

I Annex - Democracy and the rule of law

9. LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

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Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

DECREE PROMULGATING THE LAW ON PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

(Official Gazette of the Republic of Montenegro 48/03)

I hereby promulgate the Law on Protector of Human Rights and Freedoms passed by the Parliament of the Republic of Montenegro at the second sitting of the first ordinary session in 2003 on 8 July 2003.

No. 01-441/2

Podgorica, 9 July 2003

The President of the Republic of Montenegro

Fillip Vujanović

LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

I. GENERAL PROVISIONS

Article 1

Protector of Human Rights and Freedoms

The Protector of Human Rights and Freedoms is established by this Law.

The Protector of Human Rights and Freedoms (hereinafter referred to as: the Protector) shall protect human rights and freedoms guaranteed by the Constitution, laws, ratified international treaties on human rights, and generally recognized rules of international law, when these are violated by means of enactment, action or failure of state authorities, bodies of local self-government and public services and other holders of public power to act (hereinafter referred to as: authorities).

The Protector has no powers concerning the work of courts except in cases defined by this Law.

Article 2

Autonomy and Independence

The Protector is autonomous and independent in performing his/her duties.

Article 3

Constitutionality and Legality

The Protector shall perform his/her duties on the basis of the Constitution and laws and shall abide by the principles of justice and equity in his/her work.

Article 4

Accessibility

Any person who believes that his/her rights or freedoms have been violated by means of enactment, action or failure to act of the authorities may refer to the Protector.

The Protector may also act ex officio.

The proceedings before the Protector shall be free of charge.

Article 5

Publicity of the work

The work of the Protector is public unless otherwise provided for by this Law.

The publicity of the work of the Protector is ensured through submission and publication of annual and special reports and in any other manner determined by the Protector.

Article 6

Headquarters

The headquarters of the Protector shall be in Podgorica.

The Protector may organize Protector's days outside the headquarters.

Article 7

Resources

The Republic of Montenegro shall provide the resources and conditions for the work of the Protector.

II ELECTION, TERMINATION OF OFFICE AND REMOVAL FROM OFFICE

Article 8

Election

The Parliament of the Republic of Montenegro (hereinafter referred to as: the Parliament) shall elect the Protector upon a proposal of the competent working body of the Parliament, by a majority vote of all members of the Parliament.

In the procedure of establishing the proposal of candidates for the election of the Protector, the competent working body of the Parliament shall undertake consultations with scientific and specialized institutions, bodies as well as representatives of the non-governmental sector dealing with issues related to human rights and freedoms.

The public shall be informed about the initiation of the procedure to propose candidates.

Article 9

Deputy Protector

The Protector shall have at least one Deputy Protector (hereinafter referred to as: the Deputy).

The Parliament shall decide how many Deputies the Protector shall have, upon proposal of the Protector.

The Deputy shall perform activities that fall under the jurisdiction of the Protector. One of the Deputies shall deal with the protection of minority rights.

Article 10

Election of Deputies

The Assembly shall elect the Deputy upon a proposal of the Protector, by majority of votes of all members of the Parliament.

Article 11

Terms of office

The Protector and the Deputy shall be elected for a period of six years and may be re-elected for a second term after the expiration of the terms of office.

Article 12

Eligibility

Any citizen of the Republic of Montenegro who obtained a university degree and who has extensive experience in the field of human rights and freedoms and is of high personal and professional stature may be elected as a Protector and a Deputy.

Article 13

Deadline for election

The procedure for election of the Protector shall be initiated no more than three months prior to the expiration of the Protector's terms of office.

Article 14

Immunity

The Protector and the Deputy shall enjoy the same immunity as members of the Parliament.

The Protector and the Deputy may not be liable for opinion expressed or recommendation given in the exercise of his/her duties.

Article 15

Confidentiality

The Protector and the Deputy are obliged to protect the confidentiality of all information or personal data they have gained knowledge of in the exercise of their duties.

The obligation to protect confidentiality of information and personal data shall remain in force even after expiration of the terms of office, or removal from office.

Article 16

Incompatibility of office

The Protector and the Deputy may not hold any representative and other public office, nor may they perform other professional activity.

The Protector and the Deputy may not be members or partners of the bodies of political parties.

Limitations from paragraph 1 of this Article shall not apply to scientific, educational or artistic activities, or activities falling under the protection of copyrights.

Article 17

Oath

Before taking office, the Protector and the Deputy shall take the following oath:

»I swear that I will perform my duty in accordance with the Constitution and the law protect human rights and freedoms and abide by the principles of justice and equity in exercise of my duties«.

The Protector shall take the oath before the Parliament, while the Deputy shall do it before the President of the Parliament.

Article 18

Replacement of the Protector

In the case of absence, the Protector shall be replaced by his/her Deputy.

Article 19

Termination of office

Protector's and Deputy's office shall terminate for any of the reasons below:

- 1) death,
- 2) expiration of the terms of office,
- 3) resignation,
- 4) meeting the age retirement conditions,
- 5) permanent loss of the ability to hold his/her office,
- 6) obtaining membership or partnership in bodies of political parties,
- 7) loss of citizenship, and
- 8) holding a representative and any other public office, or exercising any professional activity incompatible with this office.

When a reason for the termination of office occurs, the competent working body of the Parliament shall inform the Parliament about it.

The Parliament shall pass a decision verifying the termination of Protector's and Deputy's office.

Article 20

Removal from office of the Protector

The Protector shall be removed from office if he/she:

- 1) has been convicted of a criminal offence, which makes him/her unsuitable for holding the office,
- 2) exercises his/her duties unprofessionally and carelessly.

The procedure for the dismissal of the Protector shall be launched upon initiative of one third of the members of the Parliament, whereas the decision for dismissal shall be passed by a majority vote of all members of the Parliament.

The competent working body of the Parliament shall conduct the preliminary procedure to determine unprofessional and careless exercise of the Protector's duties, giving the Protector the opportunity to explain him/herself.

Upon the completion of the preliminary procedure, the competent working body of the Parliament shall submit to the Parliament a substantiated proposal for passing the decision on the motion, which shall be accompanied with the statement of the Protector.

The Protector shall be authorized to explain him/herself regarding the proposal from paragraph 4 of this Article.

Article 21

Removal from office of the Deputy

The Deputy shall be removed from office for the same reasons prescribed for the removal from office of the Protector.

The Deputy shall be dismissed upon submission of a substantiated proposal of the Protector, by a majority of votes of all members of the Parliament.

In addition to the proposal for dismissal of the Deputy, the Protector shall submit the explanation of the Deputy regarding the allegations stipulated in the proposal for his/her dismissal.

Article 22

The decision on removal from office

The Protector and the Deputy respectively shall be considered removed from office as of the day the decision on removal was passed.

III JURISDICTION AND AUTHORISATIONS

Article 23

Jurisdiction

The Protector shall consider cases involving violations of human rights and freedoms committed by the authorities by means of enactment, action or failure to act and shall undertake activities to remedy such violations in accordance with the this Law.

The Protector shall also deal with general issues that are important for the protection and promotion of human rights and freedoms and shall co-operate with appropriate organizations and institutions dealing with human rights and freedoms.

Article 24

Special authorisations in judicial procedure

The Protector shall act upon complaints referring to an ongoing judicial proceedings only in case of delay, if an obvious abuse of procedural powers occurred or if court decisions have not been executed.

Article 25

Participation in law making process

The Protector may launch an initiative for amending certain legislation, especially for the purpose of harmonization with internationally recognized standards in the field of human rights and freedoms.

The Protector shall provide an opinion on the draft laws, other regulations or general enactments if he/she finds it necessary for the purpose of protecting and promoting human rights and freedoms.

Article 26

Initiating a Procedure before the Constitutional Court

The Protector may propose the initiation of proceedings before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general enactment relating to human rights and freedoms.

Article 27

Opinion during the proceeding

The Protector may provide his/her opinion on the protection and promotion of human rights and freedoms, upon the request of the authorities deciding on such rights, notwithstanding the nature or degree of the procedure that is ongoing before these authorities.

Article 28

Authorisations for the protection of persons deprived of their liberty

The Protector may, without prior notification, carry out an inspection of all premises in the prisons and in other premises in which individuals deprived of their liberty are held.

The Protector shall be entitled to communicate with individuals deprived of their liberty without presence of officials.

Individuals deprived of their liberty shall be entitled to file their complaint in a sealed envelope.

Correspondence sent by persons deprived of their liberty shall be forwarded immediately to the Protector, unopened and unread, whereas any response of the Protector shall go through the same procedure.

Article 29

Duty to Meet the Protector

The President of the Republic of Montenegro, the President of the Parliament, the Prime Minister and other members of the Government of the Republic of Montenegro (hereinafter referred to as: the Government), Municipal Mayors, Capital City Mayor, Old Historical Capital Mayor shall be in obligation to meet the Protector without any delay upon his/her request.

IV PROCEDURE

Article 30

Confidentiality

The proceedings before the Protector are confidential.

Any person who files a complaint or takes part in any way in the investigation undertaken by the Protector may not be held liable or put into a less favourable position based on such grounds.

Article 31

Filing a complaint

Any person who believes that his or her human rights and freedoms have been violated by means of enactment, action or failure to act of the authorities may file a complaint with the Protector.

A person from paragraph 1 of this Article may also file a complaint to the Protector through relevant associations or organizations as well as through the elected representatives.

The complaint may also be submitted orally in the record room of the Protector's office.

Article 32

The Complaint

The complaint shall contain the title of the authority whose action it refers to, description of the violation of human rights and freedoms, facts and evidence substantiating the complaint, information on legal actions that have been undertaken, name and address of the complainant as well as the statement indicating whether or not the complainant agrees that his or her name can be disclosed in the procedure.

Article 33

Supplementing the complaint

Should the complaint not contain all the necessary information, the Protector may request for the complaint to be supplemented within the deadline he/she determines.

Article 34

Procedure Ex Officio

The Protector shall also act ex officio when he or she comes into possession of reliable information that human rights and freedoms have been violated by means of enactment, action or failure to act of the authorities.

If the Protector acts ex officio, the consent of the injured person shall be obtained.

Article 35

Exhaustion of legal actions

The Protector may request that, prior to his/her consideration of the complaint, other legal actions be exhausted in order to remedy the violation which the complainant refers to, if he/she finds such procedure more efficient.

Article 36

Deadline for filing a complaint

The complaint shall be filed within one year from the date the violation of human rights and freedoms was committed, or from the date the violation became known.

Exceptionally, the Protector shall act after the expiration of the deadline set forth in paragraph 1 of this Article if he/she evaluates the case as important.

Article 37

Decision not to act upon a complaint

The Protector shall not act upon the complaint if:

- 1) the complaint is anonymous,
- 2) it is submitted after the expiration of the prescribed deadline, except for cases referred to in Article 36 paragraph 2 of this Law;
- 3) it does not contain the necessary information, and if the complainant fails to supplement it within the prescribed deadline;
- 4) other legal actions to remedy the violation have not been exhausted, when the complainant has been directed to do so by the Protector;

- 5) the complaint is re-filed, but does not contain new evidence; and
- 6) if there is an obvious abuse of the right to file the complaint.

Article 38

Notification

The Protector shall notify the complainant as to the reasons for not taking action upon the complaint and shall direct him/her on how to secure the protection of his/her rights with other institutions.

Article 39

Submission of the Complaint

When the Protector assesses that the complaint is in accordance with the required conditions, he/she shall notify the complainant and the head of the authority whose enactment, action or failure to act the complaint refers to.

In the notification to the head of the authority, the Protector shall state the content of the complaint and determine the deadline of at least eight days within which the head of the authority shall have to respond.

If the Protector assesses that the statement of the head of the authority does not contain all the necessary information, he or she may request additional elements of information to be provided within the deadline he/she determines.

Article 40

Duties of the Authorities

The authorities are obliged to provide the Protector, upon his/her request, with access to all requisite information and notifications they are responsible for, regardless of the level of secrecy, as well as with free access to all premises.

Should the authorities fail to proceed upon the request of the Protector within the determined deadline, they shall, without delay, inform the Protector of the reasons they have not proceeded.

The authorities shall have the duty to provide the Protector, upon his/her request, with direct insight into the official files, documents, information, as well as to deliver him/her the copies of requested files and documents, in compliance with the rules on handling official files and documents.

Failure to act upon the request of the Protector shall be considered an obstruction of his/her work, of which the Protector may inform the immediate superior of the authorities, the Parliament or the public.

Article 41

Mandatory Co-operation

All the authorities are obliged to provide the Protector with adequate assistance, upon his/her request.

Article 42

Suspension of the Consideration of a Complaint

The Protector shall not continue with the consideration of a complaint if he/she has determined that:

- 1) court proceedings were initiated after the complaint had been filed with the Protector;

- 2) the complainant does not co-operate in the procedure undertaken by the Protector;
- 3) the complainant withdrew the complaint;
- 4) the authorities have remedied the committed violation in the meantime.

Article 43

Experts and Witnesses

For the purpose of investigation, the Protector may call any person possessing appropriate knowledge or information about allegations of the complaint to appear as an expert or witness.

Persons from paragraph 1 of this Article are obliged to respond to the Protector's call.

Article 44

Final Opinion

After proceeding upon a complaint, the Protector shall give the final opinion.

The final opinion shall contain the judgment of whether, how and to what extent the violation of human rights and freedoms of a complainant occurred, recommendations as to what needs to be done in order to remedy the said violation, as well as the deadline for authorities to take action.

The respondent authorities are obliged to submit to the Protector, within the deadline he/she determines, a report stating the actions taken in order to enforce the recommendations contained in the final opinion.

Should the authority fail to comply with the recommendation, the Protector may address the public, refer to the immediate superior authorities or submit the special report thereon.

Article 45

Initiative

The Protector may submit complaint to the competent authorities for launching disciplinary proceedings or procedure for removal from office against persons whose action provoked the violation of human rights and freedoms.

Article 46

Annual report on work

The Protector shall submit an annual report on work to the Parliament.

Upon request of the Parliament, the Government of the Republic of Montenegro (hereinafter referred to as: the Government) is obliged to give its opinion on the annual report submitted by the Protector.

The annual report shall contain, namely, a general statistical tabulation of all investigated cases, a general evaluation of the status of human rights and freedoms in the Republic of Montenegro, and the Protector's recommendations and suggested measures to remedy the observed failures.

The annual report for the previous year shall be submitted not later than 31 March of the current year.

The annual report shall be accessible to the public.

Article 47

Special Report

The Protector may submit a special report if he/she assesses that exceptionally important reasons require such action.

The special report from paragraph 1 of this Article shall be accessible to the public.

V RIGHTS OF THE PROTECTOR

Article 48

Salary

The Protector shall be entitled to the same remuneration as that accorded to the president of the Constitutional Court of the Republic of Montenegro.

The Deputy shall be entitled to the same remuneration as that accorded to a judge of the Constitutional Court of the Republic of Montenegro.

Article 49

Other Rights

The Protector and the Deputy shall also enjoy other rights related to their work and provided for in their employment status, in accordance with the legislation that regulates the status of Republic officials.

VI FINANCING OF THE PROTECTOR

Article 50

Financial Resources for the Work of the Protector

Resources for the work of the Protector shall be determined in a separate item of the Budget of the Republic of Montenegro.

The Protector shall draft a proposal for this item of the Budget and submit it to the Government.

VII TECHNICAL SERVICE

Article 51

Setting up a Technical Service

The Protector shall set up his/her Technical Service to perform expert and administrative tasks.

The Technical Service shall be under the management of the Secretary.

The Protector shall have the authority to appoint and dismiss the Secretary.

Following the preliminary opinion of the competent working body of the Parliament, the Protector shall adopt the act on internal organization and systematization of posts in the Technical Service.

Article 52

Employees in the Technical Service

Legislation on public servants shall apply to the employees in the Technical Service.

VIII RULES OF PROCEDURE

Article 53

Rules of procedure

The Protector shall adopt the Rules of Procedure that regulate in detail his/her methods of work and procedure.

The Rules of Procedure shall be published in the Official Gazette of the Republic of Montenegro.

IX PENAL PROVISIONS

Article 54

Violations of the Procedure

A fine amounting from ten to twenty times the amount of the minimal salary in the Republic shall be imposed on persons who violated the procedure as follows:

- 1) if a competent person who is employed with authorities fails to proceed timely upon the request of the Protector (Article 40);
- 2) if a person fails to respond to the call from the Protector (Article 43).

X TRANSITIONAL AND FINAL PROVISIONS

Article 55

The procedure for the election of the Protector shall be conducted within three months from the day of entry into force of this Law.

Article 56

The Protector shall act in cases of violation of human rights and freedoms that occur after the entry into force of this Law.

Article 57

The Protector shall adopt secondary legislation in accordance with this Law within three months from the day he/she took office.

Article 58

The present law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro.