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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**

**ON AMENDING THE LAW ON MEDIA**

**OF MONTENEGRO**

**DRAFT LAW**  
**AMENDING THE LAW ON MEDIA**

*(„Off.publication RCG" no. 51/02, 62/02, no 46/10, 73/10 and 40/11)*

**Article 1**

In Law on media („Off.publication RCG" no. 51/02, 62/02, no 46/10, 73/10 and 40/11) article 11 is amended as it follows:

“On the basis of the State Attorney’s proposal, the competent court may ban the distribution of the publicized media programming that invites forceful destruction of the constitutional system, infringement of the territorial integrity of the state, violates public moral or breaches guaranteed freedoms and rights of citizens or promotes racial, ethnic or religious hate or discrimination, while in the case of repetition of the same offence the Court may temporarily ban distribution of this media i.e. broadcasting. “

**Article 2**

In Law on media („Off.publication RCG" no. 51/02, 62/02, no 46/10, 73/10 and 40/11) in article 12, after paragraph 3 is added new paragraph 4 as it follows:

“In the decision from the paragraph 3, the Court will warn the media that further violation of the Law on media may result in ban of distribution of the media i.e. broadcasting”

**Article 3**

In Law on media („Off.publication RCG" no. 51/02, 62/02, no 46/10, 73/10 and 40/11) after article 16 are added two new articles 16a and 16b:

*“Article 16a”*

If the media house whose publicized programming distribution was prohibited by the court, after the courts prohibition, continues with publicizing the same or other programming by which it incites forceful abolishment of the constitutionally established order, infringement of territorial integrity of the state of Montenegro, violates public moral or breaches guaranteed freedoms and rights of citizens or promotes racial, ethnic or religious hate or discrimination, at the proposal of the state prosecutor, the responsible court may temporarily – until the final decision in this matter, prohibit distribution of this media i.e. broadcasting.

In the case referred to in Paragraph 1 of this Article, the state prosecutor shall, apart from submitting a proposal to the responsible court for temporarily media distribution ban i.e. broadcasting, immediately upon learning that this media published again program contents prohibited by the court or other program contents that incites forceful abolishment of the constitutionally established order, infringement of territorial integrity of the state of Montenegro, violates public moral or breaches guaranteed freedoms and rights of citizens or promotes racial, ethnic or religious hate or discrimination, also submit a proposal for adequate fine to the media, or the owner, and to editor in chief of corresponding media.

The prohibition from the paragraph 1 of this article refers only to the media responsible for violation of the Law.

*“Article 16b”*

The ban procedure from articles 12 – 16 of this Law will be applicable to the procedure with regard to article 16a.

**Article 4**

In the same Law, after article 45 is added new article 45a:

*“Article 45a*

A fine of 5,000 to 10,000 euros, shall be adjudicated to corresponding media, or to the owner, while a fine of 1,000 to 5,000 euros shall be adjudicated to responsible editor in chief of the media, which despite the courts prohibition of distribution of certain program content, continues with publicizing the same or other programming by which it incites forceful abolishment of the constitutionally established order, infringement of territorial integrity of the state of Montenegro, violates public moral or breaches guaranteed freedoms and rights of citizens or promotes racial, ethnic or religious hate or discrimination”

**Article 5**

This Law enters into force on the day of its publication in Official Gazzette.

## EXPLANATORY NOTE

### Constitutional ground

Constitutional ground for adoption of this Law is incorporated in article 47 paragraph 2 and article 50 paragraph 2.

“The right to freedom of expression may be limited only with the right on dignity , reputation and honor of the others, or if the public moral or security is jeopardized”, as stipulated in Article 47 of the Constitution of Montenegro.

“The competent court may prevent dissemination of information and ideas via the public media if it is needed for prevention of: incitement for forceful abolishment of the constitutionally established order, infringement of territorial integrity of the state of Montenegro, promoting the violence, war and incitement to committing crimes, promoting racial, ethnic or religious hate or discrimination”, as stipulated in Article 50 of the Constitution of Montenegro.

Constitutionally established order, territorial integrity of the state, prevention of promoting racial, ethnic or religious hate or discrimination are the Constitutional values which, according to article 50 of the Constitution, may be the basis for competent court to “prevent dissemination of information and ideas via public information medium”.

Public moral represents a value the violation of which by the media results in negative consequences for the wider society and disturbs a significant part or the overall public; thus, it may have a potential impact on all – erga omnes. Public moral as a constitutional value is defined in Article 47 of the Constitution of Montenegro as a basis for limitation of freedom of expression, thus, the proposed solution in the Law Proposal is fully compatible with the Constitution.

### Reasons for adoption of the Law

Current untamed behavior of a certain public information medium endangers national and religious harmony and public moral in Montenegro, in a repeated and continuous manner. Inability of the Court to stop this with its decisions turns into undermining of reputation of the overall judiciary, due to the lack of adequate legal grounds for ban.

The proposed Draft should eliminate existing legal loopholes, as well as to stipulate the procedure before competent authorities in the cases of severe abuses and repetitions, as well as systematic publishing of program content aiming at violating public moral, incitement to forceful abolishment of the constitutionally established order, infringement of territorial integrity of the state of Montenegro, breaching of guaranteed freedoms and rights of citizens or promoting racial, ethnic or religious hate or discrimination.

It is also stipulated that the article 11 should be changed in order to make it in accordance with proposed article 16a.

The state Attorney is obliged, according to this Draft, to introduce the financial fine to media or to its owner, which request will be submitted along with the request for temporarily ban of distribution i.e. broadcasting.

## European legislation

Also, according to the standings of the European court for human rights, protection of the right to expression does not cover speech of hatred (case „*Féret s. Belgium*“, application no. 15615/07, from July 16th 2009) or advocating antidemocratic standings (case „*Refah Partisi and other vs. Turkey*“, applications no. 41340/98, 41342/98, 41343/98 i 41344/98, from February 13th 2003).

Also, the standing of the European court is that “effective prevention of major fouls, where fundamental values and basic private life aspects are endangered, demands effective penal law provisions” (case “*K.U. vs. Finland*” application no. 2872/02, from December 2<sup>nd</sup> 2008).

The court in Strasbourg considers that the state, for the purpose of moral protection, has the right to prohibit publication of program contents that has no intellectual or artistic substance (verdict “*Handyside vs. United Kingdom*” from December 7th 1976, Series A, no. 24).

Next, it is legitimate and granted to limit the expansion of ideas that stimulate hatred and discrimination, so the freedom of expression cannot be used in any way that would lead toward annihilation of rights and freedoms, granted by the European convention (case “*Kühnen vs. Federal Republic of Germany*”, 1988; “*D.I. vs. Germany*”, 1996).