

THE LAW ON PROHIBITION OF DISCRIMINATION

I. GENERAL PROVISIONS

Subject of the Law

Article 1

Prohibition and protection from discrimination shall be exercised pursuant this Law.

The prohibition of and protection from discrimination 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, 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, 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.

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.

The incitement or giving instruction to discriminate against certain person or a group of persons on any ground referred to in paragraph 1 of this Article shall be deemed 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.

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.

Special measures

Article 5

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 imposed by 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: authority), 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

Article 7

Harassment, on any ground referred to in Article 2, paragraph 2 of this Law, represents certain behaviour toward or treatment of a person who such behaviour or treatment does not want, and which has the purpose or represents violation of the personal dignity, and causes state of intimidation, inconvenience, hostility, humiliation or offensiveness.

Mobbing

Article 8

Mobbing is a behaviour in the workplace when one or more persons systematically, over a longer period of time, mentally abuse or humiliate another person by the way of insulations, depreciation, harassment and other activities, bringing that person in an unequal position on any ground referred to in Article 2, paragraph 2 of this

Law, which is aimed to harm his/her personal reputation, honour, human dignity and integrity and can cause adverse effects of mental, psychosomatic and social nature or compromise the professional future of the person who is a victim of mobbing.

Segregation

Article 9

Segregation is any separation of persons or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law, except in cases when the separation is objective and justified, and the way to achieve this goal is necessary and proportionate.

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 public service delivery

Article 11

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

- 1) Making public service delivery difficult or impossible,
- 2) Refusing public service delivery,
- 3) Conditioning of public service delivery with the conditions that are not required from other persons or group of persons,
- 4) Intentional delay or postponement of service delivery, even though the person or group of persons requested and met the requirements for timely service delivery before the other 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, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 2 of this Article.

Discrimination based on religion and belief

Article 17

Discrimination shall be deemed to be any differentiation, unequal treatment or bringing in an unequal position of a person or a group of persons on the basis of religion or belief, affiliation or non-affiliation to certain religious community.

Discrimination of persons with disability

Article 18

Under discrimination against a person with disability shall be considered particularly: 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, denial of the rights on schooling or education, denial of the right to work and the rights related to employment relations in accordance with the needs of such person,

denial of the right to marry, form a family and other rights from the field of marriage and family relations.

Entrance in facilities/buildings and areas in public use which are inaccessible to the persons with reduced mobility and persons with disability, i.e. 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 paragraph 1 of this Article.

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 their gender identity and sexual orientation.

Gender identity and sexual orientation are personal matters of every person and no one can be invited to publicly declare its gender identity and sexual orientation.

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 a long period of time against the same person or the group of persons (extended discrimination);
- 4) disseminated 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

In addition to the competencies and authorisations prescribed by the separate law, the Protector of Human Rights and Freedoms (hereinafter referred to as the Protector) shall be also competent to:

- 1) provide required information to the complainant who considers to be discriminated by the natural or legal person, about his/her rights and duties, as well as about possibilities of court protection;

- 2) conduct the conciliation proceeding, with the consent of the person allegedly discriminated against, between that person and authority or other legal and natural person he/she considers to have performed discrimination, with the possibility of concluding a settlement out of trial, in accordance with the law regulating the mediation proceeding;
- 3) inform the public about the important issues of discrimination;
- 4) if necessary, carry out the researches in the field of discrimination;
- 5) keep separate records of submitted complaints with regard to discrimination;
- 6) collect and analyse statistical data on cases of discrimination;
- 7) undertake actions to raise awareness on issues related to discrimination.

Submitting 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

The Protector, in a separate part of the annual report, shall inform the Parliament of Montenegro on observed cases of discrimination and action undertaken and shall give recommendations and propose measures for elimination of discrimination.

The Protector may submit a separate report about observed cases of discrimination to the Parliament of Montenegro, if that is required by the competent working body of the Parliament of Montenegro or the Protector evaluates that that is required by exceptionally important reasons.

IV. COURT PROTECTION

Proceeding before the court

Article 24

Anyone who considers to be damaged by discriminatory treatment of an authority and other legal 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;
- 3) compensation of damage, in accordance with the law;
- 4) in case discrimination is performed through the media, publication in the media, on the expenses of respondent, of the judgement establishing discrimination.

In the cases referred to in paragraph 1, items 1 and 2 of this Article, the lawsuit shall 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.

Lawsuit referred to in paragraph 1, items 1 and 2 of this Article, can be filed individually only if an act or action of discrimination had not resulted in loss or violation of a right.

Deadline for filing the lawsuit

Article 27

The lawsuit referred to in Article 24, paragraph 2 of this Law may be filed within 90 days from the day of cognition for the committed discrimination.

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 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.

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 over the implementation of this Law 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.

VI. RECORDS

Keeping the records

Article 33

Authorities, other legal and natural persons shall be obliged to keep separate records on all reported cases of discrimination and to timely deliver the data from the records to the Protector.

The courts, the inspection authorities and misdemeanour authorities are obliged to keep separate records about filed lawsuits in connection with discrimination and timely deliver the data from the records to the Protector.

Detailed content and manner of keeping the records referred to in paragraph 2 of this Article shall be prescribe by the authority of state administration in charge of human and minority rights.

VII. PENAL PROVISIONS

Offences

Article 34

A fine amounting from two hundred to three hundred times the minimum wage in Montenegro shall be imposed on a legal person or entrepreneur, if:

- 1) refuses the provision of public services, conditions the service delivery with the conditions that are not required from other persons or groups of persons or intentionally delays or postpones the delivery of services, even though the person or group of persons requested and met the requirements for the timely provision of services before the other persons did (Article 11, paragraph 1, items 2, 3 and 4);
- 2) prevents, restricts or makes difficult the use of entrances to facilities/buildings and areas in public use to the persons with reduced mobility or persons with disability (Article 18, paragraph 2);
- 3) files the lawsuit without the written consent of a discriminated person or a group of persons (Article 30, paragraph 2);
- 4) does not keep separate records on all reported cases of discrimination or does not timely deliver the data from the records to the Protector (Article 33, paragraph 1);
- 5) does not keep separate records on filed lawsuits in connection with discrimination or does not timely deliver the data from the records to the Protector (Article 33, paragraph 2);

For the offense referred to in paragraph 1 of this Article shall be also fined the responsible person in authority or legal person and natural person in the amount of twenty times the minimum wage in 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”.