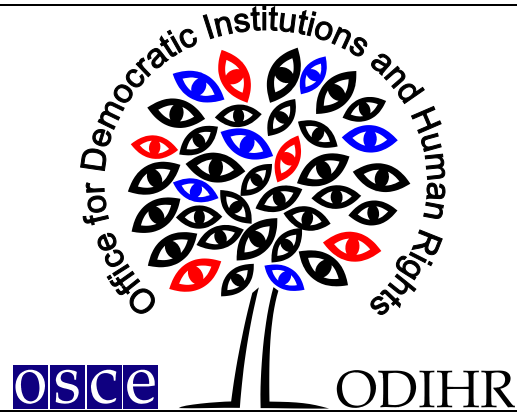


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**OPINION  
ON THE DRAFT LAW ON AMENDMENTS TO THE  
LAW ON THE PROTECTOR OF  
HUMAN RIGHTS AND FREEDOMS  
OF MONTENEGRO**

**based on an English translation of the draft law**

**provided by the Ministry for Human and Minority Rights of Montenegro**

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**Annex 1: Draft Law on Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro**

## **I. INTRODUCTION**

1. *On 9 July 2013, the Minister for Human and Minority Rights of Montenegro sent an official letter to the OSCE Mission to Montenegro requesting the legal review of the draft Law on Amendments to the Law on the Protector of Human Rights and Freedoms.*
2. *On 23 July 2013, the OSCE Mission to Montenegro forwarded the letter to OSCE/ODIHR, along with the English translation of the draft Amendments provided by the Ministry for Human and Minority Rights of Montenegro. On this occasion, the OSCE Mission to Montenegro asked OSCE/ODIHR to prepare a legal review of the compliance of the draft Amendments with international human rights standards and OSCE commitments.*
3. *Previously, OSCE/ODIHR, together with the European Commission for Democracy through Law (hereinafter “Venice Commission”) had already reviewed and issued a joint opinion on the Law on the Protector of Human Rights and Freedoms<sup>1</sup> (hereinafter “the Human Rights Protector Law”, or “the Law”) in October 2011<sup>2</sup> (hereinafter “the 2011 Joint Opinion”). In 2009 and 2010, both the OSCE/ODIHR,<sup>3</sup> and the Venice Commission,<sup>4</sup> had also reviewed draft versions of the Human Rights Protector Law separately.*
4. *This Opinion was prepared in response to the Minister for Human and Minority Rights’ letter of 9 July 2013.*

## **II. SCOPE OF REVIEW**

5. The scope of this Opinion mainly covers the draft Law on Amendments to the Law on the Protector of Human Rights and Freedoms (hereinafter “the Draft Law”) submitted for review. The draft Law on Amendments of the Law on Prohibition of Discrimination of Montenegro (hereinafter “Draft Amendments to the Anti-Discrimination Law”), as recently reviewed by OSCE/ODIHR,<sup>5</sup> was also considered and referenced to the extent relevant. Thus limited, the Opinion does not constitute a full and comprehensive review of the legislation relating to the institutional framework for the protection and promotion of human rights in Montenegro.

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<sup>1</sup> This Law was adopted by the Parliament of Montenegro on 29 July 2011.

<sup>2</sup> Joint Opinion by the Venice Commission and OSCE/ODIHR on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, issued on 19 October 2011, available at <http://www.legislationline.org/documents/id/16665>.

<sup>3</sup> OSCE/ODIHR Comments on the draft Law on the Protector of Human Rights and Freedoms of Montenegro, Opinion-Nr.: GEN-MNG/166/2010 (AT), issued on 1 October 2010, available at <http://www.legislationline.org/documents/id/16053> (hereinafter “the 2010 OSCE/ODIHR Comments”).

<sup>4</sup> Opinion on Draft Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2009)043, Opinion No. 540/2009, of 12 October 2009, adopted by the Venice Commission at its 80<sup>th</sup> Plenary Session (9-10 October 2009), available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)043-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)043-e).

<sup>5</sup> OSCE/ODIHR Opinion on the draft Law on Amendments to the Law on Prohibition of Discrimination of Montenegro, Opinion-Nr.: NDISCR-MNG/234/2013 (A1C), dated 31 July 2013, available at [http://legislationline.org/download/action/download/id/4579/file/234\\_NDISCR\\_MNG\\_31%20July%202013\\_en.pdf](http://legislationline.org/download/action/download/id/4579/file/234_NDISCR_MNG_31%20July%202013_en.pdf) (hereinafter “the 2013 OSCE/ODIHR Opinion on the Draft Amendments to the Anti-Discrimination Law”).

6. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards and practices governing National Human Rights Institutions (hereinafter “NHRIs”), including relevant Council of Europe<sup>6</sup> and OSCE documents.<sup>7</sup>
7. The OSCE/ODIHR also reiterates that the recommendations made in the 2011 Joint Opinion remain valid with regard to Articles not amended by the Draft Law, and that this Opinion builds upon these recommendations, as appropriate, for the provisions amended by the Draft Law. The Opinion also reflects the content of other previous OSCE/ODIHR opinions and comments, as applicable.
8. This Opinion is based on the English translation of the Draft Law provided by the Minister for Human and Minority Rights of Montenegro, which has been attached to this document as Annex 1. Errors from translation may result.
9. 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 the legal and institutional framework on protection and promotion of human rights in Montenegro, that the OSCE/ODIHR may make in the future.

### **III. EXECUTIVE SUMMARY**

10. At the outset, it should be noted that this Draft Law contains some important improvements in terms of compliance with international standards applicable to NHRIs. The authors of the Draft Law are to be commended for the substantial amendments to improve the Human Rights Protector Law’s compliance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>8</sup> (hereinafter “the OPCAT”), as well as for including clear provisions granting proper remuneration for the Protector, Deputies and Advisors, thus reinforcing guarantees of their independence and integrity.
11. At the same time, some key recommendations from the 2011 Joint Opinion have not been addressed and certain aspects relating to the mandate and responsibilities of the Human Rights Protector could be enhanced or specified more clearly in the Draft Law. This relates in particular to the consistency of the Human Rights Protector Law with the Anti-Discrimination Law, as well as the complaint-handling procedures before the Human Rights Protector. In order to ensure the full compliance of the Draft Law with

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<sup>6</sup> General Policy Recommendation No. 2 of the European Commission against Racism and Intolerance (ECRI), Council of Europe, on Basic Principles concerning Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at National Level, of 13 June 1997. See also General Policy Recommendation No. 7 of the ECRI, on National Legislation to Combat Racism and Racial Discrimination, of 13 December 2002.

<sup>7</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 27; Document of the Fifteenth Meeting of the Ministerial Council, Madrid, 29-30 November 2007, Decision 10/07 on tolerance and non-discrimination: promoting mutual respect and understanding, par 10; Annex to Ministerial Council Decision 14/04, OSCE Action Plan for the Protection of Gender Equality, par 42.

<sup>8</sup> The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the CAT”) was adopted on 10 December 1984 at the thirty-ninth session of the General Assembly of the United Nations by resolution A/RES/39/46. Montenegro succeeded to this Convention on 23 October 2006; UN Optional Protocol to the CAT, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, ratified by Montenegro on 6 March 2009.

international standards and to make certain provisions more effective, the OSCE/ODIHR thus recommends as follows:

***1. Key Recommendations***

- A. to amend Article 2 of the Human Rights Protector Law as follows:
  - 1) cover the acts and omissions of both the public and private sectors; [pars 18 and 26]
  - 2) expressly mention that the Human Rights Protector constitutes the Institutional Mechanism for the protection from discrimination and the promotion of equality, in accordance with the Law on Prohibition of Discrimination; [pars 19 and 37-38]
- B. to require under Article 3 of the Draft Law (amending Article 10 of the Human Rights Protector Law) that the Human Rights Protector go through a consultative process with various public and non-governmental organs prior to proposing candidate(s) for Deputies to the Parliament; [par 22]
- C. to introduce under Article 10 of the Draft Law (introducing new Articles 25a to 25d to the Human Rights Protector Law) the legal guarantee that persons who have cooperated with the office of the Protector shall not suffer any retaliation or sanction; [par 35]
- D. to amend Article 37 of the Human Rights Protector Law to clarify the administrative or disciplinary procedure (and competent body) preceding the imposition of possible sanctions for failure to provide requested information and/or expressly refer to the applicable legislation regulating “obstruction” and related penalties; [par 43]
- E. to supplement Article 17 of the Draft Law to expand the scope of the persons listed under Article 45 of the Human Rights Protector Law to include all staff working for the Human Rights Protector, and the other “independent experts” that may be engaged by the Protector as part of the OPCAT working group; [par 45]

***2. Additional Recommendations***

- F. to expressly mention the “promotion” of human rights in addition to the protection of human rights under Articles 1 and 2 of the Human Rights Protector Law; [par 17]
- G. to state under Article 3 of the Draft Law (amending Article 10 of the Human Rights Protector Law) that the Protector’s Deputies shall report to the Protector, who in turn is accountable to the Parliament of Montenegro; [par 24]
- H. to consider amending Article 4 of the Draft Law (amending Article 11 of the Human Rights Protector Law) as follows:
  - 1) add a reference to international human rights treaties in the text of the oath; [par 25]
  - 2) state that the Protector and the Deputies shall both take their oath before the Parliament; [par 25]
- I. to supplement Chapter III of the Human Rights Protector Law on the general competences of the Protector as follows:

- 1) add additional functions relating to the “*promotion* of human rights”; [pars 17, 38 and 39]
  - 2) provide under Article 7 of the Draft Law (amending Article 23 of the Human Rights Protector Law) that the obligation to receive the Human Rights Protector shall extend to any state and/or local official and include the duty to meet with the Protector’s Deputies, advisors and members of the working body; [par 27]
  - 3) expressly mention additional powers and functions of the Protector as an anti-discrimination and equality body, to ensure consistency between the Human Rights Protector Law and the Draft Amendments to the Anti-Discrimination Law; [pars 38-39]
- J. to provide under Article 8 of the Draft Law for the deletion of Article 24 of the Human Rights Protector Law, to avoid duplication; [par 36]
- K. to supplement Article 10 of the Draft Law (introducing new Articles 25b and 25c to the Human Rights Protector Law) as follows:
- 1) specify under Articles 25b (first indent) and 25c (first indent) that the Human Rights Protector has the power to carry-out *regular* visits to all places where persons are or may be deprived of their liberty; [par 31]
  - 2) add under Article 25b (second indent), as well as under new Article 43a introduced by Article 15 of the Draft Law, that the authorities and the Human Rights Protector will enter into a dialogue on proper implementation measures; [pars 32 and 44]
  - 3) define under the last paragraph of Article 25b “persons deprived of liberty” to reflect the definition of “deprivation of liberty” of Article 4 par 2 of the OPCAT; [par 33]
  - 4) amend and supplement the new Article 25c relating to access to information and monitoring of places where persons are deprived of their liberty to fully comply with Article 20 of the OPCAT; [par 34]
- L. to include under Article 12 of the Draft Law (amending Article 30 of the Human Rights Protector Law) the possibility for an individual to also submit a complaint by proxy or representative acting on his/her behalf; [pars 26 and 41]
- M. to consider supplementing Chapter V of the Human Rights Protector Law on the complaints-handling procedure with the following additional powers and functions relating to the quasi-judicial competency of the Human Rights Protector:
- 1) receive complaints against both public and private bodies for *any* human rights violation, not only in discrimination cases; [pars 18 and 26]
  - 2) seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process; [pars 26 and 39]
  - 3) refer its findings to courts of law or specialized tribunals for adjudication in all cases; [par 26]
  - 4) seek enforcement through the court system of its decisions on the resolution of complaints; [par 26]

- 5) follow up and monitor the implementation of its decisions on the resolution of complaints; [par 26]
- N. to adapt Article 22 of the Human Rights Protector Law to reflect the deletion of paragraphs 1 and 3 of Article 27 of the Human Rights Protector Law, as appropriate; [par 40]
- O. to add under Article 17 of the Draft Law (amending Article 45 of the Human Rights Protector Law) that confidential information collected when acting as a national preventive mechanism under the OPCAT shall be privileged; [par 46]
- P. to clarify the provisions of Article 20 of the Draft Law (introducing the new Article 51b) regarding the different titles, qualification requirements and respective grades of the advisers and other professional staff working for the Protector; [par 48]
- Q. if additional competences as anti-discrimination and equality body are not added under Chapter III of the Human Rights Protector Law, to expressly refer under Article 11 of the Draft Law (amending Article 27 of the Human Rights Protector Law) to the additional competences of the Human Rights Protector laid down in the Law on Prohibition of Discrimination; [par 39]
- R. to provide sufficient funding to ensure that the Human Rights Protector will have the human, financial, material and technical capacity to properly exercise his/her functions as a human rights protection mechanism, anti-discrimination and equality body and national preventive mechanism under the OPCAT; [par 20]
- S. to ensure that the Rules of Procedure provide that the composition and selection/engagement process of the OPCAT working body is transparent and inclusive; [par 29]
- T. if the competence of the Human Rights Protector is extended to cover both public and private bodies, to supplement articles of the Human Rights Protector Law referring to public authorities to reflect the applicability of the legislation to private entities, as appropriate. [pars 26 and 42]

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on NHRIs**

12. The Protector of Human Rights and Freedoms of Montenegro (hereinafter “the Human Rights Protector” or “the Protector”) is *inter alia* responsible for protecting human rights and freedoms and investigating complaints against public authorities for the violation of human rights. As such, this institution is covered by the United Nations Principles relating to the status of national institutions for the promotion and protection of human rights (hereinafter “the Paris Principles”)<sup>9</sup> which set minimum standards for ensuring the operation and efficiency of NHRIs. The ensuing recommendations are also based on the General Observations issued by the Sub-Committee on Accreditation and adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human

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<sup>9</sup> Defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

Rights (hereinafter “the ICC General Observations”), as last amended in May 2013, which serve as interpretive tools of the Paris Principles.<sup>10</sup>

13. In addition, the Protector is responsible under Article 2 of the Human Rights Protector Law to take measures “to prevent torture and other forms of inhuman or degrading treatment or punishment”. This signifies that the Human Rights Protector constitutes a national preventive mechanism under the OPCAT and as such should comply with the relevant provisions of the OPCAT.
14. Article 9 of the Human Rights Protector Law as amended by the Draft Law also refers to the protection of the rights of persons with disabilities. Consequently, the Human Rights Protector also falls within the ambit of the independent mechanisms for implementation of the UN Convention on the Rights of Persons with Disabilities<sup>11</sup> (hereinafter “the CRPD”) as per Article 33(2) of the CRPD.
15. As a candidate country to join the European Union,<sup>12</sup> Montenegro has undertaken to make its legislation compliant with the EU *acquis*. Therefore, and as appropriate, this analysis of the Draft Law will take into account relevant EU legislation, particularly the key EU Equality Directives as they relate to anti-discrimination and equality bodies.<sup>13</sup>

## **2. General Provisions**

16. At the outset, OSCE/ODIHR would like to reiterate some of the main recommendations of the 2011 Joint Opinion, left un-addressed, or only partially touched upon, by the Draft Law, particularly as regards:
  - the scope of competences of the Human Rights Protector as stated under Article 2 of the Human Rights Protector Law<sup>14</sup> (see also pars 17-19 *infra*);
  - the lack of an inclusive and pluralistic approach to the selection and appointment procedures of the Human Rights Protector (Article 7 of the Human Rights Protector Law) and the recommendation to amend Article 91 par 2 of the Constitution to provide for a vote by qualified majority of the members of parliament for his/her appointment and dismissal;<sup>15</sup>

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<sup>10</sup> Latest revised ICC General Observations as adopted by the International Coordinating Committee Bureau at its meeting in Geneva on 6-7 May 2013, available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf>.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (hereinafter the “EU Employment Equality Directive”); Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin (hereinafter the “EU Racial Equality Directive”); Council Directive 2004/113/EC of 13 December 2004 on equal treatment between men and women in the access to and supply of goods and services; and Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (hereinafter both together referred as the “EU Gender Equality Directives”).

<sup>14</sup> See pars 8-12 of the 2011 Joint Opinion.

<sup>15</sup> See pars 15-18 and 25 of the 2011 Joint Opinion and pars 28-29 of the 2010 OSCE/ODIHR Comments.



- the omission, both in the Constitution and in the Human Rights Protector Law, to expressly state whether the Protector may or may not be re-appointed;<sup>16</sup>
  - the limited personal, material and temporal scope of functional immunity for the Protector and his/her staff (Article 12 of the Human Rights Protector Law);<sup>17</sup>
  - the lack of provisions regulating the procedure for dismissal of the Human Rights Protector (Article 15 of the Human Rights Protector Law);<sup>18</sup> and
  - the content of the reports submitted by the Human Rights Protector to the Parliament (Article 47 of the Human Rights Protector Law).<sup>19</sup>
17. Also, it is important to highlight that Articles 1 and 2 of the Human Rights Protector Law mention only the “protection” of human rights and freedoms, and not the “*promotion and protection*”. Other Articles of the Law refer to the “protection and promotion” of human rights<sup>20</sup> and substantively provide for human rights promotion-related activities such as advising on draft legislation, providing opinions, publishing special reports on human rights issues, etc. According to Sections A.1 and A.2 of the Paris Principles, an NHRI should possess “as broad a mandate as possible”, which should include both “the promot[ion] *and* protect[ion] of human rights”.<sup>21</sup> It is therefore recommended to expressly mention the “promotion” of human rights under Articles 1 and 2 of the Human Rights Protector Law and, as appropriate, further detail in the Draft Law which kind of activities this would imply, *e.g.* by clarifying or considering supplementing<sup>22</sup> the provisions of Chapter III of the Human Rights Protector Law on the general competences of the Protector<sup>23</sup> (see also pars 38-39 *infra*).
18. Additionally, it must be noted that Article 27 of the Human Rights Protector Law refers to cases of discrimination also by natural or legal persons, not only by public authorities, and that the scope of the Anti-Discrimination Law extends to both public and private spheres. To ensure coherence and avoid confusion, it is advisable to extend the scope of Article 2 of the Human Rights Protector Law to cover the acts and omissions of both the public and private sectors<sup>24</sup> and to include the Human Rights Protector’s ability to receive complaints against both public and private bodies under his/her jurisdiction<sup>25</sup> in Chapter V of the Human Rights Protector Law. This would be in line with the revised ICC General Observations (May 2013) and would

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<sup>16</sup> See par 20 of the 2011 Joint Opinion.

<sup>17</sup> See par 23 of the 2011 Joint Opinion.

<sup>18</sup> See pars 24-26 of the 2011 Joint Opinion.

<sup>19</sup> See par 42 of the 2011 Joint Opinion (obligatory parliamentary debate on the annual work report and its main topics and separate section on the activities of the Human Rights Protector as a National Preventive Mechanism under the OPCAT).

<sup>20</sup> Human Rights Protector Law refer respectively to “opinion on the protection and promotion of human rights” on draft laws, regulations or other acts (Article 18), “opinion on the protection and promotion of human rights” at the request of authorities (Article 20) and “general issues of importance for the protection and promotion of human rights and freedoms” (Article 21).

<sup>21</sup> See also ICC General Observation 1.2.

<sup>22</sup> *E.g.* by adding, providing that there is sufficient funding and human resources to allow the NHRI to carry-out such activities, education, training, advising, public outreach and advocacy activities (see ICC General Observation 1.2).

<sup>23</sup> See Sections 4-6 of the Paris Principles and ICC General Observation 1.2 on the Human Rights Mandate of NHRIs.

<sup>24</sup> ICC General Observation 1.2.

<sup>25</sup> ICC General Observation 2.10.

demonstratively recognize the key role that national human rights institutions can play in the implementation of the UN Guiding Principles on Business and Human Rights.<sup>26</sup>

19. Moreover, the institutional framework regulating the promotion and protection of human rights in Montenegro may seem confusing due to certain inconsistencies between the Human Rights Protector Law and the Draft Amendments to the Anti-Discrimination Law, particularly in terms of the scope of competences of the Human Rights Protector<sup>27</sup> (see also pars 38-39 *infra*). To avoid any confusion, it is recommended to:
- expressly mention under Article 2 of the Human Rights Protector Law that the Human Rights Protector constitutes an anti-discrimination body whose competences are detailed in the Anti-Discrimination Law;
  - given that the Draft Amendments to the Anti-Discrimination Law of Montenegro expressly include the “promotion of equality” as part of the competencies of the Human Rights Protector, make it clear under Article 2 of the Human Rights Protector Law that the institution also constitutes an equality body;
  - ensure that the Human Rights Protector Law includes the detailed and full powers to implement the provisions of the Anti-Discrimination Law on the scope of his/her competences as anti-discrimination and equality body, as per Article 9 of the Draft Law amending Article 21 of the Anti-Discrimination Law<sup>28</sup> (see par 39 *infra*).
20. While, according to the recent Reports submitted by Montenegro to the Committee on the Elimination of Racial Discrimination and the Committee Against Torture, some progress has been reported in terms of fund allocations,<sup>29</sup> sufficient funding should be ensured for the Institution to have the human, financial, material and technical capacity to guarantee the proper implementation of the Human Rights Protector Law. This should include the allocation of funds for suitable premises which may be easily distinguished from those of the government and which are accessible to the wider community (including to persons with disabilities). Furthermore, funds should also support the establishment of well-functioning communications systems, the possibility

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<sup>26</sup> UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). See also par 42 of the Report of the Human Rights Council’s Working Group on the issue of human rights and transnational corporations and other business enterprises, 14 March 2013, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-32\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-32_en.pdf).

<sup>27</sup> See pars 33-37 of the 2011 Joint Opinion and par 38 of the 2013 OSCE/ODIHR Opinion on the Draft Amendments to the Anti-Discrimination Law.

<sup>28</sup> See par 38 of the 2013 OSCE/ODIHR Opinion on the Draft Amendments to the Anti-Discrimination Law and pars 73-75 of the 2010 OSCE/ODIHR Comments.

<sup>29</sup> Second and Third Periodic Reports submitted by Montenegro under Article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/MNE/2-3) dated 12 July 2013, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/454/23/PDF/G1345423.pdf?OpenElement>, par 52 which states that “the Law on Budget for 2011, funding for the work of the office of the Protector has been increased for about 31%. Premises of the institution of the Protector have been moved to a new location in the very centre of the city, with equipment and offices that are fully innovated.” Second Periodic Report submitted by Montenegro under Article 19 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/MNE/2) dated 14 March 2013, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/419/65/PDF/G1341965.pdf?OpenElement>, pars 43-44 which states that “[u]nder the Budget Law, funds allocated for the needs of new mechanisms of the Protector of Human Rights and Freedoms amounted to € 93,496 for the anti-discrimination program and € 105,117 for the anti-torture programme.”

to receive external sources of funding,<sup>30</sup> the training and professional development of staff<sup>31</sup> and the development and formalization of working relationships with other domestic human rights bodies/institutions and civil society, international human rights bodies and NHRIs in other countries,<sup>32</sup> among others. It is particularly important that the institution of the Human Rights Protector has sufficient funding to fulfil its competences as an anti-discrimination and equality body, and as a national preventive mechanism of the OPCAT.

### **3. The Appointment and Cessation of Functions of the Human Rights Protector and Deputies (Articles 1 to 5 of the Draft Law)**

21. As already stated earlier under par 16 *supra*, it is essential that the Human Rights Protector is selected and appointed following inclusive and pluralistic selection and appointment procedures.<sup>33</sup> The manner of selecting and appointing the Human Rights Protector also concerns the overall composition of the NHRI since ensuring pluralism is a prime requirement of the Paris Principles as a guarantee of institutional independence.<sup>34</sup>
22. Consequently, the methods for selection and appointment of the Protector's Deputies should also be open and consultative. This could be achieved by providing for procedures whereby the Human Rights Protector would consult diverse societal groups for suggestions or recommendations of candidates; or whereby he/she would organize their participation in the application, screening, selection and appointment process, among others.<sup>35</sup> Accordingly, Article 3 of the Draft Law (amending Article 10 of the Human Rights Protector Law) could be supplemented by requiring the Human Rights Protector to go through a consultative process with various public and non-governmental organs prior to proposing candidate(s) for Deputies to the Parliament.
23. Article 2 of the Draft Law provides for the internal division of work and specialization of the deputies (as was already mentioned in the current Article 9 of the Human Rights Protector Law) while the general mandate of the Protector as per Article 2 of the Human Rights Protector Law provides for overall coherence of the work of the institution.
24. According to Article 3 of the Draft Law (amending Article 10 of the Human Rights Protector Law), the "Deputy shall report to the Protector and the Parliament of Montenegro". It is unclear why the Protector's Deputies should report to both the Protector and the Parliament of Montenegro. According to ICC General Observation 1.1, it is important to include in the legislation clear provisions on lines of accountability. The Protector, as the individual entrusted with the broadest powers and responsibilities listed in Article 2 of the Human Rights Protector Law, should be the one accountable to the Parliament on behalf of the institution. As such, the Protector has to present an account of, and answer for, the performance of tasks and functions of the institution as a whole, including the work of his Deputies, Advisers and other

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<sup>30</sup> ICC General Observation 1.10 as amended in May 2013.

<sup>31</sup> See the UNDP-OHCHR Toolkit for Collaboration with NHRIs, Section 8.2.4.4 on Training and Professional Development, page 175, available at <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

<sup>32</sup> ICC General Observations 1.4 on Interaction with the International Human Rights System and 1.5 on Cooperation with other Human Rights Bodies.

<sup>33</sup> See pars 15-18 and 25 of the 2011 Joint Opinion and pars 28-29 of the 2010 OSCE/ODIHR Comments.

<sup>34</sup> See section B.1 of Paris Principles.

<sup>35</sup> ICC General Observations 1.7 and 1.8.

experts and staff mentioned in the Human Rights Protector Law. It is advisable to clarify the lines of accountability under Article 3 of the Draft Law by stating that the Protector's Deputies shall report to the Protector, who in turn is accountable to the Parliament of Montenegro.

25. Regarding Article 4 of the Draft Law on the oath by the Human Rights Protector and Deputies, OSCE/ODIHR would like to reiterate its recommendation to amend the text of the oath to expressly include international human rights treaties so as to avoid an interpretation that the Protector should protect human rights in accordance "only" with the domestic law.<sup>36</sup> Also, given that both the Protector and his/her Deputies are appointed by the Parliament, it is unclear why they should take their oath before different entities, i.e. the Protector before the Parliament and the Deputies before the President of the Parliament. It would be recommended to amend Article 4 of the Draft Law (amending Article 11 of the Human Rights Protector Law) to reflect that the oath shall be taken before the Parliament in both cases.

#### **4. Scope of Competences of the Human Rights Protector (Articles 6 to 11 of the Draft Law)**

##### **4.1 General Competences**

26. According to Chapter V of the Human Rights Protector Law, the Protector is provided with a mandate to handle complaints alleging violations of human rights, and consequently should be provided with the necessary functions and powers to adequately fulfil such mandate. In May 2013, the ICC adopted a new General Observation relating to the quasi-judicial competency of NHRIs (complaints-handling) with a proposed list of powers and functions.<sup>37</sup> It is recommended to consider including some of these powers and functions in the Human Rights Protector Law (see also par 39 *infra*), particularly:
- the ability to receive complaints against both public and private bodies in its jurisdiction for *any* human rights violation,<sup>38</sup> not only in discrimination cases (Article 2 of the Human Rights Protector Law as well as all articles of the law referring to public authorities should be supplemented accordingly);
  - the ability to receive complaints from any person on behalf of the alleged victim(s), where prior and written consent is given (not only members of parliament or organizations dealing with human rights and freedoms) (see also par 41 *infra*);

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<sup>36</sup> See par 22 of the 2011 Joint Opinion.

<sup>37</sup> ICC New General Observation 2.10.

<sup>38</sup> Human rights that business enterprises have the responsibility to respect include *e.g.* the freedom of association and the right to collective bargaining, the elimination of compulsory labour, the abolition of child labour, the right to privacy, the freedom of expression and opinion of employees, the right to enjoy just and favourable working conditions, the compliance with UN Basic Principles and Guidelines on Development-based Evictions and Displacement developed by the UN Special Rapporteur on the Right to Adequate Housing (UN document E/CN.4/2006/41, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>). See page 10 of the UN Office of the High Commissioner for Human Rights Interpretive Guide to the Corporate Responsibility to Respect Human Rights (2011), available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf). See also "Human Rights Translated: A Business Reference Guide" by Monash University, the International Business Leaders Forum, OHCHR and the United Nations Global Compact (2008), available at [http://human-rights.unglobalcompact.org/doc/human\\_rights\\_translated.pdf](http://human-rights.unglobalcompact.org/doc/human_rights_translated.pdf).

- the ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process (see also par 39 *infra*);
  - the ability for the Human Rights Protector to refer his//her findings to courts of law or specialized tribunals for adjudication in all cases;
  - the ability to seek enforcement through the court system of its decisions on the resolution of complaints;
  - the ability to follow up and monitor the implementation of its decisions on the resolution of complaints.
27. Regarding Article 7 of the Draft Law (amending Article 23 of the Human Rights Protector Law), OSCE/ODIHR reiterates that the obligation to receive the Human Rights Protector at his/her request should not be limited to the officials listed in Article 23 of the Law, but should be extended to any state and/or local official. This obligation to meet should also extend to the Protector's Deputies, advisors and members of the OPCAT working body (see par 29 *infra*).<sup>39</sup>

#### ***4.2 Competences as a National Preventive Mechanism under the OPCAT***

28. It is particularly noteworthy and welcome that the provisions relating to the Protector as a national preventive mechanism under the OPCAT have been substantially amended and supplemented to improve the legislation's compliance with the OPCAT. Some further improvements, as detailed below, should be considered in order to ensure that the Draft Law is fully in line with the provisions of the OPCAT.
29. A special expert advisory body to assist the Protector in implementing his/her role as the national preventive mechanism was already created by Article 25 par 3 of the current Human Rights Protector Law. In the Draft Law, this body is referred to as the "working group". It is particularly welcome that in the amended version of Article 25, par 2 now includes representatives of non-governmental organizations as members of such body. A new Article 25a provides for the nomination of all members of the working group to be based "on a public call" with more detailed provisions on composition and selection/engagement to be determined in the Rules of Procedure of the Protector. This is a positive change to the current Law, since this provision expressly provides for a more open selection process. At the same time, the Rules of Procedure will need to ensure that the composition of this body, and selection/engagement process for its members, is transparent and inclusive. The selection and appointment process will need to involve a wide range of stakeholders, including civil society, with due consideration for gender balance and an adequate representation of ethnic and minority groups (as required by Article 18 par 2 of the OPCAT for experts of a national preventive mechanism).
30. Articles 25b and 25c, newly introduced by Article 10 of the Draft Law, generally comply with the requirements of the OPCAT as regards the scope of the mandate of national preventive mechanisms, as the Human Rights Protector, the Deputy, his/her advisors and the working group have the power to monitor facilities where persons are deprived of their liberty, visit such persons without prior notification or approval, and talk to them in the absence of officials or other persons. The Human Rights Protector may also provide recommendations to public authorities, give opinions on relevant laws and regulations, as well as cooperate with the UN Subcommittee on Prevention

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<sup>39</sup> See par 27 of the 2011 Joint Opinion and par 60 of the 2010 OSCE/ODIHR Comments.

of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the UN Subcommittee on Prevention of Torture”). At the same time, the new Articles may benefit from certain improvements, which are detailed below.

31. As mentioned in the 2011 Joint Opinion,<sup>40</sup> it would be important to specify that the Human Rights Protector has the power to carry out *regular* visits to all places where persons are or may be deprived of their liberty; Articles 25b (first indent) and 25c (first indent) could be supplemented accordingly.<sup>41</sup> Such regular visits are essential for the Protector to fulfil the strategic preventive role that OPCAT envisages for national preventive mechanisms.
32. Article 25b (second indent) provides for the powers to issue recommendations to the authorities. In order to fully correspond to the requirements of the OPCAT, such provision could further ensure that the authorities and the Human Rights Protector will thereupon enter into a dialogue on proper implementation measures as foreseen in Article 22 of the OPCAT (see par 44 *infra*).
33. The last paragraph of Article 25b defines “persons deprived of their liberty” as “persons under any kind of retention, detention, imprisonment or placement under supervision of an authority, who cannot abandon such place at their own will.” Article 4 par 2 of the OPCAT defines the deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. Such definition may encompass a wide variety of facilities, such as police stations, prisons, pre-trial detention centres, hospitals or psychiatric institutions, airports, migrants holding facilities, centres for juveniles, military barracks, etc., either public or private. The definition used in Article 25b appears to be more limited and unclear, e.g. it does not expressly cover both public and private custodial setting and the wording “placement under the supervision of an authority” is not defined. Unless this is merely a result of faulty translation, the definition of “persons deprived of liberty” in the last paragraph of Article 25b should be amended to reflect the wording of Article 4 par 2 of the OPCAT.
34. It is welcome that the new Article 25c broadens the powers of the Human Rights Protector as a national preventive mechanism in terms of access to information and monitoring of places where persons are deprived of their liberty. However, in order to fully comply with Article 20 of the OPCAT, the new Article 25c should be amended as follows:
  - the access to information on the number of persons deprived of their liberty should not be limited to the places which are being visited (as currently stated in Article 25c (third indent), but should cover any places of deprivation of liberty, even those not actually being visited;
  - Article 25c (third indent) should also include access to information concerning the “number of places of detention and their location”;
  - Article 25c (fourth indent) should not only include information about the treatment of persons deprived of their liberty, but also about the “conditions of detention” of such persons; and

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<sup>40</sup> See par 29 of the 2011 Joint Opinion.

<sup>41</sup> See Article 1 of the OPCAT: “The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

- Article 25c (fifth indent) should provide the possibility for the Human Rights Protector or his/her representatives to be accompanied by a translator if deemed necessary.
35. It should also be noted that the Draft Law currently does not include a legal guarantee that persons who have cooperated with the office of the Protector (e.g. detainees, their families and friends, lawyers, former detainees, staff of places of detention, and any other person or organization wishing to complain or convey information to the Protector) shall not suffer any retaliation or sanction (as per Article 21 par 1 of the OPCAT). Such legal guarantee is distinct from the protective measures mentioned under Article 29 of the Human Rights Protector Law regarding the investigation of complaints, but could be added to this provision. It is recommended that the Draft Law is amended accordingly.
36. Given that the introduction of the new Article 25c renders the current Article 24 of the Law somewhat redundant, it is unclear why the Draft Law does not also foresee the deletion of Article 24. The current wording of Article 24 is also not fully consistent with the newly introduced provisions, e.g. with regard to the categories of persons permitted access to premises where persons are deprived of their liberty, which do not include the members of the working group established under the Law. Consequently, to avoid any confusion, it is recommended that, instead of amending Article 24 of the Human Rights Protector Law, Article 8 of the Draft Law should provide for the deletion of this provision.

### **4.3 Competences as an Anti-Discrimination and Equality Body**

37. It is noted that Article 11 of the Draft Law (amending Article 27 of the Human Rights Protector Law) will delete the reference to the Protector as an institutional mechanism for the protection from discrimination (Article 27 par 1) and the possibility to initiate or to intervene in court proceedings dealing with anti-discrimination issues (Article 27 par 3, on this aspect see also par 39 *infra*). As already mentioned in par 19 *supra*, the Human Rights Protector has been designated as the anti-discrimination and equality body under Article 21 of the Anti-Discrimination Law (and proposed draft amendments) and it is important that Article 2 of the Human Rights Protector Law clearly states this additional competence of the Protector, with an express reference to the Law on Prohibition of Discrimination. This will help ensure consistency between the Human Rights Protector Law and the Draft Amendments to the Anti-Discrimination Law.
38. According to the EU Equality Directives, anti-discrimination and equality bodies mainly focus on the promotion of equal treatment, but also on the analysis, monitoring and support of equal treatment, and should provide independent assistance to alleged victims of discrimination, conduct independent surveys concerning discrimination and issue public independent reports and recommendations on discrimination issues.<sup>42</sup> It is recommended to supplement, as appropriate, the general competences listed under Chapter III of the Human Rights Protector Law to expressly mention such roles and competences.

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<sup>42</sup> While EU Racial Equality Directive focuses only on the promotion of equality, the EU Gender Equality Directives also include analysis, monitoring and support of equal treatment in the competences of the equality bodies.



39. To further enhance consistency of both laws, it is recommended to further supplement Chapter III of the Human Rights Protector Law by also including certain competences which are stated in the Anti-Discrimination Law but which are not currently mentioned in the Human Rights Protector Law (see also par 26 *supra*). This could include *e.g.* the possibility to conduct conciliation proceedings (see par 26 *supra*), to initiate court proceedings or appear as an intervening third party (see par 37 *supra* and Article 21 par 4 of the Anti-Discrimination Law), to collect and analyze data/statistics, public information and awareness-raising on human rights issues.<sup>43</sup> In case these additional competences are not mentioned specifically under Chapter III of the Human Rights Protector Law, then Article 11 of the Draft Law (amending Article 27 of the Human Rights Protector Law) should at least contain specific references to the additional competences of the Human Rights Protector laid down in the Anti-Discrimination Law.
40. Additionally, given that paragraphs 1 and 3 of Article 27 of the Human Rights Protector Law will be deleted (as per Article 11 of the Draft Law), meaning that the current par 2 will become the new par 1, other articles of the Human Rights Protector Law which currently refer to Article 27, such as Article 22 of the Human Rights Protector Law, should be adapted accordingly.

#### **5. The Complaints-Handling Procedure (Articles 12 to 17 of the Draft Law)**

41. Article 30 of the Human Rights Protector Law (as amended by Article 12 of the Draft Law) provides that “the complaint may be filed by anyone who believes that his/her rights and freedoms are violated”. While the Human Rights Protector Law provides the possibility of the complaint being filed by a Member of Parliament or human rights organizations, it does not specify that an individual may also submit a complaint by proxy or representative acting on his/her behalf (see par 26 *supra*). It would be recommended to supplement Article 12 of the Draft Law (amending Article 30 of the Human Rights Protector Law) to allow for this.
42. It is welcome that Article 14 of the Draft Law (amending Article 36 of the Human Rights Protector Law) clarifies the powers of the Human Rights Protector to compel public authorities to produce documents and information and grant access to premises, thus distinguishing between the general competences of the Protector and his/her competences as a national preventive mechanism under the OPCAT. Should the scope of competences of the Protector be extended to cover private entities, Article 36 of the Human Rights Protector Law would also need to address such situations.
43. Under Article 37 of the Human Rights Protector Law, the Protector “can notify the immediate superior authority or the Parliament or inform the public” in cases where a public authority fails to comply with his/her requests; this is considered an “obstruction” of the work of the Protector. In this context, it may be beneficial to discuss further ways of strengthening the Protector’s mandate to compel authorities to respond to his/her recommendations or to provide requested information.<sup>44</sup> While Article 44 of the Human Rights Protector Law refers to disciplinary or dismissal procedures, as well as misdemeanour proceedings, this covers situations where the act

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<sup>43</sup> See Article 21 of the Anti-Discrimination Law as amended by the Draft Amendments to the Anti-Discrimination Law.

<sup>44</sup> See the UNDP-OHCHR Toolkit for Collaboration with NHRIs, Section 7.6.8 on Capacity to Obtain Information and Documents, page 149, available at <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.



or failure to act resulted in a violation of human rights and freedoms, but not specifically the failure to respond to recommendations or provide requested information. It is thus advised to review Article 37, and perhaps consider specifying, either in this provision or in a separate one, the legal consequences of such “obstruction”, in particular the procedure to be followed, the competent body presiding such procedures, as well as possible sanctions; potential sanctions could be introduced either directly into the text of the Law, or by referring to relevant administrative or disciplinary procedures.<sup>45</sup>

44. The introduction of a new Article 43a on reporting obligations and follow-up actions after visits of places of deprivation of liberty is much welcome. However, in order to fully correspond to the requirements of Article 22 of the OPCAT, Article 15 of the Draft Law (introducing new Article 43a) could ensure that such report is followed by a dialogue between the authorities and Human Rights Protector on proper implementation measures for recommendations issued by the Human Rights Protector (see par 32 *supra*).
45. Regarding the handling of personal data (Article 45 of the Human Rights Protector Law as amended by Article 17 of the Draft Law), it is recommended to expand the scope of the persons listed to include all staff working for the Human Rights Protector, as well as the “independent experts” that may be engaged by the Human Rights Protector as part of the working group under Article 25 par 3 as amended by Article 9 of the Draft Law.
46. It should also be highlighted that Article 21 par 2 of the OPCAT expressly provides that confidential information collected by a national preventive mechanism under the OPCAT shall be privileged, i.e. that it will not be disclosed under any circumstances, not even during investigations by public authorities or court proceedings (except in very limited circumstances to be defined by law, such as by consent by the individuals mentioned in the documents, or the disclosure of the information by the individual to a third party). It would be recommended to supplement Article 17 of the Draft Law (amending Article 45 of the Human Rights Protector Law) accordingly.

## **6. Other Provisions (Articles 18 to 23 of the Draft Law)**

47. It is welcome that Article 18 of the Draft Law amends the provisions on remuneration of the Protector and Deputy Protector by referring to the remunerations, respectively, of the President of the Constitutional Court and of a judge of the Constitutional Court; this provision also demonstrates the high value placed in the institution’s independence. This is in line with the ICC General Observations which recommend that salaries and benefits awarded be comparable to those of civil servants performing similar tasks in other independent institutions of the State.<sup>46</sup> Similarly, Article 20 of the Draft Law also provides for the remuneration of the Secretary General of the Protector and Advisors to the Protector by reference to civil servants performing similar tasks, which is commendable.
48. Article 20 of the Draft Law (introducing the new Article 51b) provides for different types of advisers to assist the Protector to perform his/her functions. However, the different titles, qualification requirements and respective grades under Article 51b par 2 and par 4 are confusing. It is also unclear whether the title “advisor” applies to all

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<sup>45</sup> See par 62 of the 2010 OSCE/ODIHR Comments.

<sup>46</sup> See ICC General Observations 2.6.

professional staff working for the Human Rights Protector. Unless this is merely a result of faulty translation, it is recommended to clarify this point.

*[END OF TEXT]*

**LAW ON AMENDMENTS TO THE LAW ON THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO**

**Article 1**

In the Law on the Protector of Human Rights and Freedoms of Montenegro (Official Gazette of Montenegro, no. 42/11), in Article 8, paragraph 2 shall be deleted.

**Article 2**

In Article 9, paragraph 2 shall be amended to read as follows:

„The Deputy shall perform duties within the competency of the Protector according to the internal division of work which shall provide specialization, and especially specialization for the protection of rights of persons deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, protection of the rights of members of minorities and other minority national communities, the protection and promotion of children's rights, protection of the rights of persons with disabilities, gender equality and protection from discrimination.“

Paragraph 3 shall be deleted.

In paragraph 4 after the words: „(hereinafter referred to as: the Parliament)“, full-stop shall be replaced with the comma and the words: “on recommendation of the Protector” shall be added.

Current paragraph 4 shall become paragraph 3.

**Article 3**

In Article 10, after paragraph 2 a new paragraph shall be added and shall read as follows:

„For its work, the Deputy shall report to the Protector and the Parliament of Montenegro.“

**Article 4**

In Article 11 after paragraph 1 a new paragraph shall be added and shall read as follows:

„The Protector shall take the oath before the Parliament, and the Deputy before the President of the Parliament.“

**Article 5**

In Article 16, paragraph 2 the word „Protector“ shall be replaced with the words: „state administration body in charge for human and minority rights“.

### **Article 6**

Article 17 shall be amended to read as follows:

„The Protector shall be also authorized to act upon complaints on work of courts relating to the delay of the proceeding, an obvious abuse of procedural rights in judicial proceedings in progress or failure to execute court decisions.“

### **Article 7**

In Article 23 the words: „without delay“, shall be replaced with the words: „at the latest within five days“.

### **Article 8**

In Article 24, paragraph 1 the word „employee“, shall be replaced with the words: „advisor to the Protector“.

### **Article 9**

Article 25 shall be amended to read as follows:

„The Protector shall perform the duties of preventative mechanisms for the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as: the prevention of torture), in accordance with this Law and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to perform certain duties for the prevention of torture that require specialized knowledge, the Protector shall form a working body consisting of experts in the relevant fields and representatives of non-governmental organizations.

In performing the duties referred to in paragraph 1 of this Article, the Protector may engage other independent experts if necessary.“

The act on establishing a working body referred to in paragraph 2 of this Article shall define tasks and manner of work of this body.“

### **Article 10**

After Article 25 four new Articles shall be added and shall read as follows:

#### „Article 25a

Members of the working body referred to in Article 25 paragraph 2 of this Law shall be nominated by the Protector based on the public call.

Composition, criteria, manner of nomination and engagement of working body members referred to in paragraph 1 of this Article shall be determined in the Rules of Procedure of the Protector.

#### Article 25b

Prevention of torture includes the following:

- visiting bodies, institutions or organizations in which are or could be placed persons deprived of their liberty and persons with restricted movement in order to increase the level of their protection from torture and other cruel, inhuman or degrading treatment or punishment;
- giving recommendations to the competent bodies, institutions and organizations to improve the treatment of persons deprived of their liberty and the conditions in which they are staying, or the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- giving opinions on laws and regulations for the protection and promotion of human rights and freedoms of persons deprived of their liberty and persons with restricted movement;
- Cooperation with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Subcommittee for the Prevention of Torture).

Persons deprived of their liberty within the meaning of this Law shall be persons under any kind of retention, detention, imprisonment or placement under the supervision of an authority, who can not abandon such place at their own will.

#### Article 25c

In the performance of the prevention of torture, the Protector and the Deputy Protector, as well as the Advisor to the Protector and the Members of the working body referred to in Article 25, paragraph 2 of this Law, who are authorized by the Protector, shall have the right to:

- without prior notice, visit authorities, institutions and organizations, and inspect premises in which are placed or could be placed persons deprived of their liberty;
- access freely to information on the authorities, institutions and organizations in which are staying persons deprived of their liberty;
- access freely to information on the number of persons deprived of their liberty in the authority, institution, or organization they are visiting;
- access freely to information on the treatment of persons deprived of their liberty;

- without the presence of an official, talk with persons who are deprived of their liberty and who can provide adequate information regarding the suspicion on violation of human rights by acting of the authority, institution or organization they are visiting.

#### Article 25d

Members of the working body and the independent experts from Article 25 paragraphs 2 and 3 of this Law shall be entitled to adequate remuneration for performed work.

The decision on the amount of remuneration referred to in paragraph 1 of this Article shall be issued by the Protector, in accordance with the regulation establishing the criteria for determining the remuneration for the work of the members of the working body or other forms of work.“

#### Article 11

In Article 27, paragraphs 1 and 3 shall be deleted.

#### Article 12

In Article 30, paragraph 1 the words „filed“, shall be replaced with the words: „may be filed“.

#### Article 13

In Article 35, paragraph 1 after the word „deadline“, shall be added the words: „for submitting a statement and required documentation referred to in paragraph 1 of this Article,“.

Paragraph 3 shall be amended to read as follows:

„If the statement referred to in paragraph 2 of this Article does not contain all the required information or if required documentation is not submitted, the head or the person managing the authority is obliged to submit amended statement and required documentation, on the request of the Protector.“

#### Article 14

Article 36 shall be amended so to read as follows:

„At the request of the Protector, the head or the person managing the authority shall:

- give access to all information under the jurisdiction of the authority he/she is managing, regardless of the degree of confidentiality;
- provide direct access to official records, documents and data, and deliver copies of requested records and documents;
- provide access to all premises.

The head, or the person managing the authority, institution or organization in which are detained persons deprived of their liberty or persons with restricted movement, is obliged to provide to the Protector and the Deputy Protector and the Advisor to the Protector and the

member of the working body referred to in Article 25, paragraph 2 of this Law, authorized by the Protector, the following:

- unrestricted access to the premises where persons deprived of their liberty and persons with restricted movement are placed;
- interviews with persons deprived of their liberty or persons with restricted movement, without the presence of an official;
- access to required documentation.“

### **Article 15**

After the Article 43 new Article shall be added and shall read as follows:

#### **„Article 43a**

On performed visit referred to in Article 25b, paragraph 1, item 1 of this Law, shall be prepared record, which shall be signed by the persons who participated in the visit.

Based on the record referred to in paragraph 1 of this Article, the Protector shall write a report on his findings, and shall submit it to the authority, institution or organization in which the visit was conducted.

When the Ombudsman finds out that torture or other cruel, inhuman or degrading treatment or punishment occurred, the report shall contain the opinion with the recommendation(s) or warning(s) to the authority, institution or organization in which the violation was found.

The report with the opinion and recommendation(s) or warning(s) referred to in paragraph 3 of this Article, the Protector shall submit to the authority, institution or organization in which the visit took place, as well as to the authority or the body responsible for supervising authority, institution or organization.

The head of the authority, institution or organization to which the recommendation or the warning referred to in paragraph 4 of this Article is sent shall, within a specified deadline set in the act of the Protector, take measures regarding the warning or the recommendation of the Protector and shall inform the Protector, without delay, about measures taken.

After receiving the information referred to in paragraph 5 of this Article the Protector can conduct a control visit to the authority, institution or organization, in which the case of torture or other cruel, inhuman or degrading treatment or punishment was determined.“

### **Article 16**

In Article 44, paragraph 1 after the words „may submit“, shall be added the words: „to the competent authority“.

In paragraph 2 the words: „and the Law on Prohibition of Discrimination“, shall be deleted.

### **Article 17**

Article 45 shall be amended to read as follows:

„The Protector, the Deputy Protector, as well as the Advisor to the Protector and the member of the working body referred to in Article 25, paragraph 2 of this Law are obliged to keep the personal data they have obtained in the performance of their work in accordance with the law governing the protection of personal data.

The obligation referred to in paragraph 1 of this Article, shall also apply after termination of office, employment or membership in the working body.“

### **Article 18**

Article 49 shall be amended to read as follows:

„The Protector shall be entitled to a salary, supplement to the function and other income in the amount specified for the President of the Constitutional Court.

The Deputy Protector is entitled to a salary, supplement to the function and other income in the amount specified for a judge of the Constitutional Court of Montenegro.“

### **Article 19**

Chapter **VIII** shall be amended to read as follows:

**„VIII Secretary General and Service of the Protector“**

Article 51 shall be amended to read as follows:

„ For performance of professional and other activities the Protector shall form the Service of the Protector (hereinafter referred to as: the Service).

Work of the Service shall be organized and coordinated by the Secretary General.“

### **Article 20**

After Article 51 three new Articles shall be added and shall read as follows:

„Article 51a

The Secretary General, in addition to tasks referred to in Article 51, paragraph 2 of this Law, shall: prepare draft acts governing certain issues referred to internal affairs and work of the Protector; chair the meetings of the Service; organize the work on drafting the annual and special reports; take care of exercise of the rights, obligations and responsibilities of employees arising from the work and based on the work; take care of the use of budgetary resources; organize and implement training and professional development of employees; implement the decisions and conclusions of the Protector; organize and carry on the co-operation of the Protector with the authorities and organizations in the country and abroad; as well as take care of the equipment and resources for the work of the Protector. The Secretary General shall perform other duties as assigned to him/her by the Protector.

The Secretary General shall be appointed by the Protector for a term of five years and may be re-appointed.



The Secretary-General is entitled to a salary in the amount specified for a Secretary General of the Constitutional Court of Montenegro.

For its work the Secretary General shall report to the Protector.

#### Article 51b

Professional activities within the competence of the Protector shall be performed by the Advisors to the Protector.

The Advisor the Protector may be a person who in addition to the general requirements established by the law, have a university degree, VIII level of education qualifications and a minimum of 10 or seven years of work experience.

The titles of the Advisor to the Protector shall be: Adviser to the Protector – Head and the Advisor to the Protector.

The Advisor to the Protector - Advisor to the Head, shall be entitled to the salary from the salary grade 3, and the Advisor to the Protector to the salary grade 4 and have the right to salary determined by the coefficient of that salary grades in accordance with the law regulating the salaries of civil servants and state employees.

The Act on internal organization and systematization of Service shall be issued by the Protector, with the previous opinion of the competent working body of the Parliament.

#### Article 51c

To carry out the professional duties, the Protector shall issue official identification document to the Advisors of the Protector.

The form and content of the official identification document shall be established by the state authority responsible for human and minority rights. “

### **Article 21**

Article 52 shall be amended to read as follows:

„On the rights, obligations and responsibilities of the employed persons in the Service, which are not regulated by this Law, shall apply the regulations on civil servants and state employees and general labor legislation.“

### **Article 22**

The Rules of Procedure of the Protector shall be harmonized within six months from the date of entry into force of this Law.

The acts referred to in Article 5 and Article 51c, paragraph 2 of this Law shall be adopted within six months from the date of entry into force of this Law.

### **Article 23**

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