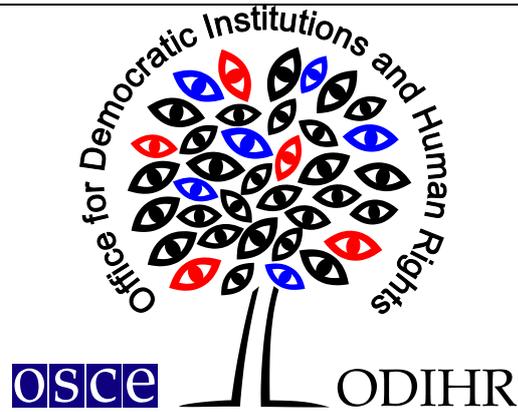


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OPINION

ON THE LAW ON PROHIBITION OF

DISCRIMINATION

OF MONTENEGRO

Based on an unofficial English translation of the Law

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Annex 1: Law of Montenegro on the Prohibition of Discrimination

I. INTRODUCTION

1. *On 13 March 2013, the Head of the OSCE Mission to Montenegro received a letter from the Minister for Human and Minority Rights of Montenegro, informing him that a working group had been established to amend the Law on the Prohibition of Discrimination, and the Law on the Protector of Human Rights and Freedoms, and asking for opinions on both laws, to support the working group in their tasks.*
2. *On 18 March 2013, the OSCE Mission to Montenegro forwarded an English translation of the letter to the OSCE/ODIHR, asking for an opinion on the Law on the Prohibition of Discrimination (the Law on the Protector of Human Rights and Freedoms had already been reviewed jointly by the OSCE/ODIHR and the European Commission for Democracy through Law of the Council of Europe (hereinafter “Venice Commission”).*
3. *In 2009 and 2010, both the OSCE/ODIHR¹, and the Venice Commission², had reviewed draft versions of the Law on Prohibition of Discrimination.*
4. *This Opinion was prepared in response to the request received from the Minister for Human and Minority Rights.*

II. SCOPE OF REVIEW

5. The scope of this Opinion mainly covers the Law on Prohibition of Discrimination (hereinafter “the Law”). Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and policy anti-discrimination framework in Montenegro.
6. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international and regional anti-discrimination standards, as found in the international agreements and commitments ratified and entered into by Montenegro.
7. This Opinion is based on unofficial translation of the Law, which has been attached to this document as Annex 1. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to legislation and policy combating discrimination in Montenegro, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

9. It should be noted at this point that the concept of the Law, and numerous provisions aptly reflect the requirements set by international anti-discrimination standards. In the interests of concision, and the positive aspects have been mentioned repeatedly in

¹ OSCE/ODIHR Comments on the draft Anti-Discrimination Law in Montenegro, No. NDISCR-MNG/135/2009 (TND), issued on 9 July 2009, and OSCE/ODIHR Comments on the draft Law on Prohibition of Discrimination in Montenegro, No. NDISCR-MNG/150/2010 (TND), issued on 27 January 2010.

² Opinion on the draft Law on Prohibition of Discrimination of Montenegro, CDL-AD(2009)045, Opinion no. 541/2009, of 12 October 2009, adopted by the Venice Commission at its 80th Plenary Session (9-10 October 2009) and Opinion on the draft Law on Prohibition of Discrimination of Montenegro, CDL-AD(2010)011, Opinion no. 564/2009 of 18 March 2010, adopted by the Venice Commission at its 82nd Plenary Session (12-13 March 2010).

previous ODIHR reviews of draft versions of the Law, this Opinion will mainly focus on those areas which would benefit from further enhancement and revision.

10. In order to ensure the full compliance of the Law with international standards, the OSCE/ODIHR thus recommends as follows:

1. Key Recommendations

- A. To introduce a separate provision to the Law specifying its scope and areas of activity; [pars 15-16]
- B. To restrict the ban on segregation in Article 9 to racial segregation, while stressing that this type of segregation may never, under no circumstances, be justified; [pars 31-32]
- C. To amend Article 18 as follows:
 - 1) Widen the scope of this provision to ensure overall accessibility for disabled persons; [par 36]
 - 2) Include specific references to the general concept of reasonable accommodation, including the exception in cases where this would impose an undue burden on relevant natural or legal persons, or public institutions; [par 37]
 - 3) Clarify the extent and meaning of par 3; [par 38]
- D. To enhance Article 20 by attaching special consequences or sanctions to cases where discrimination is considered particularly grave, and clarify the wording of this provision; [pars 40 and 53]
- E. To ensure that the Human Rights Protector has full powers and mandate to implement the Law, in line with international standards, and see to it that the Law and the Law on the Human Rights Protector are consistent; [pars 44-45]
- F. To expand the powers of the courts under Article 26, including the range of sanctions that may be imposed; [pars 47 and 53]

2. Additional Recommendations

- G. To adopt a wider definition of victimization in Article 4, in line with international standards; [par 17]
- H. To amend Article 2 as follows:
 - 1) Simplify, and render more concise the definition of discrimination under Article 2 par 2; [par 22]
 - 2) Reduce, and clarify, the list of protected grounds in Article 2 par 2; [par 23]
 - 3) Include in the definition of discrimination the protection from discrimination based on assumed grounds, and affiliation with a certain identifiable group; [pars 24-25]
 - 4) Ensure that the definition of direct discrimination in Article 2 par 3 is rendered more compliant with EU legislation and adapt Article 16 par 3 accordingly; [par 28]

- 5) Consider excluding the incitement to discriminate from Article 2 par 5; [par 29]
 - I. To eliminate “inconvenience” as a result of harassment under Article 7; [par 30]
 - J. To reconsider the structure and added value of reiterating special types of discrimination under Chapter II; [par 33]
 - K. To ensure that the Law is consistent with the 2011 Law on the Prohibition of Discrimination against Persons with Disabilities; [par 34]
 - L. To consider introducing an additional level of administrative review of complaints of discrimination; [par 42]
 - M. To amend the wording of Article 29 to fully reflect international standards relating to the shift of the burden of proof in anti-discrimination proceedings; [par 49] and
 - N. To amend Article 30 to aptly reflect international standards on third-party intervention. [pars 50-51]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Anti-Discrimination Standards

11. This Opinion analyzes the current Law from the viewpoint of its compatibility with relevant international human rights standards and OSCE commitments. Both key general international human rights instruments applicable in Montenegro contain anti-discrimination clauses, namely the International Covenant on Civil and Political Rights³ (hereinafter “ICCPR”) in its Article 26, and the European Convention on Human Rights⁴ (hereinafter “ECHR”) in its Article 14 and Protocol No. 12.
12. At the same time, Montenegro has further ratified numerous specific anti-discrimination instruments, among others the UN Convention on the Elimination of All Forms of Racial Discrimination⁵ (hereinafter “CERD”), the UN Convention on All Forms of Discrimination against Women⁶ (hereinafter “CEDAW”), and the UN Convention on the Rights of Persons with Disabilities⁷ (hereinafter “CRPD”).

³ The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and Montenegro succeeded to it on 23 October 2006.

⁴ The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. Montenegro ratified the Convention, as well as Protocol No. 12, on 3 March 2004.

⁵ The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in resolution 2106 (XX) of 21 December 1965 and signed on 7 March 1966. Montenegro succeeded to this Convention on 23 October 2006.

⁶ Convention on the Elimination of All Forms of Discrimination against Women, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. Montenegro succeeded to this Convention on 23 October 2006.

⁷ Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Montenegro ratified this Convention on 21 September 2010.

13. As Montenegro is a candidate country to join the European Union⁸, and has thus undertaken to make its legislation compliant with the EU *acquis*, this analysis of the Law will also take into account relevant EU legislation.⁹ The most important EU directives in the field of anti-discrimination remain Council Directive 2000/78/EC on equality in the field of employment¹⁰ (hereinafter the “EU Employment Equality Directive”) and Council Directive 2000/43/EC relating to equal treatment irrespective of ethnic or racial origin¹¹ (hereinafter the “EU Racial Equality Directive”).
14. Of the various OSCE commitments focusing on equal treatment, the Vienna Document is among the most specific. It stresses that all OSCE participating States shall commit to ensuring human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind, including by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹²

2. Scope of the Law and Definition of Discrimination

2.1 Scope of the Law

15. While Articles 1-6 of the Law contain such matters as the subject of the Law, as well as definitions and other general provisions, the Law does not contain a provision specifically outlining its scope. This was already raised in the most recent OSCE/ODIHR review of a draft version of the Law, the 2010 OSCE/ODIHR Comments on the draft Law on Prohibition of Discrimination in Montenegro¹³ (hereinafter “ODIHR’s 2010 Comments”), and is still retained as an important matter. In particular, the Law should clearly set out that it prohibits discrimination in both the public and private sphere (as implied by subsequent provisions). Moreover, while Article 3 specifies whom the Law protects (natural and legal persons), it should also state who the originators of discrimination may be, namely public authorities, but also natural and legal persons.
16. Further, the areas of activity covered by the Law should also be specified. While certain Articles prohibit special types of discrimination, in particular areas (e.g. Articles 10 – 19), setting out the areas of activity in a separate provision would greatly enhance clarity of the Law. As already proposed in ODIHR’s 2010 Comments¹⁴, the Law should unequivocally prohibit discrimination in the following areas covered by

⁸ Following the entry into force of the Stabilisation and Association Agreement with the EU on 1 May 2010, Montenegro was officially granted candidate status for EU membership on 17 December 2010. Accession negotiations between the EU and Montenegro officially started on 29 June 2012.

⁹ See the 2012 EU Progress Report on Montenegro (p. 14), issued on 10 October 2012, which notes that the current Law on the Prohibition of Discrimination in Montenegro still needs to be brought in line with the EU *acquis*: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf

¹⁰ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

¹¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

¹² Concluding Document of the Vienna – the Third Follow-up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.7.

¹³ See ODIHR’s 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 28.

¹⁴ *Ibid.*, par 29.

the EU Equality Directives¹⁵: access to employment, self-employment/occupation, vocational training, employment conditions (including dismissals and pay), membership/involvement in workers' associations or professional bodies, social protection, including social security and healthcare, education, and access to and supply of goods and services available to the public, including housing. Other areas of applicability could be, following relevant case law of the European Court of Human Rights (hereinafter "ECtHR"), access to justice¹⁶, the personal sphere (private and family life, adoption, the home and marriage)¹⁷, and political participation.¹⁸

17. Under Article 4, persons reporting discrimination, giving deposition before a competent authority, or offering evidence in proceedings investigating discrimination are protected from adverse consequences. This provision reflects the principle of protection from victimization, found in both EU Equality Directives¹⁹, which grants general protection from adverse treatment or consequences following complaints or proceedings "aimed at enforcing compliance with the principle of equal treatment". When compared to this definition, as already stated in ODIHR's 2010 Comments²⁰, the application of Article 4 would appear to be unnecessarily narrow, as it only protects people from victimization in very specific circumstances, namely when they report discrimination, give depositions or offer evidence in proceedings. It is recommended to adopt a more general definition of victimization in Article 4, so that not only persons reporting or giving evidence to cases of discrimination are protected thereunder, but anybody or any group of persons that is treated or affected adversely by anti-discrimination complaints and proceedings.

2.2 Definitions of Discrimination under Article 2 of the Law

18. In the Law, Article 2 outlines the prohibition of any form of discrimination, on any ground. This same provision then defines key terms relating to discrimination, namely discrimination itself, direct and indirect discrimination, and incitement/instruction to discriminate.
19. As already stressed in ODIHR's 2010 Comments²¹, the definition of discrimination under Article 2 would benefit from certain amendments to ensure its compliance with international standards. Currently, this provision states that discrimination is "any unjustified, legal or actual, direct or indirect distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons". Article 2 par 2 then proceeds to specify that such distinction or treatment is not permissible if based on certain protected grounds, all of which are listed in the provision.

¹⁵ It should be noted that while the EU Racial Equality Directive covers all of the above, the EU Employment Equality Directive focuses only on the first five areas mentioned in this list.

¹⁶ See, e.g., the ECtHR judgment in the case of *Moldovan and Others v. Romania* (no. 2), application no. 37193/07, of 25 March 2010.

¹⁷ See ECtHR judgments in the following cases: *Mazurek v. France*, application no. 34406/97, of 1 February 2000, *Sommerfeld v. Germany* [GC], application no. 31876/96, of 8 July 2003, and *Rasmussen v. Denmark*, application no. 8777/79, of 28 November 1984.

¹⁸ This may include cases involving freedom of expression, freedom of assembly (e.g. *Bączkowski and Others v. Poland*, application no. 1543/06, of 3 May 2007) and association, and free elections.

¹⁹ Article 9 of the Racial Equality Directive and Article 11 of the Employment Equality Directive.

²⁰ See ODIHR's 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 30.

²¹ *Ibid.* pars 16-18.

20. This definition appears to be quite lengthy and complicated when compared to the definitions provided under international law. While Article 26 of the ICCPR does not contain a definition of discrimination, UN General Comment No. 18 on discrimination defines it as “any distinction, exclusion, restriction or preference” based on the list of protected grounds cited in Article 26, which has the purpose or effect of nullifying, or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.²² The ECtHR states, in its judgment of *Willis v. the United Kingdom*²³, that discrimination is “treating differently, without an objective and reasonable justification, persons in relevantly similar situations“. The EU Equality Directives refer to situations “where one person is treated less favourably than another is, has been or would be in a comparable situation”.²⁴
21. It would appear that Article 2 par 2 attempts to combine the definitions found in the ICCPR and in ECtHR case law, which results in a slightly convoluted and unclear definition (though certain unclear aspects may also be due to faulty translation). In particular, the list of different discriminatory actions (first distinction, unequal treatment, or failure to treat, then exclusion, restriction or preferential treatment) would appear to be unnecessarily long, and lacking in clarity. To simplify the definition of discrimination, and make it more understandable, it is thus recommended to more accurately reflect the international law definitions by stating that discrimination is any difference in treatment (including any distinction, exclusion, restriction or preference)²⁵, based on listed protected grounds, of persons in similar or comparable situations.
22. As for the protected grounds enumerated in Article 2 par 2, it is noted that the list is quite extensive, containing no less than 18 grounds. Grounds such as race, skin colour, social or ethnic origin, language, religion or belief, political and other opinion, gender, gender identity, sexual orientation, health condition, age and disability are largely in line with standard international practice. However, the meaning and added value of characteristics such as national affiliation, affiliation to the minority nation, or minority national community, as well as “membership in a group or assumed membership in a group, political party or other organization” remain doubtful. If “national affiliation” simply means having a certain nationality, then this should be specified in the text of Article 2 par 2.
23. While belonging to a minority nation or minority national community may be a relevant issue in Montenegro, it should be reconsidered whether discrimination based on this ground would not, in fact, be considered discrimination based on a person’s ethnic origin, race, or religion or belief. Finally, the fact of belonging to a group or organization would appear to be quite vague, as the Law does not specify which types of groups or organizations it refers to; should this be political groups, or other politically active groups, then this would appear to already be covered by the protected ground “political and other opinion”, expressed by joining the group, organization or

²² ICCPR General Comment No. 18 on non-discrimination, issued by the Office of the UN High Commissioner for Human Rights on 11 October 1989, par 7.

²³ ECtHR judgment in the case of *Willis v. United Kingdom*, application no. 36042/97, of 11 June 2002, par 48.

²⁴ Article 2 in both EU Equality Directives.

²⁵ See General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI) on National Legislation to Combat Racism and Racial Discrimination, of 13 December 2002, par 12 of the Explanatory Memorandum, which specifies that the term “differential treatment” should be interpreted widely.

- party. Should it be all types of groups, then this would arguably be a too broad level of protection. It is advised to consider removing this part of Article 2 par 2.
24. At the same time, as already noted in ODIHR's 2010 Comments²⁶, the reference to assumed membership in a group could refer to cases where a person is discriminated because he/she is mistakenly believed to have a certain protected characteristic, e.g. because he/she is believed to be of a certain ethnicity or religion, even though this is, in fact, not the case. Should this have been the intention when drafting the Law, it is recommended to clarify this point, by specifying that discrimination based on the listed real or presumed grounds is forbidden.
 25. Additionally, the issue of being discriminated due to a person's affiliation with a protected group (defined by a specific defining characteristic) is not specifically outlined in the Law, which, as stated above, only mentions affiliation in relation to nationality, or minority nations or communities. Affiliation with a protected identifiable group implies that a person is discriminated for associating with individuals with certain identifiable and defining characteristics, without having these characteristics him or herself; he/she is thus discriminated not for who or what he/she is, but for whom he/she associates with. As already recommended in ODIHR's 2010 Comments²⁷, it is advised to include references to this in Article 2 with respect to all protected grounds.
 26. Direct discrimination is defined in Article 2 par 3 as a situation where a person or group of persons, in the same or similar situation as another person or group of persons, is, was or may be brought into an unequal position by an act, action or failure to act. Article 2 par 3 includes a caveat specifying that discrimination shall not exist where the act, action or failure to act are objectively and reasonably justified by a legitimate purpose and "achievable with the means appropriate and necessary to use for achieving that purpose", and are acceptable and proportionate in relation to the purpose to be achieved.
 27. Generally, this definition reflects the standards set by the ECtHR in its case law (see par 20 *supra*), which also states that differences in treatment may not constitute discrimination in cases where such difference was objectively and reasonably justifiable. At the same time, it is noted that the EU Equality Directives, while not containing such a caveat in their definition of direct discrimination, do permit an exception to both direct and indirect discrimination in cases where, by nature of particular occupational activities, or due to the context in which they are carried out, a genuine occupational requirement justifies a difference in treatment, provided that the objective is legitimate, and the requirement proportionate.²⁸ This is partially reflected in Article 16 par 3 of the Law (discrimination in the field of labour), which speaks of the personal characteristic of a person representing a "real and decisive condition" for doing a certain work. At the same time, this wording does not appear to completely reflect the wording used in the EU Equality Directives.
 28. While the definition of direct discrimination under Article 2 par 3 is compliant with ECHR standards, it may well be considered worthwhile to revise it to reflect EU legislation, given Montenegro's status as an accession State, by outlining that direct discrimination is prohibited in all cases except in cases involving a genuine

²⁶ See ODIHR's 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 25.

²⁷ *Ibid.*, par 26.

²⁸ Article 4 in both EU Equality Directives.

occupational requirement.²⁹ The wording of Article 16 par 3 should be adapted accordingly. On the other hand, the definition of indirect discrimination, found in Article 2 par 4 of the Law, rightly indicates that a difference in treatment may be objectively and reasonably justified by a legitimate purpose, provided the appropriate and necessary means are used to obtain this purpose in a proportionate manner.

29. Finally, Article 2 par 5 states that incitement or instruction to discriminate shall be deemed to be discrimination. The inclusion of the latter term reflects a recommendation from ODIHR's 2010 Comments³⁰, stating that the EU Equality Directives prohibit the instruction to discriminate. At the same time, it is reiterated that the prohibition of incitement to discriminate may potentially affect every person's right to freedom of expression, including the freedom of the media. While this right may be limited if this is necessary in a democratic society for the protection of, e.g. national security, territorial integrity, disorder and crime, or the rights and freedoms of others, such restrictions need to be proportionate to the harm being addressed; it is not clear whether a blanket ban on incitement would fulfill these criteria.³¹ It is thus recommended to consider excluding the term "incitement to discriminate" from the wording of Article 2 par 5.

3. Special Forms of Discrimination

30. Chapter II of the Law focuses on special forms of discrimination, including harassment, mobbing, and segregation (Articles 7-9). Harassment is mentioned specifically in the EU Directives, which specify that in certain circumstances, it shall be considered as a form of discrimination.³² As already stated in ODIHR's 2010 Comments, including "inconvenience" as a result of harassment (the other results mentioned are intimidation, hostility, humiliation or offensiveness), would appear to set the threshold for harassment quite low, as numerous less serious adverse effects could fall under this term. The EU Directives speak of the creation of an "intimidating, hostile, degrading, humiliating or offensive environment", and, unless this issue is merely a result of faulty translation, it would be advisable to adapt the terminology of Article 7 accordingly.
31. Segregation is regulated in Article 9, and involves any separation of persons, or group of persons, based on protected grounds, except in cases where such separation is objective and justified, and the way to achieve this goal is necessary and proportionate. In this context, it is reiterated that, as already mentioned in ODIHR's 2010 Comments, Article 3 of the CERD specifically condemns racial segregation, and obliges States to prevent, prohibit and eradicate all forms of racial segregation³³. This means that racial segregation may never, under no conditions be justified.
32. On the other hand, separations of persons due to their age or gender may at times be desirable by the persons affected; the added value of generally prohibiting all types of segregation is thus not apparent. It would thus be preferable if the Law included a clear prohibition of all forms of racial segregation regardless of the circumstances,

²⁹ The 2012 EU Progress Report on Montenegro also specified that in relation to definitions, legislation on discrimination is not in line with the EU *acquis* (p. 41).

³⁰ See ODIHR's 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 27.

³¹ See ODIHR's 2009 Comments on the draft Anti-Discrimination Law in Montenegro, par 24.

³² Article 2 par 3 in both EU Equality Directives.

³³ Based on the definition of racial discrimination in Article 1 par 1 of CERD, the term "racial" refers not only to race, but also to a person's colour, descent, or national or ethnic origin.

without specifically going into other types of segregation, which, if causing disadvantages to segregated persons, would in any case be covered by the general definition of discrimination, as being a difference in treatment based on a protected ground.

33. In addition to this overlap with the general prohibition of discrimination, it is questionable whether certain special forms of discrimination mentioned in Articles 12 (discrimination based on health conditions), Article 13 (discrimination based on age), Article 14 (political discrimination), Article 17 (discrimination based on religion or belief), Article 18 (discrimination of persons with disability), and Article 19 (discrimination based on gender identity and sexual orientation) really need to be reiterated specifically in Chapter II of the Law, given that the protected grounds of health, age, political opinion, religion or belief, disability, or gender identity/sexual orientation are already explicitly mentioned in Article 2 par 2 on the prohibition of discrimination. This could create the impression that these types of discrimination are more important than others which are not specifically mentioned, for example discrimination based on racial or ethnic grounds³⁴, or on language. This structure of the Law should be rethought, as should the fact that under Chapter II, discrimination in certain areas (use of public buildings and facilities (Article 10), public services (Article 11), and labour (Article 16) is mixed with the specific types of discrimination mentioned above. As stated in par 16 *supra*, it would be preferable to specifically set out the areas of application of the Law in a separate provision, instead of reiterating discrimination principles in several different provisions.
34. Article 18 of the Law outlines in detail discrimination based on a person's disability. It is noted that in 2011, a Law on the Prohibition of Discrimination against Persons with Disabilities³⁵ was passed. While enhanced protection of this vulnerable group is in principle welcomed, care should be taken to ensure that both laws do not contradict one another, and that having a general anti-discrimination law, and a more specific law against the discrimination of disabled persons does not reduce the effectiveness of both pieces of legislation (especially as, according to Article 1 of the latter law, the Law on the Prohibition of Discrimination against Persons with Disabilities takes precedence over the more general Law on the Prohibition of Discrimination).
35. Article 5 of the CRPD states that States shall take all necessary steps to ensure that "reasonable accommodation" is provided. Under Article 2 of the same Convention, this is defined as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. Article 5 of the EU Employment Equality Directive reiterates this for the area of employment, and specifies that measures should be taken to ensure access to, participation in, or advancement in employment, or training activities for disabled persons, unless such measures would impose a disproportionate burden on the employer.
36. While Article 18 par 2 appears to reflect the above principle, it only does so in relation to "entrance to facilities/buildings and areas in public use" which are inaccessible to

³⁴ The absence of this type of discrimination in the Chapter II was also noted in the last country report on Montenegro issued by the European Commission against Racism and Intolerance (ECRI), CRI(2012)5, 4th monitoring cycle, issued on 21 February 2012, par 22.

³⁵ Law on the Prohibition of Discrimination against Disabled Persons, No. 01-949/2, adopted on 22 July 2011 and promulgated on 27 July 2011.

persons with reduced mobility, and persons with disabilities. This requirement seems to meet the obligation to enhance accessibility for disabled persons laid out in Article 9 of the CRPD, but should, in line with this provision, be expanded to include access to the general physical environment, transportation, information and communications.

37. Moreover, to further enhance protection for disabled persons, it is recommended to extend Article 18 to also include other aspects of reasonable accommodation, including access to, participation in, or advancement in employment, or training activities, but also other areas of relevance to disabled persons. At the same time, it is noted that this principles does not apply where such measures impose a disproportionate burden on the employer, or other stakeholders. This exception, recognized in the above international instruments, is not included in the Law on the Prohibition of Discrimination against Persons with Disabilities. This should be borne in mind when reviewing potential discrepancies between both pieces of legislation.
38. Furthermore, it is noted that Article 18 par 3 states that the failure to take special measures to remedy limitations or the unequal position of disabled individuals shall also constitute discrimination. The meaning and extent of this provision should be clarified.³⁶
39. Finally, Article 20 of the Law speaks of grave forms of discrimination, which include discrimination on multiple grounds, committed several times, during a long period of time, disseminated through public media (as well as displaying materials and symbols of discriminatory content in public places), and such discrimination which has particularly grave consequences for a person, group of persons, or their property.
40. As already noted in ODIHR's 2010 Comments³⁷, the objective and purpose of Article 20 is unclear. No enhanced sanctions are foreseen for grave forms of discrimination. Furthermore, it is unclear what constitutes "particularly grave consequences" for person, a group or their property. Therefore, it is recommended to enhance this provision by attaching special consequences or sanctions to such cases where discrimination is considered particularly grave. At the same time, sanctioning discrimination achieved through disseminating, in public media, or by writing and displaying materials and symbols of discriminatory content in public places (Article 20 par 4) should be approached with caution, given that this could potentially raise some concerns with regard to the freedom of expression, and freedom of the media. In line with the recommendations made in par 29 *supra*, it is recommended that such language is removed.

4. Remedies and Sanctions

41. According to the EU Equality Directives, judicial and/or administrative procedures should be available to all persons considering themselves wronged by discriminatory action, as well as, where appropriate, conciliation procedures. For cases involving complaints of racial discrimination, Article 6 of the CERD also requires effective protection and remedies, through tribunals or other state institutions.
42. The Law foresees essentially two types of remedial procedures, namely complaints to the Protector of Human Rights and Freedoms (hereinafter "the Human Rights

³⁶ The same principle exists in Article 8 of the Law on the Prohibition against Disabled Persons, which states that the inaccessibility of structures and areas in public use constitutes discrimination.

³⁷ See ODIHR's 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 39.

Protector”), and court proceedings. It does not contain administrative procedures. Generally, it is assumed that administrative complaints procedures for discriminatory behaviour of public authorities, leading to administrative sanctions, could have the additional advantage of reducing the burden placed on courts. Moreover, such proceedings would also help advance awareness within public administration of the principle of equal treatment, and would permit public administrative offices to remedy discriminatory behaviour or policies in the public sector themselves. If administrative procedures are not successful, complainants could then still take their matter to courts; procedures before the Human Rights Protector could be initiated at the same time as administrative procedures, as an alternative remedy. Introducing this additional anti-discrimination mechanism should be considered.

4.1 The Human Rights Protector

43. Under Article 27 of the Law on the Protector of Human Rights and Freedoms (hereinafter “the Law on the Human Rights Protector”), the Human Rights Protector shall be the national mechanism for protection from discrimination. The establishment of a special body dealing with discrimination (specifically racial and ethnic discrimination) is mentioned in Article 13 of the EU Racial Equality Directive, which states that such bodies shall provide independent assistance to victims of discrimination in pursuing their complaints, conduct independent surveys concerning discrimination, and publish independent reports. The necessity for the independence of such body is also set out in General Policy Recommendation No. 7 of the Council of Europe’s European Commission against Racism and Intolerance (hereinafter “ECRI”), as are some of its tasks, which should include the right to initiate and participate in court proceedings, and monitoring legislation.³⁸
44. The OSCE/ODIHR and the Venice Commission have already raised some concerns with regard to the independence of the Human Rights Protector in their review of the 2011 Law on the Human Rights Protector.³⁹ Moreover, ODIHR’s 2010 Comments⁴⁰, and the Venice Commission’s 2009 Opinion⁴¹ specified that as an equality body, the Human Rights Protector should have full powers for the implementation of the Law, and that his/her office should receive sufficient human and financial resources to fulfil its new tasks, and additional training for its staff.⁴²
45. The Law, in its Articles 21-23, does set out special competences for the Human Rights Protector as an anti-discrimination mechanism, in addition to this institution’s usual competences under the Law on the Human Rights Protector. However, in the area of complaints, inconsistencies between the two laws remain: while Article 22 of the Law

³⁸ ECRI General Policy Recommendation No. 7, Recommendation 24, as well as pars 51 and 52 of the Explanatory Memorandum.

³⁹ See the OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, of 19 October 2011, adopted by the Venice Commission at its 88th Plenary Session (14-15 October 2011), pars 17-18. The matter of the Human Rights Protector’s independence was also raised in the 2012 EU Progress Report on Montenegro, p. 9: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf

⁴⁰ See ODIHR’s 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, pars 13 and 40.

⁴¹ See the Venice Commission’s 2009 Opinion on the draft Law on Prohibition of Discrimination of Montenegro, par 126.

⁴² The 2012 EU Progress Report on Montenegro also noted that the financial and human resources of the Ombudsman have been strengthened, but still need to be increased (pages 9 and 12).

states that anybody who considers him/herself discriminated by an authority, a legal, or a natural person may complain to the Human Rights Protector, this extended field of competences is not reflected in the Law on the Human Rights Protector. Instead, Article 2 of the Law on the Human Rights Protector states that this body shall only deal with complaints against state bodies, and other holders of state power. It is urgently recommended to address this discrepancy, to ensure that, in line with Article 22 of the Law, individuals and staff of the Human Rights Protector will know for certain that everyone may address the Human Rights Protector also in these cases.

4.2 Court Protection

46. Under Article 24 of the Law, anybody who considers him/herself to be damaged by discriminatory treatment of an authority, or other legal or natural person is entitled to seek court protection by initiating a lawsuit; such proceedings are considered to be urgent. Article 26 is more specific as to the types of lawsuits that may be filed, namely such concerning the establishment of the fact of discrimination, prohibition of exercising discriminatory activities, compensation of damages, and publication in the media of a judgment establishing discrimination.
47. As stated in ODIHR's 2010 Comments⁴³, this provision does not include other types of court orders to correct discriminatory behaviour. It also fails to include court orders sanctioning the failure to comply with previous orders (although this may be foreseen in relevant civil procedure legislation). The powers of the courts under Article 26 should be extended.
48. Article 29 outlines the shift of the burden of proof which habitually takes place in proceedings involving claims of discrimination. According to the EU Equality Directives, individuals alleging discrimination need only establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It shall then be for the respondent to prove that such discrimination has not taken place.
49. Under Article 29, plaintiffs shall "prove the likelihood" of the respondent committing an act of discrimination; this wording may well go beyond what is required when shifting of the burden of proof, which merely requires the "establishment of facts". Unless this lack of clarity stems from faulty translation, it is recommended to amend Article 29 so that it fully reflects the intentions behind the principle of shifting the burden of proof under the EU Equality Directives⁴⁴, namely to release complainants from the burden of actually needing to prove discrimination.
50. Also under the EU Equality Directives⁴⁵, third parties, more specifically associations, organisations, or other legal entities with a legitimate interest in ensuring that the Directives are complied with, may engage, either on behalf or in support of a complainant, with his/her approval, in judicial or administrative procedures provided to enforce the obligations under the Directives.⁴⁶ This is partially reflected in Article 30 of the Law, according to which lawsuits for establishing discriminatory behaviour, prohibition of exercising a discriminatory activity, and requiring the media to publish

⁴³ See ODIHR's 2010 Comments on the draft Law on Prohibition of Discrimination of Montenegro, par 38.

⁴⁴ Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive.

⁴⁵ Article 7 par 2 of the Racial Equality Directive and Article 9 par 2 of the Employment Equality Directive.

⁴⁶ A similar principle is outlined in ECRI General Policy Recommendation No. 7, Recommendation 25.

judgments establishing discrimination, may also be filed on behalf of discriminated persons by organizations or individuals dealing with the protection of human rights.

51. While reference to organizations/individuals dealing with the protection of human rights appears unproblematic, as human rights protection would generally also include protection from discrimination, the principle of third-party intervention should be applicable not only on behalf of a complainant, but also, with his/her approval, in support of him/her. Further, it is noted that under Article 30, a compensation lawsuit may currently not be filed on behalf of another person; this would appear to be an unnecessarily restrictive application of the principle of third-party intervention. It is recommended to amend Article 30 accordingly, to ensure full compliance with EU legislation.
52. Article 34 outlines fines amounting to 200-300 times the minimum wage in Montenegro for cases where the provision of public services is refused, or otherwise delayed or conditional, the access to buildings or facilities is prevented or restricted, lawsuits are filed without the written consent of a person, records of discrimination cases or lawsuits are not kept separately, or data from such records is not delivered in a timely manner.
53. Under the EU Equality Directives⁴⁷, sanctions for infringements of provisions adopted pursuant to the Directives shall be effective, proportionate and dissuasive. While the fines mentioned in Article 34 would most probably fulfil this requirement, it is noted that they only apply in very specific cases, and do not extend to general cases of discrimination raised before courts under Article 26. In addition to compensation for damages, which may be requested under Article 26 par 3, and to the other court orders mentioned under this provision, the dissuasiveness of sanctions could perhaps be enhanced if courts were permitted to additionally impose fines for discriminatory behaviour as such, for the failure to implement a court decision under Article 26 (see par 47 *supra*), or for other discrimination-related cases. This would become particularly relevant if enhanced fines were imposed for grave cases of discrimination, as suggested above under par 40 *supra*.

[END OF TEXT]

⁴⁷ Article 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive.

THE LAW ON PROHIBITION OF DISCRIMINATION

I. GENERAL PROVISIONS

Subject of the Law

Article 1

Prohibition and protection from discrimination shall be exercised pursuant this Law.

The prohibition of and protection from discrimination shall be, also, exercised pursuant provisions of other laws regulating prohibition of and protection from discrimination on particular grounds or related to exercise of particular rights, if they are not contrary to this law.

Prohibition of Discrimination

Article 2

Any form of discrimination, on any ground, shall be prohibited.

Discrimination is any unjustified, legal or actual, direct or indirect distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender identity, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation as well as other personal characteristics.

Direct discrimination exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or were brought, or may be brought in an unequal position by an act, action or failure to act, on any ground referred to in paragraph 2 of this Article, unless the act, action or failure to act are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

Indirect discrimination exists if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into unequal position in respect to other person or group of persons, on any ground referred to in paragraph 2 of this Article, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

The incitement or giving instruction to discriminate against certain person or a group of persons on any ground referred to in paragraph 1 of this Article shall be deemed to be discrimination.

Protection from discrimination

Article 3

The right on protection from discrimination belongs to all natural and legal persons to which the Montenegrin legislation is applicable, if they are discriminated against on any ground referred to in Article 2, paragraph 2 of this Law.

Persons reporting discrimination

Article 4

No one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination.

Special measures

Article 5

Special measures aimed at creating conditions for the realisation of national, gender and overall equality and protection of persons being in unequal position on any ground, may be imposed by state authorities, authorities of the state administration, authorities of the units of local self-government, public enterprises and other legal persons performing public powers (hereinafter referred to as: authority), as well as other legal and natural persons.

The measures referred to in this Article shall be applied in proportion to the needs and possibilities and shall last until the goals established by those measures are achieved.

Consent

Article 6

Consent of a person to be discriminated against shall not relieve from responsibility the person exercising discrimination, giving instruction to discriminate or inciting discrimination.

II. SPECIAL FORMS OF DISCRIMINATION

Harassment

Article 7

Harassment, on any ground referred to in Article 2, paragraph 2 of this Law, represents certain behaviour toward or treatment of a person who such behaviour or treatment does not want, and which has the purpose or represents violation of the personal dignity, and causes state of intimidation, inconvenience, hostility, humiliation or offensiveness.

Mobbing

Article 8

Mobbing is a behaviour in the workplace when one or more persons systematically, over a longer period of time, mentally abuse or humiliate another person by the way of insulations, depreciation, harassment and other activities, bringing that person in an unequal position on any ground referred to in Article 2, paragraph 2 of this

Law, which is aimed to harm his/her personal reputation, honour, human dignity and integrity and can cause adverse effects of mental, psychosomatic and social nature or compromise the professional future of the person who is a victim of mobbing.

**Segregation
Article 9**

Segregation is any separation of persons or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law, except in cases when the separation is objective and justified, and the way to achieve this goal is necessary and proportionate.

**Discrimination in use of facilities/buildings
and areas in public use
Article 10**

Restricting or disabling the use of facilities/buildings and areas in public use to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law, shall be deemed to be discrimination.

The right to use the facilities/buildings and areas in public use may be restricted only in accordance with the law.

**Discrimination in public service delivery
Article 11**

Discrimination in the area of public service delivery, on any ground referred to in Article 2, paragraph 2 of this Law, shall be deemed to be:

- 1) Making public service delivery difficult or impossible,
- 2) Refusing public service delivery,
- 3) Conditioning of public service delivery with the conditions that are not required from other persons or group of persons,
- 4) Intentional delay or postponement of service delivery, even though the person or group of persons requested and met the requirements for timely service delivery before the other persons.

**Discrimination based on health conditions
Article 12**

Disabling, restricting or making difficult for a person or a group of persons to get employment, to work, to get education or any other unjustified differentiation or unequal treatment based on health conditions, shall be deemed to be discrimination.

**Discrimination based on age
Article 13**

Disabling or restricting the exercise of the rights or any other unjustified differentiation or unequal treatment of a person or a group of persons on the bases of age, shall be deemed to be discrimination.

**Political discrimination
Article 14**

The discrimination of individuals or groups of persons because of political belief, because of belonging or not belonging to a political party or other organization is prohibited.

**Discrimination in the field
of education and vocational training
Article 15**

Discrimination in the field of education and vocational training is considered to be making difficult or denying the enrolment into educational institution and institution of high education and the choice of educational programme at all levels of education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other educational activities, classification of children, pupils, participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law.

**Discrimination in field of labour
Article 16**

In addition to the cases of discrimination prescribed by the law regulating the field of labour and employment, discrimination in work shall also refer to the payment of unequal salary or remuneration for work of equal value to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law.

Persons performing temporary or seasonal work or working under special agreement, students and pupils on practice, as well as other persons participating on any ground in the work for an employer, shall also have the right on the protection from discrimination referred to in paragraph 1 of this Article.

Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 2 of this Article.

**Discrimination based on religion and belief
Article 17**

Discrimination shall be deemed to be any differentiation, unequal treatment or bringing in an unequal position of a person or a group of persons on the basis of religion or belief, affiliation or non-affiliation to certain religious community.

**Discrimination of persons with disability
Article 18**

Under discrimination against a person with disability shall be considered particularly: preventing or making difficult the access to health care, i.e. denial of the right to health care, regular medical treatment and medicines, rehabilitation means and measures, denial of the rights on schooling or education, denial of the right to work and the rights related to employment relations in accordance with the needs of such person,

denial of the right to marry, form a family and other rights from the field of marriage and family relations.

Entrance in facilities/buildings and areas in public use which are inaccessible to the persons with reduced mobility and persons with disability, i.e. making impossible, restricting or making difficult the use of mentioned facilities, in a way which is not disproportionate burden for a legal or natural person who is obliged to provide for that, shall be deemed to be discrimination within the meaning of paragraph 1 of this Article.

Discrimination against person with disability exists also in the case when special measures to remedy limitations or unequal position this person is facing are not taken.

**Discrimination on the basis
of gender identity and sexual orientation
Article 19**

Any differentiation, unequal treatment or bringing a person in an unequal position based on gender identity or sexual orientation, shall be deemed to be discrimination.

Everyone has the right to express their gender identity and sexual orientation.

Gender identity and sexual orientation are personal matters of every person and no one can be invited to publicly declare its gender identity and sexual orientation.

**Grave form of discrimination
Article 20**

Grave form of discrimination, on any ground referred to in Article 2, paragraph 2 of this Law shall be deemed to be discrimination:

- 1) committed against the same person or the group of persons on multiple grounds referred to in the Article 2, paragraph 2 of this Law (multiple discrimination);
- 2) committed several times against the same person or the group of persons (repeated discrimination);
- 3) committed during a long period of time against the same person or the group of persons (extended discrimination);
- 4) disseminated through public media, as well as by writing and displaying the materials and symbols of discriminatory content in public places;
- 5) which has particularly grave consequences for discriminated person, group of persons or their property.

III. PROTECTOR OF HUMAN RIGHTS AND FREEDOMS

**Competency of the Protector
Article 21**

In addition to the competencies and authorisations prescribed by the separate law, the Protector of Human Rights and Freedoms (hereinafter referred to as the Protector) shall be also competent to:

- 1) provide required information to the complainant who considers to be discriminated by the natural or legal person, about his/her rights and duties, as well as about possibilities of court protection;

- 2) conduct the conciliation proceeding, with the consent of the person allegedly discriminated against, between that person and authority or other legal and natural person he/she considers to have performed discrimination, with the possibility of concluding a settlement out of trial, in accordance with the law regulating the mediation proceeding;
- 3) inform the public about the important issues of discrimination;
- 4) if necessary, carry out the researches in the field of discrimination;
- 5) keep separate records of submitted complaints with regard to discrimination;
- 6) collect and analyse statistical data on cases of discrimination;
- 7) undertake actions to raise awareness on issues related to discrimination.

Submitting complaint Article 22

Anyone who considers to be discriminated against by an act, action or failure to act made by an authority and other legal and natural persons, may address the Protector with a complaint.

The complaint referred to in paragraph 1 of this Article can be submitted to the Protector also by organisations or individuals dealing with the protection of human rights, with the consent of the person or the group of persons discriminated against.

Acting upon the complaints referred to in paragraphs 1 and 2 of this Article, shall be conducted in compliance with regulations setting up the manner of operation of the Protector, unless this law provides otherwise.

Reports of the Protector Article 23

The Protector, in a separate part of the annual report, shall inform the Parliament of Montenegro on observed cases of discrimination and action undertaken and shall give recommendations and propose measures for elimination of discrimination.

The Protector may submit a separate report about observed cases of discrimination to the Parliament of Montenegro, if that is required by the competent working body of the Parliament of Montenegro or the Protector evaluates that that is required by exceptionally important reasons.

IV. COURT PROTECTION

Proceeding before the court Article 24

Anyone who considers to be damaged by discriminatory treatment of an authority and other legal and natural person shall be entitled to the court protection, in accordance with the law.

The proceeding shall be initiated by filing a lawsuit.

The provisions of the law regulating civil proceeding shall be accordingly applied on the proceeding referred to in paragraph 2 of this Article, unless this law provides otherwise.

The proceeding referred to in the paragraph 2 of this Article is urgent.

In the dispute for protection from discrimination the revision shall be always allowed.

Territorial jurisdiction

Article 25

In the proceeding for protection from discrimination, beside the court of general territorial jurisdiction, the court on whose territory is the residence or office of the plaintiff shall also have the territorial jurisdiction.

Lawsuit

Article 26

By lawsuit referred to in Article 24, paragraph 2 of this Law can be claimed also:

- 1) establishment of the fact that the respondent has acted discriminatory against the plaintiff;
- 2) prohibition of exercising the activity that bears potential treat of discrimination, i.e. prohibition of repetition of discrimination activity;
- 3) compensation of damage, in accordance with the law;
- 4) in case discrimination is performed through the media, publication in the media, on the expenses of respondent, of the judgement establishing discrimination.

In the cases referred to in paragraph 1, items 1 and 2 of this Article, the lawsuit shall be exert together with the claim for protection of the right of which is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.

Lawsuit referred to in paragraph 1, items 1 and 2 of this Article, can be filed individually only if an act or action of discrimination had not resulted in loss or violation of a right.

Deadline for filing the lawsuit

Article 27

The lawsuit referred to in Article 24, paragraph 2 of this Law may be filed within 90 days from the day of cognition for the committed discrimination.

Temporary measures

Article 28

Prior to initiation or during the lawsuit proceeding referred to in Article 24 of this Law, upon the proposal of the party, the court may pass temporary measures.

The proposal for passing a temporary measure must prove the likelihood of the necessity of such measure in order to prevent the danger of irreparable damage, particularly serious violation of the right to equal treatment or prevent violence.

On a proposal for passing a temporary measure the court is obliged to deliver a decision without delay.

On the proceeding referred to in paragraph 1 of this Article shall be accordingly applied the provisions of the Law on Executive Procedure.

Burden of proof

Article 29

If the plaintiff proved the likelihood of respondent committing an act of discrimination, the burden of proving that due to that act the violation of equality in rights and equality before the law did not occurred, passes on the respondent.

The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.

Other persons who may file a lawsuit

Article 30

The lawsuit referred to in Article 26, paragraph 1 items 1, 2 and 4 of this Law may be filed, on behalf of discriminated persons, also by organizations or individuals who are dealing with the protection of human rights.

The lawsuit referred to in paragraph 1 of this Article may be filed only with the written consent of a discriminated person or a group of persons.

Informing the Protector

Article 31

Plaintiff referred to in Articles 24 and 30 of this Law, who filed the complaint with the Protector, shall notify the Protector in writing about initiation of the court proceeding.

V. INSPECTION CONTROL

The role of inspection

Article 32

Inspection control over the implementation of this Law with respect to discrimination in the field of labour and employment, occupational safety, health care, education, building and construction, traffic, tourism and other fields, shall be performed by inspections competent for those fields, in accordance with the law.

VI. RECORDS

Keeping the records

Article 33

Authorities, other legal and natural persons shall be obliged to keep separate records on all reported cases of discrimination and to timely deliver the data from the records to the Protector.

The courts, the inspection authorities and misdemeanour authorities are obliged to keep separate records about filed lawsuits in connection with discrimination and timely deliver the data from the records to the Protector.

Detailed content and manner of keeping the records referred to in paragraph 2 of this Article shall be prescribe by the authority of state administration in charge of human and minority rights.

VII. PENAL PROVISIONS

Offences Article 34

A fine amounting from two hundred to three hundred times the minimum wage in Montenegro shall be imposed on a legal person or entrepreneur, if:

- 1) refuses the provision of public services, conditions the service delivery with the conditions that are not required from other persons or groups of persons or intentionally delays or postpones the delivery of services, even though the person or group of persons requested and met the requirements for the timely provision of services before the other persons did (Article 11, paragraph 1, items 2, 3 and 4);
- 2) prevents, restricts or makes difficult the use of entrances to facilities/buildings and areas in public use to the persons with reduced mobility or persons with disability (Article 18, paragraph 2);
- 3) files the lawsuit without the written consent of a discriminated person or a group of persons (Article 30, paragraph 2);
- 4) does not keep separate records on all reported cases of discrimination or does not timely deliver the data from the records to the Protector (Article 33, paragraph 1);
- 5) does not keep separate records on filed lawsuits in connection with discrimination or does not timely deliver the data from the records to the Protector (Article 33, paragraph 2);

For the offense referred to in paragraph 1 of this Article shall be also fined the responsible person in authority or legal person and natural person in the amount of twenty times the minimum wage in Montenegro.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Proceedings on complaints Article 35

Proceedings on complaints related to discrimination submitted prior to the entry into force of this Law shall be completed in accordance with the regulations that were applied until the entry into force of this Law.

Secondary legislation Article 36

Secondary legislation referred to in Article 33, paragraph 3 of this Law shall be delivered within six months from the day of entry into force of this Law.

Entering into force Article 37

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