

Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of 26th convocation, at the Tenth sitting of the First Regular (spring) session in 2017, on 29 June 2017, has delivered

THE 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, and 18/14) in Article 2 paragraph 2, the words: "any unjustified, legal or actual, direct or indirect" shall be replaced with the words: "any legal or actual", after the word "gender," the words: "gender reassignment," shall be added and after the words: "sexual orientation" the comma shall be deleted and the words: "and/or intersexual characteristics," shall be added.

In paragraph 4, the words: "a regulation or general act" shall be replaced with the words: "law, other regulation or other act,".

Article 2

After Article 2, shall be added a new Article which shall read as follows:

“Treatments which shall not be considered to be discrimination

Article 2a

It shall not be considered to be discrimination under the terms of Article 2 paragraph 2 of this Law putting in disadvantaged position a person or a group of persons in relation to other persons:

- 1) when such a treatment is prescribed by the law in order to preserve health, safety of citizens, maintain public order and peace, prevent criminal offences and protect rights and freedoms of others, if the used means are appropriate and necessary to achieve some of those objectives in a democratic society and are proportionate to the objective that should be achieved with such measures;
- 2) in occasion of the performance of professional activities, i.e. entering in employment relation, membership in religious communities and other organisations, i.e. acting of a person that is in line with religious teachings, ceremonies and affairs of a religious community, as well as of other public or private organization which system of values is based on a religious teaching or belief, and which is acting in accordance with the Constitution and the law, if so is required by the religious teaching or belief, and because of the nature of those activities or circumstances in which they are carried out, the religious teaching or belief constitute a genuine, legitimate and justified requirement to perform the affair;
- 3) on the grounds of age in contracting insurance premiums and other conditions in the insurance in accordance with generally accepted principles of risk assessment, relevant and accurate statistical data and rules of actuarial mathematics (mathematical methods used in the area of insurance);
- 4) in access to goods and services if the access to goods and service is designated exclusively or primarily to members of one sex or persons with disabilities, when

such treatment is objectively and reasonably justified by a legitimate objective and the used means are appropriate and necessary for the achievement of that objective;

- 5) by determining the minimum or maximum age limit, professional experience, or education level as a condition for entering in employment or as a condition for obtaining other employment rights, in accordance with special regulations;
- 6) by determining the appropriate maximum age limit as a reason for termination of employment relation in accordance with the conditions for entitlement to old-age retirement;
- 7) on the grounds of citizenship in accordance with special regulations.

The terms referred to in paragraph 1 items 6 and 7 of this Article shall be determined in proportion to the objective and purpose for which they are determined, if the means for achieving that objective are proportionate and **necessary**."

Article 3

After Article 6, shall be added a new Article which shall read as follows:

„ Meaning of terms

Article 6a

Certain terms used in this Law shall have the following meanings:

- 1) *service* is any service in economic and other activity which is provided with compensation or without compensation, and in particular in activities of an industrial and commercial character, independent activities and in other areas;
- 2) *commodity* is any material movable thing, except securities, business documents or money;
- 3) *goods* are goods of general interest, public goods and goods in general use."

Article 4

Article 7 shall be amended to read as follows:

"Harassment of a person or group of persons on any of the grounds referred to in Article 2 paragraph 2 of this Law shall be any unwanted behaviour, including also harassment through audio and video surveillance, mobile devices, social networks and the Internet, with the purpose of or which consequence is violating personal dignity, causing fear, feelings of humiliation or offensiveness or creating hostile, humiliating or offensive environment and shall be considered to be discrimination.

Discrimination shall be considered to be also any unwanted verbal, non-verbal or physical behaviour of sexual nature which has the purpose of violating dignity of a person or a group of persons, or achieves such effect, and especially when such behaviour is causing fear or is creating hostile, humiliating, intimidating, degrading or offensive environment."

Article 5

The title of Article and Article 11 shall be amended to read as follows:

“Discrimination in access to goods, services in public and private sectors and commodities

Article 11

Discrimination in access to goods, services in public and private sectors and commodities on any of the grounds referred to in Article 2 paragraph 2 of this Law, shall be considered to be:

- 1) hindering or preventing access to goods, services in public and private sectors and commodities;
- 2) refusing access to goods, services in public and private sectors and commodities;
- 3) setting conditions in occasion of access to goods, services in public and private sectors and commodities, which are not required from other persons or group of persons;
- 4) intentional delay or postponement of access to goods, services in public and private sectors and commodities, even though a person or group of persons requested and met the requirements for timely access to those goods, services and commodities, before other persons or group of persons did”.

Article 6

In Article 13 after paragraph 1 shall be added a new paragraph which shall read:

"Discrimination of a child shall be considered to be any differentiation between children born in marriage and out of marriage, giving priority to children of one sex compared to children of the other sex, differentiation on the grounds of expressed opinion or belief of parents, i.e. guardians and family members of the child, as well as differentiation among children also on any of the grounds referred to in Article 2 paragraph 2 of this Law ".

Article 7

The title of Article and Article 14 shall be amended to read as follows:

"Discrimination on the grounds of membership in political, trade union or other organization

Article 14

Discrimination of a person or group of persons compared to other persons on the grounds of political belief, membership or non-membership in political, trade union or other organization shall be prohibited."

Article 8

Article 15 shall be amended to read as follows:

„Discrimination in the area of education, i.e. vocational training is considered to be hindering or preventing the enrolment into an educational institution and institution of higher education and the choice of curricula at all levels of education, expelling from these institutions contrary to regulations in the area of education, hindering or denying possibility to attend classes and participate in other educational activities, classification of children, pupils and university students or otherwise differentiating or unequally treating them, on any of the grounds referred to in Article 2 paragraph 2 of this Law.”

Article 9

In Article 16, paragraph 1 shall be amended to read as follows:

„Discrimination of persons seeking employment, as well as employees, i.e. persons who on some other grounds perform work for the employer, on any of the grounds referred to in Article 2 paragraph 2 of this Law, shall be prohibited.“

Paragraph 2 shall be deleted.

In paragraph 3 the words: "paragraph 2" shall be replaced with the words: "paragraph 1".

Former paragraph 3 shall become paragraph 2.

Article 10

The title of Article and Article 17 shall be amended to read as follows:

„Racial discrimination

Article 17

Racial discrimination is any differentiation, unequal treatment or bringing a person or a group of persons in unequal position with a belief that race, colour of skin, language, nationality or national or ethnic origin justify depreciation of a person or group of persons, i.e. justify the notion of superiority of a person or group of persons towards those who are not members of that group, particularly in the area of education, employment and choice of profession, vocational training, social protection and social benefits, health care and housing, **access** to goods, services in public and private sectors and commodities.”

Article 11

After Article 17, shall be added a new Article which shall read as follows:

„Discrimination on the grounds of religion and belief

Article 17a

Discrimination on the grounds of religion and belief shall be considered to be any treatment which is contrary to the principle of freedom of religion, i.e. any unequal treatment, differentiation or bringing persons in unequal position on the grounds of religion or personal belief, as well as belonging or not belonging to a religious community.”

Article 12

The title of Article and Article 19 shall be amended to read as follows:

"Discrimination on the grounds of gender identity, sexual **orientation and/or **intersexual characteristics****

Article 19

Any differentiation, unequal treatment or bringing persons or groups of persons in an unequal position on the grounds of gender identity, sexual orientation and/or intersexual characteristics shall be considered to be discrimination.

Everyone has the right to express its gender identity, sexual orientation and/or intersexual characteristics.

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

Under the gender identity is understood the own gender experience that does not have to depend on the sex that is determined and registered at birth. Gender identity refers to every person and does not imply only a binary concept of male or female.

Under the sexual orientation is understood an emotional and/or physical attraction or affection towards persons of the same and/or different sex.

Under the intersexual characteristics are understood **different** physical characteristics of a person (which can be chromosomal, hormonal and/or anatomical), that do not meet the strict medical definition of men or women and may be present in different degrees.”

Article 13

In Article 21 paragraph 1 item 4 after the word “characteristics” shall be added the words which shall read as follows: “or the consequences of unequal treatment would be of a such nature so to cause systemic breach of the principle of prohibition of discrimination, and particularly grave violation of personal dignity, or would otherwise put a person seeking protection from discrimination in a particularly disadvantaged position on any of the grounds referred to in Article 2 paragraph 2 of this Law”.

Article 14

In Article 29, after paragraph 1 shall be added a new paragraph which shall read as follows:

„The rule on the burden of proof referred to in paragraph 1 of this Article shall also apply in the procedure for protection from discrimination before the Protector.”

Former paragraph 2 shall become paragraph 3

Article 15

Articles 34, 34a and 34b shall be amended to read as follows:

“Article 34

A fine of 10.000 EUR to 20,000 EUR shall be imposed for misdemeanour on a legal person, if:

1) it is restricting or disabling the use of facilities/buildings and areas in public use to a person or a group of persons, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 10 **paragraph 1**);

2) disables, restricts or makes difficult the use of access to facilities/buildings and areas in public use to persons with reduced mobility and persons with disabilities, in a way which is not disproportionate burden for a legal or natural person who is obliged to provide for that (Article 18 **paragraph 1**);

For misdemeanour referred to in paragraph 1 of this Article, also a responsible person in a legal person, state authority, authority of local self-government and authority of local government shall be fined in the amount of EUR 1.500 to 2,000 EUR.

For misdemeanour referred to in paragraph 1 of this Article also an entrepreneur shall be fined in the amount of 5.000 EUR to 6,000 EUR.

For misdemeanour referred to in paragraph 1 of this Article a natural person shall be fined in the amount of 150 EUR to 2,000 EUR.

Article 34a

A fine of 1,000 EUR to 20,000 EUR shall be imposed for misdemeanour on a legal person, if:

- 1) performs any unwonted behaviour, including also harassment through audio and video surveillance, mobile devices, social networks and the Internet, with the purpose of or which consequence is violating personal dignity, causing fear, feelings of humiliation or offensiveness or creating hostile, humiliating or offensive environment (Article 7 paragraph 1)
- 2) performs any unwanted verbal, non-verbal or physical behaviour of a sexual nature which has the purpose of violating dignity of a person or a group of persons, or achieves such effect, and especially when such behaviour is causing fear or is creating hostile, humiliating, intimidating, degrading or offensive environment (Article 7 paragraph 2);
- 3) performs segregation by any 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 referred to in Article 2 paragraph 2 of this Law (Article 9 paragraph 2);
- 4) uses hate speech by expressing ideas, statements, information, opinions that spreads, incites, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristic, xenophobia, racial hatred, anti-Semitism, or other forms of hatred based on intolerance including also intolerance expressed in the form of nationalism, discrimination and hostility against minorities (Article 9a);
- 5) hinders or prevents access to goods, services in public and private sectors and commodities, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 11 paragraph 1 item 1);
- 6) refuses access to goods, services in public and private sectors and commodities, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 11 paragraph 1 item 2);
- 7) sets conditions in occasion of access to goods, services in public and private sectors and commodities, which are not required from other persons or group of persons, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 11 paragraph 1 item 3);
- 8) intentionally delays or postpones access to goods, services in public and private sectors and commodities, even though a person or group of persons requested and met the requirements for timely access to those goods, services and commodities, before other persons or group of persons did, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 11 paragraph 1 item 4);
- 9) disables, restricts or makes difficult for a person or a group of persons to get employment, to work, to get education or makes unjustified differentiation or unequally treats on the grounds of health conditions (Article 12);
- 10) disables or restricts the exercise of rights or makes differentiation or unequally treats a person or group of persons on the grounds of age (Article 13 paragraph 1);
- 11) makes differences between children born in marriage and out of marriage, gives priority to children of one sex compared to children of the other sex, differentiation on the grounds of expressed opinion or belief of the parents i.e. guardians and family members of the child as well as differentiation among children also on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 13 paragraph 2);
- 12) performs discrimination of a person or group of persons compared to other persons on the grounds of political belief, membership or non-membership in political, trade union or other organization (Article 14);
- 13) hinders or prevents the enrolment into an educational institution and institution of higher education and the choice of curricula at all levels of education, expels from these

institutions contrary to regulations in the area of education, hinders or denies possibility to attend classes and participate in other educational activities, classifies children, pupils, attendants of education and university students or otherwise differentiates or unequally treats them, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 15);

14) performs discrimination of persons seeking employment, employees, or persons who on some other grounds perform work for the employer on any of the grounds referred to in Article 2, paragraph 2, of this Law (Article 16 paragraph 1);“

15) differentiates, unequally treats or brings a person or a group of persons in unequal position with a belief that race, colour of skin, language, nationality or national or ethnic origin, justify depreciation of a person or group of persons, i.e. justify the notion of superiority of a person or group of persons towards those who are not members of that group, particularly in the area of education, employment and choice of profession, vocational training, social protection and social benefits, health care and housing, access to goods, services in public and private sectors and commodities (Article 17);

16) treats contrary to the principle of freedom of religion, i.e. unequally treats, differentiates, or brings persons in unequal position on the grounds of religion or personal belief, as well as belonging or non-belonging to a religious community (Article 17a);

17) differentiates, unequally treats or brings persons or groups of persons in unequal position on the grounds of gender identity, sexual orientation and/or intersexual characteristics (Article 19 paragraph 1);

18) 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 also a responsible person in a legal person, state authority, authority of local self-government and authority of local government shall be fined in the amount of 500 EUR to 2,000 EUR.

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

For misdemeanour referred to in paragraph 1 of this Article a natural person shall be fined in the amount of 150 EUR to 2,000 EUR.

Article 34b

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

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

2) does not submit data from the separate records to Protector within the time limits prescribed in Article 33 paragraph 2 of this Law.

Article 16

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

Article 34c

One or more protective measures may be imposed individually or with the fine or the warning measure for misdemeanours referred to in Articles 34, 34a and 34b of this Law, as follows:

1) the seizure of objects;

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

3) the public announcement of a decision.

The protective measure of seizure of objects shall be obligatorily imposed whenever a misdemeanour is committed using the object which is to be seized, or when the object was designated for commitment of the misdemeanour or when the object which is to be seized was made because of committing the misdemeanour.

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

The 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 17

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

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THE PARLIAMENT OF MONTENEGRO OF 26th CONVOCATION

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