

LAW ON AMENDMENTS TO THE LAW ON PROHIBITION OF DISCRIMINATION

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 words "as well as the promotion of equality", and after the words "particular rights" shall be added 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

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 and implemented".

Article 4

Article 7 shall be amended to read as follows:

“Harassment

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 violation of personal dignity, or causes intimidation, feelings of humiliation or offensiveness or creates hostile environment, shall be prohibited.”

Article 5

Article 8 shall be amended to read as follows:

„Sexual Harassment

Article 8

Any unwanted behaviour of sexual nature which has the purpose or represents violation of dignity of a person or group of persons, or which achieves this effect, causes intimidation, creates hostile environment, feelings of humiliation or offensiveness, shall be prohibited.”

Article 6

Article 17 shall be amended to read as follows:

„Racial Discrimination

Article 17

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

Article 7

Article 18 shall be deleted.

Article 8

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

“No one may be called upon to publicly declare its gender identity and sexual orientation.”

After the 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 9

Article 21 shall be amended to read as follows:

“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 discrimination 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 the natural or legal 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 its consent, and authority, other legal and natural person referred to in the complaint on discrimination;
- 4) initiate a 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 the respondent performed discrimination by the treatment on the same ground of a group of persons with the same personal characteristics;
- 5) warn the public on appearance of severe forms of discrimination;
- 6) keep separate records of submitted complaints with regard to discrimination;
- 7) collect and analyze 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 10

Article 23 shall be deleted.

Article 11

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;"

In Item 4 the words "in case discrimination is performed through the media," shall be deleted.

In paragraph 2 the words: „paragraph 1 items 1 and 2“ shall be replaced by the words:

„paragraph 1 items 1, 2 and 2a“, and the words: „shall be exert“ shall be replaced by the words: „may be exert“.

Paragraph 3 shall be deleted.

Article 12

In Article 27 the words: „90 days“ shall be replaced by the words: “one year “.

Article 13

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:

„Complaint under Article 26 of this Law may be filed by a person who, with intent to directly verify the application of the rule on prohibition of discrimination, in any way present, or put himself in a position of the person who may be discriminated on any ground referred to in Article 2 of this Law “

Article 14

In Article 32 the words: “over the implementation of this Law“ shall be deleted.

Article 15

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 inspector, in addition to the powers prescribed by the law, and on the request of a person who believes to be discriminated and who initiated the proceeding for protection from discrimination in the competent court, has the power to temporarily postpone by its decision the enforcement of the decision, other act or action of the controlled entity, 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, if the requirements from paragraphs 1 and 2 of this Article are met.

Against the final decision referred to in paragraph 3 of this Article the administrative proceeding may not be initiated."

Article 16

In Article 33, paragraph 1 shall be deleted.

Paragraph 2 shall become paragraph 1 and shall be amended to read as follows:

„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).“

After paragraph 1 a new paragraph 2 shall be added and shall read as follows:

„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 period during the year.“

In the paragraph 3 the words: „in paragraph 2“ shall be replaced by the words: „in paragraph 1“.

Article 17

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

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

3) 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 be also fined in the amount of 100 EUR to 2.000 EUR.

For misdemeanour referred to in paragraph 1 of this Article the entrepreneur shall be fined in the amount of 300 EUR to 6.000 EUR.

Article 18

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

„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

Protective Measures

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:

- 1) seizure of objects;
- 2) prohibition to carry out the occupation, activity or duty;
- 3) public announcement of decision.

Protective measure of a seizure of objects shall be obligatory imposed whenever a misdemeanour is committed using the object that is under seizure, or when the object was designed for commitment of the misdemeanour or when the object that 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 nor longer than six months.

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

Article 19

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

Secondary legislation that regulates in more details the content and manner of keeping the records referred to in Article 33 paragraph 1 of this Law shall be delivered within six months from the day of entry into force of this Law.

Article 20

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 21

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