

PROPOSAL

THE LAW AMENDING THE LAW ON FOREIGNERS

Article 1

In the Law on foreigners («Official Gazette of Montenegro», number 82/08), after the Article 105, three new articles shall be added and shall read as follows:

Article 105 a

Those displaced persons from the former Yugoslav Republics who have temporarily continue to hold a displaced person status on the grounds of the Decision allowing a temporarily holding of a status of displaced or internally displaced persons in the Republic of Montenegro («Official Gazette of the Republic of Montenegro», number 46/06), may be granted a permanent residence if, on the day of entering into force of this law, such individuals have been registered as displaced persons, as evidenced on the grounds of the certificate issued by the Asylum Office.

The permanent residence may also be granted to internally displaced persons from Kosovo, who have temporarily continue to hold a status of internally displaced person on the grounds of a Decision referred to in paragraph 1 of this Article, if they report themselves for registering before a competent authority in charge of taking care of refugees, not later than 14 November 2009, which is evidenced by the appropriate certificate issued on behalf of such authority.

Internally displaced persons who for health reasons do not report themselves for registering, which might be evidenced by the appropriate medical certificate issued on behalf of public health institute may report themselves for registering not later than three months upon expiration of the deadline referred to in paragraph 2 of this Article.

When deciding on granting a permanent residence to individuals referred to in paragraphs 1, 2 and 3 of this Article, provisions of the Article 57, paragraph 1, items 3, 4 and 5 of this Law, shall not apply.

Individuals referred to in paragraph 1 and 2 of this Article, who do not hold a valid travel document needed for obtaining the right to permanent residence, but there are no obstacles as stipulated in Article 57, paragraph 1, items 2 and 6 of this Law, shall be granted a temporary residence until they provide a valid travel document, but not longer than three years as of the date such temporary residence has been granted.

Individuals referred to in paragraph 5 of this Article shall have all the rights and obligations as a foreign individual who enjoys a permanent residence, all in accordance with this Law.

Article 105b

Individuals referred to in Article 105 a, paragraphs 1 and 2 of this Law, may submit an application for granting a permanent residence status, within two years as of the date of entry into force of this Law.

Article 105c

With respect to individuals referred to in Article 105a of this Law, who have been granted a permanent residence, their refugee status or status of displaced persons shall cease.

Those individuals, who fail to meet criteria for obtaining a permanent residence status in line with Article 105a of this Law, shall be considered as individuals unlawfully residing in Montenegro.

Article 2

This Law shall enter into force eight days following its publication in the "Official Gazette of Montenegro"

ELABORATION

I CONSTITUTIONAL FRAMEWORK FOR PASSING THE LAW

Constitutional framework for passing the Law amending the Law on Foreigners is provided for in the Article 16, item 5 of the Constitution of Montenegro, which stipulates that the law shall regulate other issues that are of interest for Montenegro.

II REASONS FOR PASSING THE LAW

According to the Decision on temporary remaining of the status and rights of DPS and IDPS in the Republic of Montenegro ("Official Gazette of the Republic of Montenegro", Nr.46/06) is regulated that DPS from ex Yugoslav Republics whose status is established based upon Regulation on taking Care on Displaced Persons ("Official Gazette of the Republic of Montenegro", Nr.37/92) and IDPS from Kosovo whose status is regulated by the Commissariat for Displaced persons of the Government of the Republic of Montenegro shall temporarily retain the status and rights in the Republic of Montenegro which they had on the day of 3 June 2006.

Also, according to this decision is regulated that status of such persons shall be solved pursuant to the laws regulating the issue of asylum and aliens.

By adopting of this Law, conditions for a sustainable solution for status of displaced persons from former Yugoslav Republics and internally displaced persons from Kosovo, including their access to identification documents, shall be established.

III HARMONISATION WITH EUROPEAN LEGISLATION

Provisions of the Law on Foreigners pertaining to permanent residence are in line with the Council Directive 2003/109/EZ, dating 25 November 2003, which prescribes conditions for granting and conditions for cessation of a permanent residence status, as well as the rights deriving from such status. The core solution existing in the Law allows this right to be recognized to those foreigners who continuously reside in Montenegro for five years, on the grounds of granted temporary residence. Proposed solutions which exist in the amendments are not in breach of the abovementioned Directive.

IV EXPLANATION OF THE BASIC LEGAL INSTITUTES

Proposal of the Law amending the Law on Foreigners regulates the special cases of granting the right to permanent residence, by recognizing such right to refugees from former Yugoslav Republics and to internally displaced persons from Kosovo, who reside in Montenegro for a significant period of time.

Conditions which should be fulfilled by the abovementioned categories of individuals relate to the certificate of their legal status in Montenegro (refugee card, i.e. internally displaced person card), issued by the competent authorities (Ministry of Interior Affairs, Republic of Montenegro Commissariat for Displaced Persons), the evidence on submitted application for reviewing a refugee status until 14 November 2009, , valid travel document, evidence that person has not been convicted with a final verdict for criminal offence prosecuted ex officio, nor the process is initiated against that person for such criminal offence, i.e. that recognizing this status is not in contrast with interest of national security and public order.

Provisions of Proposal of the Law, stipulate that those categories of individuals, who can not provide a valid travel document necessary for obtaining the right to permanent residence, shall be granted a temporary residence for a period of three years, leaving such individual a possibility to obtain a valid travel document from his country of origin. Within this transitional period, e.g. during the temporary residence, until the right to permanent residence is recognized, these categories of individuals shall enjoy the same rights as those individuals who have been recognized a status of foreigners holding a permanent residence, as stipulated in the Article 55 of the Law on Foreigners, namely: work and employment; education and professional training; recognition of diplomas and certificates; social care, health and pension insurance; tax relief; access to market of goods and services, as well as freedom of association, affiliation and obtaining a membership in organizations which represent interests of workers and employers. The aforementioned rights are subject to the laws regulating the manner of enjoying such rights.

It should be emphasized that in accordance with the Article 86, paragraph 1 and Article 89, paragraph 3 of this Law, individuals who have been granted a temporary residence and who do not hold a valid travel document, shall be issued a identity card for foreigners with validity period equivalent to the period for which the temporary residence is being granted.

By recognising the right to permanent residence to displaced persons and internally displaced persons shall cease the status of displaced, or internally displaced person in Montenegro. Also, such right shall cease to persons who have not used this rights pursuant to the new law regulations.

V FINANCIAL ESTIMATION

For implementation of this Law it will be necessary to provide financial resources in the same amount as previously provided in the Budget of Montenegro for taking care of refugees and internally displaced persons.

VI REASONS FOR ADOPTING OF THE LAW ACCORDING TO SUMMARY PROCEEDINGS

Adopting of this Law is one of remaining obligations in fulfilling of remaining obligations according to the Road Map for Liberalization of Visa Regime

** *_ *_*

EXCERPT FROM THE LAW ON FOREIGNERS («Official Gazette of Montenegro», no. 82/08) WHICH SHALL BE AMENDED:

CHAPTER IV RESIDENCE OF FOREIGNERS, SUB - CHAPTER 3.) Permanent residence

The right to permanent residence

Article 54

Citizens of states that have emerged on the territory of former Socialistic Federal Republic of Yugoslavia, who had their registered residence in Montenegro before June 3, 2006, shall have the right to permanent residence without submitting an application and without any special approval, subject to submitting the application for registration.

Permanent residence may be granted to a foreigner who has been residing in Montenegro on the grounds of temporary residence permit for five years continuously, prior to submitting the application.

Exceptionally, permanent residence may be granted to a foreigner who has been residing in Montenegro on the grounds of temporary residence permit for less than five years prior submitting the application, if it complies with the reasons of humanity or if it will be of interest for Montenegro.

Continuous residence, in terms of paragraphs 1 and 2 of this Article, is also considered a temporary residence for a time period for which a foreigner has been absent from Montenegro several times for a total period of 10 months or for six months continuously.

To a foreigner who has been granted a temporary residence in Montenegro in accordance with Article 43 of this Law, half of the time spent in Montenegro shall be calculated in the time period necessary for granting a permanent residence.

Time period necessary for granting a permanent residence shall not encompass the time that foreign individual has spent in Montenegro:

- 1) During a stay for purposes of undertaking a seasonal work;*
- 2) Serving a prison sentence.*

Rights and obligations of a foreigner with permanent residence

Article 55

A foreigner who has been granted a permanent residence in Montenegro shall have the right to:

- 1) work and employment;*
- 2) education and professional training;*
- 3) recognition of diplomas and certificates;*
- 4) social care, health and pension insurance;*
- 5) tax relief;*
- 6) access to market of goods and services;*
- 7) freedom of association, affiliation and obtaining a membership in organizations which represent interests of workers and employers.*

A foreigner shall enjoy the rights stipulated in paragraph 1 of this Article, in accordance with laws regulating the manner of enjoying the aforementioned rights.

Submitting the application and passing a decision

Article 56

Approval for permanent residence shall be granted by the Ministry. The application for permanent residence shall be submitted by a foreigner to the Ministry, in a place of his residence.

Approval for permanent residence shall be entered into a travel document belonging to a foreigner.

The manner of issuing the approval for permanent residence, as well as the form of the approval and the form of the application referred to

in paragraph 2 of this Article shall be regulated in more details by the Ministry.

Rejecting the application

Article 57

Permanent residence shall not be granted to a foreigner:

- 1) Who does not hold a valid travel document;*
- 2) Who has been convicted with final verdict for criminal offence prosecuted ex officio or the criminal procedure is initiated against a foreigner for such criminal offence;*
- 3) Who has no means for living;*
- 4) Who has no health insurance;*
- 5) Who has no accommodation provided;*
- 6) For reasons of national security or public order.*

Administrative procedure may be initiated against a decision of the Ministry rejecting the application for permanent residence.

Denunciation of permanent residence

Article 58

Permanent residence may be denounced to a foreigner, if:

- 1) He has been convicted in Montenegro with final verdict to a prison sentence of more than six months for committing a criminal offence prosecuted ex officio;*
- 2) Reasons of national security, public order or protection of public health requests so;*
- 3) It is established that the reasons for denouncing permanent residence exist;*
- 4) He has provided false information regarding his identity or has hide circumstances that are of great importance for passing a decision on granting the right to permanent residence.*

When deciding on denunciation of permanent residence, circumstances stipulated in the Article 52, paragraph 2 of this Law shall be taken into account.

Certificate on denouncing a permanent residence shall be passed by the Ministry. Certificate shall stipulate a date by which a foreign individual is obligated to leave the territory of Montenegro and a prohibition of entry into Montenegro.

Period of prohibition of entry stipulated in paragraph 3 of this article shall be counted as of the day of leaving from the territory of Montenegro.

Administrative procedure may be initiated against a decision referred to in paragraph 3 of his Article.

Denunciation of permanent residence and prohibition of entry shall be entered into a travel document belonging to a foreigner.

More details related to inscription of denunciation of permanent residence and inscription of prohibition of entry into a travel document are regulated by the Ministry.

Cessation of the right to permanent residence

Article 59

The right to permanent residence shall cease to a foreigner, if:

- 1) He has been issued a protective measure of alienating or security measure of deportation;*
- 2) It is determined that a foreigner has moved out of Montenegro or has been continuously residing for more than one year in another state, without notifying the Ministry;*
- 3) Permanent residence has been denounced;*
- 4) He has relinquish a permanent residence, on the date of giving a statement thereof;*
- 5) He has been granted Montenegrin citizenship.*

Certificate on cessation of permanent residence referred to in paragraph 1, item 2 of his article, shall be passed by the Ministry.

Administrative procedure may be initiated against a decision referred to in paragraph 2 of this Article.

Application of a special law

Article 60

Special law regulating temporary stay and permanent residence of Montenegrin citizens and foreigner shall be applicable to issues of reporting temporary stay or permanent residence or termination of temporary stay or permanent residence and change of the address of living.

- *** -