

Law on the Protector of Human Rights and Freedoms of Montenegro

I. GENERAL PROVISIONS

Article 1

This law shall regulate the competency, authorizations and manner of working and procedure of the Protector of Human Rights and Freedoms of Montenegro (hereinafter referred to as: the Protector) regarding the protection of human rights and freedoms guaranteed by the Constitution, law, ratified international human rights treaties and generally accepted rules of international law, as well as other issues of relevance to the work of the Protector.

Article 2

The Protector shall autonomously and independently, on the principles of justice and fairness, take measures to protect human rights and freedoms, when they are violated by the act, action or failure to act of state bodies, state administration bodies, bodies of the local self-administration and local administration, public services and other holders of public powers (hereinafter referred to as: authorities) as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination.

The Protector does not have authority over the work of courts, except in cases determined by this Law

Article 3

The Protector can be addressed by anyone who believes that an act, action or failure to act of the authorities violated his/her rights or freedoms.

The Protector shall, as well, act on his/her own initiative.

Proceeding before the Protector shall be free of charge.

Article 4

The work of the Protector shall be public, unless otherwise specified by the law.

Publicity of the work of the Protector is provided through submission and publication of annual and special reports and in other ways, in accordance with the law.

Article 5

The seat of the Protector shall be in Podgorica.

The Protector may organize the Protector's Days out of his/her seat.

Article 6

The resources necessary for the effective and efficient implementation of the functions of the Protector shall be provided in the budget of Montenegro.

II. APPOINTMENT AND CESSATION OF FUNCTION

Article 7

The Protector shall be appointed in accordance with the Constitution.

Article 8

For the Protector may be appointed a person who is citizen of Montenegro, possessing university degree and at least 15 years of working experience with high personal and professional authority.

The Protector, based on internal arrangement of tasks, provides specialization, above all, for the protection of persons deprived of their liberty in order to prevent torture and other forms of inhuman or degrading treatment or punishment, protection from discrimination, protection of minority rights, protection of the rights from the area of labour and employment, child protection, protection of persons with disability and gender equality.

For the Deputy may be appointed a person who is a citizen of Montenegro, possessing university degree and at least 10 years of working experience with high personal and professional authority.

Article 9

The Protector shall have one or more Deputies.

The Deputy shall perform duties within the competency of the Protector.

One of the Deputies shall also deal with the protection from discrimination.

Decision about the number of Deputies of the Protector shall be brought by the Parliament of Montenegro (hereinafter referred to as: the Parliament), on recommendation of the Protector.

Article 10

The Deputy Protectors (hereinafter referred to as: the Deputy) shall be appointed by the Parliament on the proposal of the Protector.

The Deputy shall be appointed for a period of six years and may be re-appointed.

Article 11

The Protector and the Deputy before taking function shall take an oath that reads:

"I swear to protect human rights and freedoms in accordance with the Constitution and law, and abide by the principles of justice and fairness."

Article 12

The Protector cannot be held responsible for the opinion or recommendation he/she provided in performing his function.

Article 13

The Protector or Deputy may not hold any other public function, nor perform any professional activity.

Protector or Deputy may not be a member of a political organization, or participate in political activities.

The restriction referred to in paragraph 1 of this Article shall not apply to scientific, educational or artistic activities, or activities protected with copyright.

Article 14

The Protector, in the case of his/her absence or impediment to perform function, shall be replaced by the Deputy designated by the Protector.

In the event of cessation of function of the Protector, his/her duties shall be performed by the longest performing Deputy on this function.

Article 15

The function of the Protector or the Deputy shall cease before the expiration of the time for which he/she is appointed by:

- 1) resignation;
- 2) loss of citizenship;
- 3) meeting the conditions for retirement;
- 4) dismissal.

The Protector or the Deputy shall be dismissed from the function if he/she:

- 1) is convicted of a non-suspended prison sentence for the offense that makes him/her unworthy of performing the function;
- 2) is deprived of his/her legal capacity by a final decision;
- 3) becomes a member of a political organization;
- 4) is performing other public function or professionally is engaged in other activity.

About the reasons for cessation of function or dismissal, the Parliament shall be informed by the Protector, the Deputy or competent working body.

Article 16

The Protector and the Deputy shall have identity document.

Form and content of identity document shall be determined by the protector.

III. COMPETENCY AND AUTHORIZATIONS

Article 17

The Protector is authorized to act upon complaints relating to the work of courts in case of delay in the proceedings, abuse of procedural authorizations or failure to execute court decisions.

Article 18

The Protector may initiate the adoption of laws, other regulations and general acts for the reason of harmonization with internationally recognized standards in the area of human rights and freedoms.

The authority to which has been submitted the initiative referred to in paragraph 1 of this Article shall be obliged to make a statement about this initiative.

If he/she deems it necessary for the protection and promotion of human rights and freedoms, the Protector shall give opinion on proposal of the law, other regulation or general act.

Article 19

The Protector may initiate a proceeding before the Constitutional Court of Montenegro for the assessment of conformity of laws with the Constitution and confirmed and published international treaties or the conformity of other regulations and general acts with the Constitution and law.

Article 20

The Protector in the exercise of his/her function acts in a way that: points, warns, criticizes, proposes or recommends.

At the request of the authorities the Protector may give an opinion on the protection and promotion of human rights and freedoms.

Article 21

The Protector deals with general issues of importance for the protection and promotion of human rights and freedoms and cooperates with organizations and institutions dealing with human rights and freedoms.

Article 22

The Protector is not authorized to alter, suspend or annul the acts of the authorities.

Protector cannot represent the party in the proceedings, or file on its behalf legal remedies, except in the case referred to in Article 27 paragraph 2 of this Law.

Article 23

The President of Montenegro, the President of the Parliament, the President and the members of the Government of Montenegro (hereinafter referred to as: the Government), the President of the Municipality, the Mayor of the Capital City and the Mayor of the Old Capital shall receive the Protector on his/her request, without delay.

IV. SPECIAL AUTHORIZATIONS

Article 24

The Protector, the Deputy as well as the employee authorized by the Protector has the right to:

- Without prior notice, inspect the premises in the authorities, organizations, institutions and other places where a person deprived of liberty is or may be held;
- Without prior notification and permission, visit a person deprived of liberty and verify the respect of its rights;
- Without the presence of official or other person, either personally or through an interpreter, talk to a person deprived of liberty, as well as with other person for who he/she thinks it can provide the necessary information.

Article 25

The Protector shall be the National Mechanism for the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment.

The Protector shall take measures to prevent torture and other forms of inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to examine the current situation in the authorities, organizations and institutions where are held persons deprived of liberty or persons whose movement is restricted and in order to provide expert opinion, the Protector shall create an advisory body composed of experts in relevant fields.

In the act on creation of the advisory body, referred to in paragraph 2 of this Article, shall be determined its tasks and authorizations.

The Head, or the person managing the authority, organization or institution referred to in paragraph 2 of this Article shall be obliged to allow to the members of the advisory body the unrestricted access to the premises where are held persons deprived of liberty or persons whose movement is restricted, unrestricted conversation with these persons, as well as to make available the necessary documentation.

The authority, organization or institution referred to in paragraph 2 of this Article, shall be obliged to, without delay, that is, within the provided deadline, implement the

recommendations of the Protector for the prevention of torture and other inhuman or degrading treatment or punishment.

Article 26

The Protector shall directly cooperate with the United Nations Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 27

The Protector shall be the Institutional Mechanism for protection from discrimination.

The Protector, with the approval of discriminated person, shall act and take measures for protection from discrimination, in accordance with this Law and specific Law governing the prohibition of discrimination.

When deems necessary, the Protector shall initiate a court proceeding for the protection from discrimination or shall join a discriminated person in that proceeding as an intervener.

In acting of the Protector in cases of discrimination by natural or legal persons, the provisions of this Law shall apply.

V. PROCEDURE

Article 28

The procedure of examination of violations of human rights and freedoms shall be initiated following a complaint or by the initiative of the Protector.

Protector shall examine violations of human rights and freedoms by his/her own initiative after he/she finds out that the act, action or failure to act of authorities violated human rights and freedoms.

In order for Protector to act by his/her own initiative is required the consent of the victim.

Article 29

The procedure before the Protector is confidential.

A person who files a complaint or participates in the procedure cannot therefore be held liable or brought in an unfavourable position.

Article 30

The complaint can be filed by anyone who believes that his/her rights and freedoms are violated.

In the case of violation of the right of a child, the complaint may be filed by its parent or guardian or legal representative.

If the right of a child is violated by a person referred to in paragraph 2 of this Article, the complaint may be filed by the organization or authority that deals with the protection of child rights.

The complaint may be filed through a Member of Parliament, as well as organization dealing with human rights and freedoms.

The complaint may be filed orally on the record.

A person deprived of liberty shall have the right to file a complaint in a sealed envelope.

The authorized person from authority, organization or institution in which reside a person deprived of liberty, is required to immediately submit to the Protector unopened and unread complaint or other writing of such person.

Article 31

The complaint shall contain the name of the authority on whose work it refers, description of the violation of human rights and freedoms, the facts and evidence supporting the complaint, information about exhausted legal remedies, name and address of the complainant and an indication of whether the complainant agrees his/her name to be revealed in the procedure.

If the complaint does not contain all the necessary information or is incomprehensible, the Protector may request from the complainant to amend it within specified period of time.

Article 32

The complaint is to be filed within six months as of the day of cognition about the violation of human rights and freedoms, or within one year as of the day of violation.

Exceptionally, the Protector may act even after the expiration of the deadline referred to in paragraph 1 of this Article, if he considers that the importance of the case so requires.

Article 33

The Protector may, during the examination procedure, instruct the complainant to exhaust other legal remedies to remedy the violation he/she is indicating if he/she considers that the violation can be remedied only by these remedies, or the remedy of the violation would be more efficient.

Article 34

The Protector shall not act upon the complaint if:

- 1) he/she is not competent;
- 2) the complaint is anonymous, unless he/she considers that there are grounds for acting on his/her own initiative in accordance with Article 28, paragraph 2 of this Law;
- 3) it is submitted after the expiry of the prescribed deadline;
- 4) it does not contain the necessary information, and the complainant fails to amend it within the prescribed deadline;
- 5) the complainant withdraws the complaint before initiating the procedure;
- 6) the complainant fails to act in accordance with Article 33 of this Law;
- 7) the complaint is repeated, and new evidences are not submitted;
- 8) it is an obvious abuse of the right to file a complaint.

The Protector shall notify the complainant about the reasons for not taking the action upon the complaint and shall indicate the possibility for potential achievement of the protection of his/her rights before other authority.

Article 35

The Protector shall inform about the complaint and its content the Head or the person managing the authority on whose act, action or failure to act the complaint refers to, for the purpose of taking the statement and shall set a deadline that cannot be shorter than eight days.

The Head or the person managing the authority shall be obliged to give a statement about the allegations in the complaint within the deadline set by the Protector.

If the statement does not contain all the necessary information and documents, the Protector may request the amendment of the statement.

Article 36

The Head or the person managing the authority shall be obliged to make available to the Protector all data from the jurisdiction of the authority he/she is managing, regardless of

the degree of confidentiality as well as to provide to him/her unrestricted access to all premises, in accordance with the regulations governing the data confidentiality and protection of personal data, and handling of the official files and documents.

Article 37

If the Head or to the person managing the authority fails to comply with the request within a specified period of time, he/she shall be obliged to, without delay, inform the Protector about the reasons.

Failure to comply with the request is considered obstruction of the work of the Protector, who can notify about that the immediate superior authority or the Parliament or inform the public.

Article 38

The Authorities shall be obliged to cooperate with the Protector, and provide him/her the assistance.

Article 39

Protector shall stop the proceeding if:

- 1) finds that after filing a complaint was initiated the court proceeding;
- 2) the complainant is not cooperating in the procedure;
- 3) the complainant withdrew the complaint;
- 4) the authority, meanwhile, remedies the violation;
- 5) the complainant dies, unless the heirs request that the procedure continue.

About stopping the procedure the Protector shall notify the complainant.

Article 40

For the purpose of examining the violation of human rights and freedoms, the Protector may invite any person as a witness or hire an expert from the relevant field.

The persons referred to in paragraph 1 of this Article, shall be required to respond to the invitation and are entitled to remuneration or reimbursement of expenses in accordance with regulations governing the remuneration and reimbursement in judicial proceedings, which are paid from the funds of the Protector.

Article 41

Upon completion of examining the violation of human rights and freedoms, the Protector shall issue an opinion on whether, how and to what extent the violation of human rights and freedoms occurred.

When the Protector finds that the violation of human rights and freedoms occurred, the opinion shall also contain a recommendation on what needs to be done to remedy the violation, as well as the deadline for its remedy.

Article 42

The Head or the person managing the authority on whose work refers the recommendation, shall be obliged to, within the provided deadline, submit the report on actions taken to carry out the recommendations.

If the Head or the person managing the authority fails to comply with the recommendation within a specified deadline, the Protector may inform the immediate superior authority, submit a special report or inform the public.

Article 43

About the results of the examination of the violation of human rights and freedoms, the Protector shall notify the complainant by submitting the opinion.

Article 44

The Protector may submit the initiative for opening a disciplinary procedure or procedure for the dismissal of the person whose work or failure to act resulted in violation of human rights and freedoms.

For misdemeanours prescribed by this Law and the Law on Prohibition of Discrimination, the Protector may submit a request for initiation of misdemeanour proceeding.

Article 45

The Protector and the Deputy, as well as employees of the Protector, shall be obligated to keep confidential and personal information they have gained during the work in accordance with the law.

The obligation referred to in paragraph 1 of this Article shall be also valid after the cessation of function or employment.

Article 46

Detailed manner of working and procedure shall be established in the Rules of Procedure of the Protector.

Rules of Procedure of the Protector shall be published in the "Official Gazette of Montenegro".

VI. REPORT

Article 47

The Protector shall submit the Annual Work Report to the Parliament.

The Annual Work Report shall include in particular: general statistical overview of the cases in which he acted, the statistical overview by the areas of work, evaluation of the situation in the area of human rights and freedoms in Montenegro, recommendations and measures proposed by the Protector for improvement of the human rights and elimination of perceived shortcomings.

A special part of the Report with which the Protector informs the Parliament about the perceived phenomenon of discrimination shall include: assessment of the situation in the field of protection from discrimination, which includes evaluation of the work of authorities, service providers and other persons, perceived shortcomings and recommendations for their removal, analysis of the law.

The Annual Work Report for the previous year shall be submitted not later than 31 March of the current year.

Upon request of the Parliament, the Government is obliged to give its statement about the Annual Work Report of the Protector.

The Annual Work Report shall be made accessible to the public.

Article 48

The Protector may submit to the Parliament a special report, if he/she deems that to be necessary for the protection of human rights and freedoms.

The special report shall be available to the public.

VII. SALARIES AND RIGHTS

Article 49

The Protector and the Deputy are entitled to salary and other income, and to achieve other rights arising from the exercise of function, in accordance with the legislation governing those rights for public functionaries.

The fixed part of the salary of the Protector shall be determined by applying the coefficient of 12.98.

The fixed part of the salary of the Deputy shall be determined by applying the coefficient of 11.50.

The value of the coefficient shall be determined by the competent working body of the Parliament.

The Protector and the Deputy shall have the right to allowances based on the exercise of function in the amount of 30% from the fixed part of the salary.

Article 50

The decision on the salary, allowances, and other incomes and rights of the Protector and the Deputy shall be delivered by the competent working body of the Parliament.

VIII. ADMINISTRATIVE AND PROFESSIONAL SERVICE

Article 51

In order to perform professional and administrative tasks, the Protector shall establish the Administrative and Professional Service.

The Administrative and Professional Service is managed by the Secretary.

The Secretary shall be appointed and dismissed by the Protector.

The Secretary shall be entitled on the salary established for management staff in the ministry, in accordance with regulations on salaries of civil servants and state employees. The Act on internal organization and systematization of the Administrative and Professional Service shall be delivered by the Protector, with the prior opinion of the competent working body of the Parliament.

Article 52

On employees in the Administrative and Professional Service shall apply the regulations on civil servants and state employees.

IX. FINANCING

Article 53

Financial resources for the work of the Protector shall be provided in the separate allocation of the Budget of Montenegro.

The proposal for allocation of budgetary resources to the Protector shall be submitted by the working body of the Parliament responsible for human rights and freedoms, on the proposal of the Protector.

The Protector shall have the right to participate in the work of the competent working bodies and sessions of the Parliament in occasions when the budget proposal is discussed.

X. PENALTY PROVISIONS

Article 54

A fine amounting from 500 Euros to 2000 Euros shall be imposed for misdemeanour on:

- 1) the responsible person in the authority who do not comply with the request of the Protector within provided deadline (Article 35, paragraph 2);
- 2) the person who fails to appear before the Protector (Article 40, paragraph 2).

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 55

The procedures of examining the human rights and freedoms initiated before the day of entering into force of this Law shall continue in accordance with this Law.

Article 56

The Rules of Procedure of the Protector and the Act on internal organization and systematization of the Administrative and Professional Service shall be delivered within three months as of the day of entering into force of this Law.

Article 57

The Protector and the Deputy appointed, that is, elected before the entry into force of this Law shall continue to perform the function until the expiry of the time he/she is elected for.

Article 58

On the day of entering into force of this Law, the Law on Protector of Human Rights and Freedoms ("Official Gazette of the Republic of Montenegro", No. 41/03) shall cease to have effect.

Article 59

This Law shall enter into force eight days as of the day of its publication in the "Official Gazette of Montenegro".