a complaint

Article 22

Anyone who considers to be discriminated against by an act, action or failure to act made by an authority and other legal and natural persons, may address the Protector with a complaint.

The complaint referred to in paragraph 1 of this Article can be submitted to the Protector also by organisations or individuals dealing with the protection of human rights, with the consent of the person or the group of persons discriminated against.

Acting upon the complaints referred to in paragraphs 1 and 2 of this Article, shall be conducted in compliance with regulations setting up the manner of operation of the Protector, unless this law provides otherwise.

Reports of the Protector

Article 23

Article removed

IV COURT PROTECTION

Proceeding before the court

Article 24

Anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection, in accordance with the law.

The proceeding shall be initiated by filing a lawsuit.

The provisions of the law regulating civil proceeding shall be accordingly applied on the proceeding referred to in paragraph 2 of this Article, unless this law provides otherwise.

The proceeding referred to in the paragraph 2 of this Article is urgent.

In the dispute for protection from discrimination the revision shall be always allowed.

Territorial jurisdiction

Article 25

In the proceeding for protection from discrimination, beside the court of general territorial jurisdiction, the court on whose territory is the residence or office of the plaintiff shall also have the territorial jurisdiction.

Lawsuit

Article 26

By lawsuit referred to in Article 24, paragraph 2 of this Law can be claimed also:

- 1) establishment of the fact that the respondent has acted discriminatory against the plaintiff;

- 2) prohibition of exercising the activity that bears potential treat of discrimination, i.e. prohibition of repetition of discrimination activity;
- 2a) elimination of the consequences of discriminatory treatment;
- 3) compensation of damage, in accordance with the law;
- 4) publication in the media of the judgement establishing discrimination on the expenses of respondent.

In the cases referred to in paragraph 1, items 1 and 2 and 2a of this Article, the lawsuit shall may be exert together with the claim for protection of the right of which is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.

Deadline for filing the lawsuit

Article 27

The lawsuit referred to in Article 24, paragraph 2 of this Law may be filed within one year from the day of cognition about the commission of discrimination and no later than three years from the day on which the discrimination was committed.

Temporary measures

Article 28

Prior to initiation or during the lawsuit proceeding referred to in Article 24 of this Law, upon the proposal of the party, the court may pass temporary measures.

The proposal for passing a temporary measure must prove the likelihood of the necessity of such measure in order to prevent the danger of irreparable damage, particularly serious violation of the right to equal treatment or prevent violence.

On a proposal for passing a temporary measure the court is obliged to deliver a decision without delay.

On the proceeding referred to in paragraph 1 of this Article shall be accordingly applied the provisions of the Law on Executive Procedure.

Burden of proof

Article 29

If the plaintiff proved the likelihood of respondent committing an act of discrimination, the burden of proving that due to that act the violation of equality in rights and equality before the law did not occurred, passes on the respondent.

The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.

Other persons who may file a lawsuit

Article 30

The lawsuit referred to in Article 26, paragraph 1 items 1, 2 and 4 of this Law may be filed, on behalf of discriminated person or group of persons, also by organizations or individuals who are dealing with the protection of human rights.

The lawsuit referred to in paragraph 1 of this Article may be filed only with the written consent of a discriminated person or a group of persons.

The lawsuit under Article 26 of this Law may also be filed by a person who, with intention to directly verify the application of the rules on non-discrimination, introduces him/herself as a person, or put in the position of a person who may be discriminated on the grounds referred to Article 2 of this Law.

Informing the Protector

Article 31

Plaintiff referred to in Articles 24 and 30 of this Law, who filed the complaint with the Protector, shall notify the Protector in writing about initiation of the court proceeding.

V INSPECTION CONTROL

The role of inspection

Article 32

Inspection control with respect to discrimination in the field of labour and employment, occupational safety, 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.

Special Powers

Article 32a

When during an inspection control is found that the law or other regulation is violated, in addition to the powers prescribed by the law, inspector has the power to, on the request of a person who believes to be discriminated and who initiated the proceeding for protection from discrimination before the competent court, temporarily postpone the enforcement of the decision, other act or action of the subject of control, until the final court decision.

The request referred to in paragraph 1 of this Article may be filed within eight days as of the initiation of the proceeding for the protection from discrimination before the competent court.

The inspector is obliged to decide on the request referred to in paragraph 1 of this Article within eight days as of the date of filing the request.

VI RECORDS

Keeping the records

Article 33

The courts, the state prosecutor's offices, misdemeanour authorities, the authority responsible for police affairs and inspection authorities are obliged to keep separate records on filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination (hereinafter referred to as: separate records).

The authorities referred to in paragraph 1 of this Article shall deliver data from the separate records to the Protector not later than 31st January of the current year for the previous year, and at the

request of the Protector they shall deliver the data from these records as well for a certain shorter period during the year.

Detailed content and manner of keeping the records referred to in paragraph 1 of this Article shall be prescribed by the state authority competent for human and minority rights.

VII PENAL PROVISIONS

Misdemeanours

Article 34

A fine of 500 EUR to 20,000 EUR shall be imposed for misdemeanour on a legal person, if:

1) by expression of ideas, statements, information, opinions, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism, or other forms of hatred based on intolerance, including intolerance expressed in the form nationalism, discrimination and hostility against minorities (Article 9a);

2) refuses provision of public services, it conditions provision of services with conditions which are not asked to be met by other persons or a group of persons or it is purposefully late or postpones provision of services, although a person or a group of persons requested and met all conditions for timely provision of services before other persons (Article 11);

3) unjustifiably differentiates or treats unequally, prevents, restricts or hinders employment, work, education or unjustifiably denies other rights to a person or a group of persons, based on health conditions (Article 12);

4) prevents or restricts the exercise of the rights, unreasonably differentiates or treats unequally the person or group of persons, based on age (Article 13);

5) hinders or prevents enrolment in educational institution and institution for university education and choice of educational program at all levels of education, excludes from these institutions, hinder or deny the possibility of attendance and participation in other educational activities, classifies children, pupils, attendants of education and students, abuses or otherwise unduly makes

difference or unequally treats them, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 15);

6) pays unequal salary or remuneration for work of equal value to a person or a group of persons, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 16);

7) prevents, restricts or hinders the use of access to facilities and areas in public use to persons with reduced mobility and persons with disability (Article 18);

8) files a lawsuit without the written consent of discriminated person or group of persons (Article 30 paragraph 2);

For misdemeanour referred to in paragraph 1 of this Article the responsible person in the legal person, state authority, authority of local self-government and authority of local government shall also be fined in the amount of 100 EUR to 2,000 EUR.

For misdemeanour referred to in paragraph 1 of this Article the entrepreneur shall also be fined in the amount of 300 EUR to 6,000 EUR.

Article 34a

A fine of 100 EUR to 2,000 EUR shall be imposed on the responsible person in the state authority, authority of state administration and authority of the local self-government if:

1) it does not keep separate records on filed complaints, initiated proceedings and decisions taken within its own jurisdiction in relation to discrimination (Article 33 paragraph 1);

2) it fails to deliver the data from the separate records to the Protector within the deadlines referred to in Article 33, paragraph 2 of this Law.

Article 34b

For misdemeanours referred to in Article 34, paragraph 1 and 34a of this Law, individually or with a fine or a warning measure, one or more protective measures may be imposed as follows:

1) seizure of objects;

2) prohibition to carry out the occupation, activity or duty;

3) public announcement of a decision.

Protective measure of seizure of objects shall be obligatorily imposed whenever a misdemeanour is committed using the object which is under seizure, or when the object was designated

for commitment of the misdemeanour or when the object which is under seizure was made because of committing the misdemeanour.

Protective measure of prohibition to carry out the occupation, activity or duty may be applied for a period which may not be shorter than 30 days or longer than six months.

Protective measure of public announcement of a decision shall be enforced by publishing such a decision in the media available on the entire territory of Montenegro.

VIII TRANSITIONAL AND FINAL PROVISIONS

Proceedings on complaints

Article 35

Proceedings on complaints related to discrimination submitted prior to the entry into force of this Law shall be completed in accordance with the regulations that were applied until the entry into force of this Law.

Secondary legislation

Article 36

Secondary legislation referred to in Article 33, paragraph 3 of this Law shall be delivered within six months from the day of entry into force of this Law.

Entering into force

Article 37

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