



MONTENEGRO SUPREME COURT

I Su no. 124/19-IV

Podgorica, 27 June 2019

In accordance with Article 25, point 1 and Article 38 par. 1 of the Law on Courts ("Official Gazette of Montenegro", no. 11/2015), the General Session of the Supreme Court of Montenegro, at the sitting held on 27 June 2019 determined the following

LEGAL POSITION OF PRINCIPLE

Decision of the Parliament of Montenegro on election, appointment or dismissal of the public official cannot be contested (challenged) in an administrative dispute or in a litigation, except in cases where it is explicitly prescribed by law.

Rationale

Article 82 point 12, 13 and 14 of the Constitution of Montenegro stipulates that the Parliament of Montenegro:

- elects and dismisses the Prime Minister and members of the Government (point 12);
- elects and dismisses judges of the Constitutional Court, the Supreme State Prosecutor and four members of the Judicial Council of distinguished lawyers (point 13);
- appoints and dismisses: Ombudsman, Governor of Central bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State audit institution, and other office-holders determined by law (point 14).

The Law on Administrative Disputes excludes the conducting of an administrative dispute against decisions of the Parliament of Montenegro which are delivered directly on the basis of its constitutional powers (Article 13, par. 1, point 2 of the Law

on Administrative Disputes), therefore, they cannot be challenged in the administrative dispute.

As the law explicitly excludes conducting an administrative dispute, so the aforementioned decisions cannot be litigated either.

A different conclusion from the above cannot be deduced from the provision of Article 14 of the Law on Courts, because that provision prescribes the jurisdiction of the basic court "if the law does not prescribe the jurisdiction of another court." However, in a situation where there is excluded jurisdiction of a court, which under the general regulations would be competent, the said provisions of the Law on Courts cannot lead to the conclusion that some other court is competent.

The exception to the above mentioned, exists only in a situation where the special law explicitly prescribes right to judicial protection.

Eventual unlawful dismissal may result in damage to a public official (Article 166 of the Law on Obligations). In that situation, the subject of the dispute is material or non-pecuniary damages, whereby the basic court has jurisdiction to adjudicate disputes of property nature. In that procedure, as a preliminary question would be addressed the question of the legality of dismissal.

PRESIDENT OF THE COURT
Vesna Medenica