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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW

**ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS
OF MONTENEGRO**

LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS***Podgorica, July 2003*****LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS****I BASIC PROVISIONS****Article 1**

Establishing the Protector of Human Rights and Freedoms

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

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

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

Article 2**Autonomy and Independence**

The Protector is autonomous and independent in the exercise of his or her duties.

Article 3

Constitutionality and Legality

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

Article 4

Accessibility

Any person who believes that his or 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 in the present 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 organise Protector Day 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 DISMISSAL

Article 8

Election

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

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

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 the Deputy).

The Assembly 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 vote of all members of the Assembly.

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 accorded to the representatives.

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

Article 15**Confidentiality**

The Protector and the Deputy must 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 shall remain in force after the expiration of the terms of office, or dismissal.

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 the copyright.

Article 17**Oath**

Before taking office, the Protector and the Deputy shall swear as follows:

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

The Protector shall swear before the Assembly, while the Deputy shall swear before the President of the Assembly.

Article 18

Replacement of the Protector

In the case of absence, the Protector shall be replaced by his or 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) age retirement conditions have been met
- 5) permanent loss of the ability to hold his or her office,
- 6) membership or partnership in bodies of political parties,
- 7) loss of citizenship, and
- 8) holding a representative and any other public office, or exercise of any professional activity incompatible with the office.

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

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

Article 20

Dismissal of the Protector

The Protector shall be dismissed from office if he or she:

- 1) has been convicted of a criminal offence, which makes him or her unsuitable for holding the office,
- 2) exercises his or 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 Assembly, whereas the decision for dismissal shall be passed by a majority vote of all members of the Assembly.

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

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

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

Article 21

Dismissal of the Deputy

The Deputy shall be dismissed from office for the same reasons prescribed for the dismissal of the Protector.

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

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 or her dismissal.

Article 22

The decision on dismissal

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

III JURISDICTION AND POWERS

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 present 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 organisations and institutions dealing with human rights and freedoms.

Article 24

Special powers in judicial proceedings

The Protector shall act upon complaints referring to the on going 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 harmonisation with internationally recognised 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 finds it necessary for the purpose of protecting and promoting human rights and freedoms.

Article 26

Initiating the Constitutional Court proceedings

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 or 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 on going before these authorities.

Article 28

Powers for the protection of individuals deprived of their liberty

The Protector may, without prior notification, undertake a checkout of all spaces 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 being monitored by officials.

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

Correspondence addressed from places where persons deprived of their liberty are held shall be forwarded immediately to the Protector, unopened and unread, whereas any response of the Protector shall follow the same procedure.

Article 29

Duty to Meet the Protector

The President of the Republic of Montenegro, the President of the Assembly, the Prime Minister and other members of the Government of the Republic of Montenegro (hereinafter the Government), Municipal Mayors, Capital City Mayor, Old Historical Capital Mayor shall be in obligation to meet the Protector without any delay upon his or 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 organisations 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

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 or 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 or her consideration of the complaint, other legal actions be exhausted in order to remedy the violation which the complainant refers to, if he or she finds such procedure more efficient.

Article 36

Deadline for filing the 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 or she assesses that the case is important.

Article 37

Decision not to act upon the 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 the present 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 or her on how to secure the protection of his or her rights with other institutions.

Article 39

Delivery of the complaint

When the Protector assesses that the complaint is in accordance with the required conditions, he or she shall notify the complainant and the head of the authority which 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 determines.

Article 40

Duties of the Authorities

The authorities are obliged to provide the Protector, upon his or 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 or her request, with direct insight into the official files, documents, information, as well as to deliver him or 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 or her work, of which the Protector may inform the immediate superior of the authorities, the Assembly or the public.

Article 41

Mandatory co-operation

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

Article 42

Suspension of the consideration of a complaint

The Protector shall not continue with the consideration of a complaint if he or 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 a request from the Protector.

Article 44

Final Opinion

After the completion of his or her consideration of a complaint, the Protector shall give the final opinion.

The final opinion shall contain the judgement 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 or she determines, a report stating the action 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 dismissal procedures against persons whose action provoked the violation of human rights and freedoms.

Article 46

Annual report

The Protector shall submit an annual report to the Assembly.

Upon request of the Assembly, the Government of the Republic of Montenegro (hereinafter: 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 or 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

Remuneration

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 labour 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 budget proposal and submit it to the Government.

VII TECHNICAL SERVICE

Article 51

Setting up a Technical Service

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

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

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

Following the preliminary opinion of the competent working body of the Assembly, the Protector shall adopt the enactment on internal organisation and systematisation of posts in the Technical Service.

Article 52

Employees in the Technical Service

Legislation on Civil Service 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 or her methods of work and procedure.

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

IX PENAL PROVISIONS

Article 54

Procedural contravention

A fine amounting from ten and up to twenty times of the minimum monthly wage in the Republic shall be imposed on persons who contravened 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 TRANSITORY AND FINAL PROVISIONS

Article 55

The procedure for the election of the Protector shall be conducted within three months of the date the present law enters into force.

Article 56

The Protector shall act in cases of violation of human rights and freedoms that occur after this law enters into force.

Article 57

The Protector shall adopt the by-laws pursuant to the present law within three months of the date he or she took office.

Article 58

The present law shall enter into force eight days from the date of its publication in the "Official Gazette of the Republic of Montenegro".