

LAW ON AMMENDMENT TO THE CRIMINAL CODE OF MONTENEGRO

Article 1

In Criminal Code of Montenegro (*Official Gazette of the Republic of Montenegro*, no. 70/03 and 47/06 and *Official Gazette* no. 40/08, 25/10, 32/11 and 40/13) after Article 449 a new article shall be added, which reads as follows:

Participation in foreign armed formations

Article 449 b

(1) Anyone who in breach of law, other regulations or rules of international law, recruits, prepares, organizes, manages, transports or organizes the transports or trains an individual or a group of persons in the aim of joining the foreign armed formations or participation in them that are active outside the Montenegro

shall be sentenced with two to ten years imprisonment.

(2) Anyone who in breach of law, other regulations or rules of international law, travels for the reason of joining or participation, joins or participates in foreign armed formation that is active outside the Montenegro, individually or in organized groups,

shall be sentenced with six months to five years imprisonment.

(3) Anyone who directly or through the third person offers, gives, provides, requests, collects or hides financial assets, funds, material assets or equipment which are completely or partially dedicated to the commitment of criminal offence referred to in par. 1 and 2 of this Article

shall be sentenced with one to eight years of imprisonment.

(4) Anyone who publicly calls or encourages others to commit the offences referred to in par. 1, 2 and 3 of this Article

shall be sentenced with six months to five years imprisonment.

(5) A person from par. from 1 to 4 of this Article who prevents the committing of criminal offence by revealing an individual or a group,

shall be sentenced with six months to three years, and could be exempted from punishment.

(6) By foreign armed formation, with the meaning of this article shall be considered foreign army or police, foreign paramilitary formation or para-police formation.

Article 2

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

EXPLANATION

I. THE CONSTITUTIONAL GROUNDS FOR ENACTMENT OF THE LAW

The constitutional grounds for enactment of the Law on amendments to the Criminal Code of Montenegro is provided in Article 16, item 5 of Montenegrin Constitution which prescribes that other issues of interest for Montenegro shall be regulated in accordance with Constitution.

II. THE REASONS FOR ENACTMENT OF THE LAW

The importance of legal regulation of phenomenon of foreign fighters' participation in conflicts abroad reflects in harm that this phenomenon produces in the field of human rights, concerning the fact that it is the most serious form of breaching the human rights guaranteed by international conventions. Also, the participation of foreign fighters in conflicts can produce serious security implications and can have bad impact on the countries who are not directly involved in conflicts. Every democratic country which obeys the rule of law, human rights and sovereignty of countries is obliged to punish the participation of its citizens in conflicts abroad, by its legislation.

The enactment of Law on amendments to the Criminal Code of Montenegro will incriminate all forms of participation of foreign fighters in conflicts abroad and in that way, the human rights and basic social values, as well as the citizens of Montenegro will be protected from negative direct or indirect impacts produced by execution of this criminal offence. By prescribing the appropriate criminal sanctions for all kind of participation in foreign conflicts, one can prevent potential offenders.

The proposed amendments to the Criminal Code of Montenegro expect the suppressing the phenomenon of participation of Montenegrin citizens in foreign armed formations and appropriate imposing of sentences to the perpetrators and organizers of this criminal offence.

III. COMPABILITY WITH EUROPEAN LEGISLATION AND CONFIRMED INTERNATIONAL CONVENTIONS

The proposed law on amendments to the Criminal Code of Montenegro is completely aligned with UN Resolution 2178 (2014) on foreign fighters which was adopted by the Security Council of the UN at its session held on 24. September 2014.

On 17. October 2014, the Ministry of Interior organized the public debate during which the Resolution 2178 (2014) was presented, as well as comparative solutions of countries of the region, all in the aim of harmonization of the proposed law with international standards.

IV. THE EXPLANATION OF BASIC LEGAL INSTITUTES

Article 1 of proposed law on amendments to the Criminal Code of Montenegro proposes the introduction of a new criminal offence – participation in foreign armed formations and that in accordance with the subject of protection within the Title XXXV that refers to criminal offences against humanity and other goods protected by international law.

The proposed criminal offence stipulates that anyone who in breach of law, other regulations or rules of international law, recruits, prepares, organizes, manages, transports or organizes the transports or trains an individual or a group of persons in the aim of joining the foreign armed formations or participation in them that are active outside the Montenegro shall be sentenced with two to ten years imprisonment.

Anyone who in breach of law, other regulations or rules of international law, travels for the reason of joining or participation, joins or participates in foreign armed formation that is active outside the Montenegro, individually or in organized groups, shall be sentenced with six months to five years imprisonment.

The proposal of the Law on amendments to the Criminal Code of Montenegro, in accordance with Resolution 2178 (2014) incriminates the persons who directly or through the third person offer, give, provide, request, collect or hide financial assets, funds, material assets or equipment which are completely or partially dedicated to the commitment of criminal this offence. Also, the incrimination of the persons who publicly call or encourage others to commit this criminal offence is proposed by this Law proposal. The aim of these provisions is punishing the incitement of perpetrating this criminal offence as well as collecting the financial assets necessary for their perpetration.

For a person who prevents the execution of the criminal offence by revealing an individual or a group, the legislator has prescribed a more favorable punishment, with possibility for exemption of punishment.

The proposed amendments to the Criminal Code of Montenegro defines the term - foreign armed formations, under which, in terms of this Code, a foreign army or police, foreign paramilitary formation or para-police formation are considered.

The Article 2 of proposed law on amendments to the Criminal Code of Montenegro prescribes that the proposal of the Law on amendments will enter into force within the eight days from the day of its publishing in *Official Gazette of Montenegro*.

V. THE ESTIMATION OF FINANCIAL ASSETS FOR LAW ENFORCEMENT

The proposal of the Law on amendments to the Criminal Code of Montenegro doesn't envisage the securing of additional assets in the Budget of Montenegro.

VI. REASONS FOR ADOPTION OF LAW BY SHORTENED PROCEDURE

Pursuant to Article 151 of the Rules of Procedure of Montenegrin Parliament (*Official Gazette of the Republic of Montenegro*, no. 51/06,66/06 and *Official Gazette of Montenegro* no. 88/09,80/10,39/11,25/12 and 49/13) we believe that is necessary to adopt the proposal of Law on amendments to the Criminal Code of Montenegro by shortened procedure, taking into account the fact that non-adoption of the law by shortened procedure could cause harmful consequences for people's life, security of Montenegro, work of state and other authorities and organizations.