

## **LAW ON AMENDMENTS TO THE LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO**

### **Article 1**

In the Law on the Protector of Human Rights and Freedoms of Montenegro (Official Gazette of Montenegro, no. 42/11), in Article 8, paragraph 2 shall be deleted.

### **Article 2**

In Article 9, paragraph 2 shall be amended to read as follows:

„The Deputy shall perform duties within the competency of the Protector according to the internal division of work which shall provide specialization, and especially specialization for the protection of rights of persons deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, protection of the rights of members of minorities and other minority national communities, the protection and promotion of children's rights, protection of the rights of persons with disabilities, gender equality and protection from discrimination.“

Paragraph 3 shall be deleted.

In paragraph 4 after the words: „(hereinafter referred to as: the Parliament)“, full-stop shall be replaced with the comma and the words: “on recommendation of the Protector” shall be added.

Current paragraph 4 shall become paragraph 3.

### **Article 3**

In Article 10, after paragraph 2 a new paragraph shall be added and shall read as follows:

„For its work, the Deputy shall report to the Protector and the Parliament of Montenegro.“

### **Article 4**

In Article 11 after paragraph 1 a new paragraph shall be added and shall read as follows:

„The Protector shall take the oath before the Parliament, and the Deputy before the President of the Parliament.“

#### **Article 5**

In Article 16, paragraph 2 the word „Protector“ shall be replaced with the words: „state administration body in charge for human and minority rights“.

#### **Article 6**

Article 17 shall be amended to read as follows:

„The Protector shall be also authorized to act upon complaints on work of courts relating to the delay of the proceeding, an obvious abuse of procedural rights in judicial proceedings in progress or failure to execute court decisions.“

#### **Article 7**

In Article 23 the words: „without delay“, shall be replaced with the words: „at the latest within five days“.

#### **Article 8**

In Article 24, paragraph 1 the word „employee“, shall be replaced with the words: „advisor to the Protector“.

#### **Article 9**

Article 25 shall be amended to read as follows:

„The Protector shall perform the duties of preventative mechanisms for the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as: the prevention of torture), in accordance with this Law and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to perform certain duties for the prevention of torture that require specialized knowledge, the Protector shall form a working body consisting of experts in the relevant fields and representatives of non-governmental organizations.

In performing the duties referred to in paragraph 1 of this Article, the Protector may engage other independent experts if necessary.“

The act on establishing a working body referred to in paragraph 2 of this Article shall define tasks and manner of work of this body.“

## **Article 10**

After Article 25 four new Articles shall be added and shall read as follows:

### „Article 25a

Members of the working body referred to in Article 25 paragraph 2 of this Law shall be nominated by the Protector based on the public call.

Composition, criteria, manner of nomination and engagement of working body members referred to in paragraph 1 of this Article shall be determined in the Rules of Procedure of the Protector.

### Article 25b

Prevention of torture includes the following:

- visiting bodies, institutions or organizations in which are or could be placed persons deprived of their liberty and persons with restricted movement in order to increase the level of their protection from torture and other cruel, inhuman or degrading treatment or punishment;
- giving recommendations to the competent bodies, institutions and organizations to improve the treatment of persons deprived of their liberty and the conditions in which they are staying, or the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- giving opinions on laws and regulations for the protection and promotion of human rights and freedoms of persons deprived of their liberty and persons with restricted movement;
- Cooperation with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Subcommittee for the Prevention of Torture).

Persons deprived of their liberty within the meaning of this Law shall be persons under any kind of retention, detention, imprisonment or placement under the supervision of an authority, who can not abandon such place at their own will.

### Article 25c

In the performance of the prevention of torture, the Protector and the Deputy Protector, as well as the Advisor to the Protector and the Members of the working body referred to in Article 25, paragraph 2 of this Law, who are authorized by the Protector, shall have the right to:

- without prior notice, visit authorities, institutions and organizations, and inspect premises in which are placed or could be placed persons deprived of their liberty;
- access freely to information on the authorities, institutions and organizations in which are staying persons deprived of their liberty;
- access freely to information on the number of persons deprived of their liberty in the authority, institution, or organization they are visiting;
- access freely to information on the treatment of persons deprived of their liberty;
- without the presence of an official, talk with persons who are deprived of their liberty and who can provide adequate information regarding the suspicion on violation of human rights by acting of the authority, institution or organization they are visiting.

#### Article 25d

Members of the working body and the independent experts from Article 25 paragraphs 2 and 3 of this Law shall be entitled to adequate remuneration for performed work.

The decision on the amount of remuneration referred to in paragraph 1 of this Article shall be issued by the Protector, in accordance with the regulation establishing the criteria for determining the remuneration for the work of the members of the working body or other forms of work.“

#### **Article 11**

In Article 27, paragraphs 1 and 3 shall be deleted.

#### **Article 12**

In Article 30, paragraph 1 the words „filed“, shall be replaced with the words: „may be filed“.

#### **Article 13**

In Article 35, paragraph 1 after the word „deadline“, shall be added the words: „for submitting a statement and required documentation referred to in paragraph 1 of this Article,“.

Paragraph 3 shall be amended to read as follows:

„If the statement referred to in paragraph 2 of this Article does not contain all the required information or if required documentation is not submitted, the head or the person managing the authority is obliged to submit amended statement and required documentation, on the request of the Protector.“

#### **Article 14**

Article 36 shall be amended so to read as follows:

„At the request of the Protector, the head or the person managing the authority shall:

- give access to all information under the jurisdiction of the authority he/she is managing, regardless of the degree of confidentiality;
- provide direct access to official records, documents and data, and deliver copies of requested records and documents;
- provide access to all premises.

The head, or the person managing the authority, institution or organization in which are detained persons deprived of their liberty or persons with restricted movement, is obliged to provide to the Protector and the Deputy Protector and the Advisor to the Protector and the member of the working body referred to in Article 25, paragraph 2 of this Law, authorized by the Protector, the following:

- unrestricted access to the premises where persons deprived of their liberty and persons with restricted movement are placed;
- interviews with persons deprived of their liberty or persons with restricted movement, without the presence of an official;
- access to required documentation.“

#### **Article 15**

After the Article 43 new Article shall be added and shall read as follows:

##### „Article 43a

On performed visit referred to in Article 25b, paragraph 1, item 1 of this Law, shall be prepared record, which shall be signed by the persons who participated in the visit.

Based on the record referred to in paragraph 1 of this Article, the Protector shall write a report on his findings, and shall submit it to the authority, institution or organization in which the visit was conducted.

When the Ombudsman finds out that torture or other cruel, inhuman or degrading treatment or punishment occurred, the report shall contain the opinion with the recommendation(s) or warning(s) to the authority, institution or organization in which the violation was found.

The report with the opinion and recommendation(s) or warning(s) referred to in paragraph 3 of this Article, the Protector shall submit to the authority, institution or organization in which the visit took place, as well as to the authority or the body responsible for supervising authority, institution or organization.

The head of the authority, institution or organization to which the recommendation or the warning referred to in paragraph 4 of this Article is sent shall, within a specified deadline set in the act of the Protector, take measures regarding the warning or the recommendation of the Protector and shall inform the Protector, without delay, about measures taken.

After receiving the information referred to in paragraph 5 of this Article the Protector can conduct a control visit to the authority, institution or organization, in which the case of torture or other cruel, inhuman or degrading treatment or punishment was determined.“

### **Article 16**

In Article 44, paragraph 1 after the words „may submit“, shall be added the words: „to the competent authority“.

In paragraph 2 the words: „and the Law on Prohibition of Discrimination“, shall be deleted.

### **Article 17**

Article 45 shall be amended to read as follows:

„The Protector, the Deputy Protector, as well as the Advisor to the Protector and the member of the working body referred to in Article 25, paragraph 2 of this Law are obliged to keep the personal data they have obtained in the performance of their work in accordance with the law governing the protection of personal data.

The obligation referred to in paragraph 1 of this Article, shall also apply after termination of office, employment or membership in the working body.“

### **Article 18**

Article 49 shall be amended to read as follows:

„The Protector shall be entitled to a salary, supplement to the function and other income in the amount specified for the President of the Constitutional Court.

The Deputy Protector is entitled to a salary, supplement to the function and other income in the amount specified for a judge of the Constitutional Court of Montenegro.“

## **Article 19**

Chapter **VIII** shall be amended to read as follows:

### **„VIII Secretary General and Service of the Protector“**

Article 51 shall be amended to read as follows:

„ For performance of professional and other activities the Protector shall form the Service of the Protector (hereinafter referred to as: the Service).

Work of the Service shall be organized and coordinated by the Secretary General.“

## **Article 20**

After Article 51 three new Articles shall be added and shall read as follows:

### **„Article 51a**

The Secretary General, in addition to tasks referred to in Article 51, paragraph 2 of this Law, shall: prepare draft acts governing certain issues referred to internal affairs and work of the Protector; chair the meetings of the Service; organize the work on drafting the annual and special reports; take care of exercise of the rights, obligations and responsibilities of employees arising from the work and based on the work; take care of the use of budgetary resources; organize and implement training and professional development of employees; implement the decisions and conclusions of the Protector; organize and carry on the co-operation of the Protector with the authorities and organizations in the country and abroad; as well as take care of the equipment and resources for the work of the Protector. The Secretary General shall perform other duties as assigned to him/her by the Protector.

The Secretary General shall be appointed by the Protector for a term of five years and may be re-appointed.

The Secretary-General is entitled to a salary in the amount specified for a Secretary General of the Constitutional Court of Montenegro.

For its work the Secretary General shall report to the Protector.

#### Article 51b

Professional activities within the competence of the Protector shall be performed by the Advisors to the Protector.

The Advisor the Protector may be a person who in addition to the general requirements established by the law, have a university degree, VII1 level of education qualifications and a minimum of 10 or seven years of work experience.

The titles of the Advisor to the Protector shall be: Adviser to the Protector – Head and the Advisor to the Protector.

The Advisor to the Protector - Advisor to the Head, shall be entitled to the salary from the salary grade 3, and the Advisor to the Protector to the salary grade 4 and have the right to salary determined by the coefficient of that salary grades in accordance with the law regulating the salaries of civil servants and state employees.

The Act on internal organization and systematization of Service shall be issued by the Protector, with the previous opinion of the competent working body of the Parliament.

#### Article 51c

To carry out the professional duties, the Protector shall issue official identification document to the Advisors of the Protector.

The form and content of the official identification document shall be established by the state authority responsible for human and minority rights. “

#### **Article 21**

Article 52 shall be amended to read as follows:

„On the rights, obligations and responsibilities of the employed persons in the Service, which are not regulated by this Law, shall apply the regulations on civil servants and state employees and general labor legislation.“

#### **Article 22**



The Rules of Procedure of the Protector shall be harmonized within six months from the date of entry into force of this Law.

The acts referred to in Article 5 and Article 51c, paragraph 2 of this Law shall be adopted within six months from the date of entry into force of this Law.

### **Article 23**

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