



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Montenegro
Title:	Adopting the Law on Amendments to the Law on Minorities' Rights and Freedoms
Date:	30 October 2015
Expert:	Nenad Koprivica
Update of flash report nr:	N/a
<u>Context</u>	
Issue at stake:	The OSCE – ODIHR, within BPRI ¹ project, submitted recommendations to the Montenegrin Government regarding the politicisation of Minority Councils, who are in charge of the promotion and development of the rights of minorities and other minority ethnic groups and their members.
Ground of discrimination:	Ethnic origin
Source:	Legislation
Field:	Employment, Education
Applicable law:	Article 9 and 79 of the Constitution; Law on Minorities' Rights and Freedoms ("Official Gazette of Montenegro", no. 31/06, 38/07 and "Official Gazette", Nos. 2/11 and 8 / 11)

Content

Law development: In 2014 the Ministry for Human and Minority Rights started its work on amending the *Law on Minorities' Rights and Freedoms*, recognizing the Protector for Human Rights and Freedoms² opinion that work and functioning of minority councils in charge of minority rights' promotion and protection, are highly politicized. In this initiative the Protector proposed reviewing the provisions of Article 33 of the Law on minorities rights and freedoms, which relates to the composition and number of minority councils' members selected by default, giving priority to the political representatives of public authorities as opposed to the application of the general principle of free, transparent and direct elections, within the framework of national minorities and other minority communities. Despite the fact that a public hearing for amending the Law was held in the period of collective vacation during the summer 2014, a number of amendment proposals to the Draft Law (including those received from Minority Councils)

¹ This analysis was made for OSCE/ODIHR project "The best practice for Roma integration", as support for efforts of the Ministry of human and minority rights to prepare a new proposal for Rules for election of members of The councils of minority nations or other national minority communities, and also as a result of consultations with presidents of national minorities councils, with the representative of the Ministry for human and minority rights as well as with academic community representatives.

² The Protector of Human Rights in his 2013 Report elaborated that Minority Councils are highly politicized because of the fact that politicians are mainly the representatives in these bodies and adopt the final decisions. Therefore, on 16th May 2013 Protector submitted the initiative to the Government for the adoption of the Law on Amendments to the Law on Minority Rights and Freedoms.

were submitted to the Government. Key amendments concerned changing the election system of minority councils as well as the financing source in order to make them free from strong political influence.

The Ministry disregarded all interventions in this sense, including those ones from OSCE/ODIHR as well as the initiative of the Protector of Human Rights from 2013, and has proposed changing the Law only in the area of division of the funds for minorities, putting minority councils as well as representative bodies in the position to compete for funds with civil society organizations. The Government submitted the Bill of the Law to the Parliament in May 2015. At first, the Parliamentary Committee for the Human Rights and Freedoms refused to confirm this Law on the 23rd June and pushed the Parliament not to adopt it. But, on the other hand, the Bill of the Law was confirmed by Parliamentary Legislative Committee and sent to the Parliament. At the parliament discussion, minority parties as well as representatives of some opposition political parties stated that they are against of the adoption of the Law proposal, expressing the concern that the Law cannot be amended without any comprehensive analysis of the current situation and clearly defining the position, way to elect and mandate of minority councils as well as clarification of the work of the Fund for minorities and its members, excluding any possibility of conflict of interest. Additionally, recommendations and interventions on the Draft of the Law, including those that were injected during the public hearing, should also be taken into consideration. However, the Law has still not been adopted in the Parliament and there is no information about the continuation of the legal procedure on its adoption.

Key points of analysis:

- The Protector of Human Rights in his 2013 report elaborated that Minority Councils are highly politicized and address the initiative for the adoption of the Law on Amendments to the Law on Minority Rights and Freedoms.
- Practice indicates that job applications of minority members without certain political affiliation or political background to any position in government, local government or any other institutions are condemned to failure. Additionally, considering that Minority Councils are mandated to suggest enrolment of certain number of students at the University of Montenegro, politicisation of councils' decisions and discrimination against students might be possible in that field.
- The existing Law on Minorities' Rights and Freedoms is discriminatory especially because of the fact that, in practice, the Law produces the situation in which members of minorities which are not members of minority or civic political parties are discriminated regarding affirmative action in high education and employment in the state and local authorities and institutions.
- The amendment of the Law on Minority Rights and Freedoms must provide the de-politicisation of the work and functioning of the Minority Councils as well as eliminating the conflict of interests of their members, in order to enable implementing the principle of equal treatment between persons irrespective of their political affiliation and racial or ethnic origin.

Internet link source: <http://skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/843/880-5256-23-3-15-7.PDF> Last accessed 26/10/2015.