

THE LAW ON AMENDMENTS TO THE LAW ON PROHIBITION OF DISCRIMINATION

The law is published in the Official Gazette of Montenegro, No. 18/2014 of 11/04/2014 and entered into force on 19/04/2014

Article 1

In the Law on Prohibition of Discrimination (Official Gazette of Montenegro, No. 46/10), in Article 1, paragraph 1 shall be amended to read as follows:

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

In paragraph 2 after the words "the prohibition of and protection from discrimination" shall be added the comma and the words: "as well as the promotion of equality", and after the words: "particular rights" shall be added the comma and the words: "as well as the promotion of equality".

Article 2

In Article 2, paragraph 3, the comma after the words: "in paragraph 2 of this Article", shall be replaced with the full-stop, and the words: "unless the act, action or failure to act 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." shall be deleted.

Paragraph 5 shall be amended to read as follows:

~~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."

Article 3

In Article 3 after paragraph 3 shall be added a new paragraph and shall read as follows:

~~This~~ Law shall apply to public and private sector.

Article 4

In Article 4 after paragraph 1 shall be added a new paragraph and shall read as follows:

~~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.

Article 5

The header of Article 5 shall be amended to read as follows: ~~%~~Regulations and Special Measures", and in paragraph 1, the words: "Special measures" shall be replaced by the words: "Regulations and special measures" and the word "imposed" shall be replaced by the words: "adopted, that is introduced and implemented, within its competences, by authorised state authorities".

Article 6

Article 7 shall be amended to read as follows:

“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.+

Article 7

Article 8 shall be deleted.

Article 8

Article 9 shall be amended to read as follows:

“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.

Article 9

After Article 9 shall be added a new Article and shall read as follows:

“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.+

Article 10

Article 11 shall be amended to read as follows:

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.+

Article 11

In Article 16 after the word "justified"+ shall be added the words: "and if the condition is proportionate+."

Article 12

Article 17 shall be amended to read as follows:

“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.+

Article 13

In Article 18 paragraph 1 shall be deleted.

In paragraph 2 the words: ~~%~~paragraph 1 of this Article+shall be replaced by the words: ~~%~~Article 2 of this Law.+

Paragraphs 2 and 3 shall become paragraphs 1 and 2.

Article 14

In Article 19 paragraph 3 shall be amended to read as follows:

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

After paragraph 3 two new paragraphs shall be added and shall read as follows:

~~%~~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.+

Article 15

Article 21 shall be amended to read as follows:

~~%~~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.+

Article 16

Article 23 shall be deleted.

Article 17

In Article 24 paragraph 1 the words: ~~other legal and natural person~~+shall be replaced by the words: ~~%business entity, other legal person, entrepreneur and natural person~~+

Article 18

In Article 26 paragraph 1 after item 2 a new item shall be added and shall read as follows:

"2a) elimination of the consequences of discriminatory treatment;%~~o~~

In item 4 the words ~~%in case discrimination is performed through the media,~~+ shall be deleted.

In paragraph 2 the words: ~~sparagraph 1 items 1 and 2%~~shall be replaced by the words: ~~sparagraph 1 items 1, 2 and 2a%~~and the words: ~~sshall be exert%~~shall be replaced by the words: ~~s may be exert%~~

Paragraph 3 shall be deleted.

Article 19

Article 27 shall be amended and shall read as follows:

~~sThe 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.%~~o~~~~

Article 20

In Article 30 paragraph 1 after the word ~~persons~~ the words: ~~or~~ group of persons shall be added.

After paragraph 2 a new paragraph shall be added and shall read as follows:

„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 %o

Article 21

In Article 32 the words: ~~%o~~ over the implementation of this Law shall be deleted.

Article 22

After Article 32 a new Article shall be added and shall read as follows:

"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."

Article 23

Article 33 shall be amended and shall read as follows:

~~%o~~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.

Article 24

Article 34 shall be amended to read as follows:

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 25

After Article 34 two new Articles shall be added and shall read as follows:

sArticle 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.+

Article 26

After Article 36 two new Articles shall be added and shall read as follows:

“Harmonisation of secondary legislation

Article 36a

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

Cessation of validity of the provision of the Law

Article 36b

As of the day of the entry into force of this Law, Article 108 of the Law on amendments to the Law prescribing fines for misdemeanours shall cease to be valid. (Official Gazette of Montenegro, No. 40/2011)."

Article 27

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