



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

### **NEWS REPORT**

<b>Country:</b>	Montenegro
<b>Title:</b>	Adopting the new Law on Prohibition Against Discrimination of Persons with Disabilities
<b>Date:</b>	20 August 2015
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	In order to harmonise national legislation with international documents (primarily with United Nations Convention on the Rights of Persons with disabilities and the Optional Protocol to the Convention) as well as to improve anti-discriminatory legal framework on protection of persons with disabilities, Montenegrin Parliament adopted the new Law on Prohibition Against Discrimination of Persons with Disabilities on 26 June 2015.
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	Legislation
<b>Field:</b>	Employment, social protection, social advantages, access to goods and services, education, housing
<b>Applicable law:</b>	Article 9 of the Constitution provides that "ratified and published international agreements and generally accepted rules of international law shall make an integral part of the national legal order, have the supremacy over the national legislation and be directly applicable when they regulate the relations differently from domestic legislation. Thus, the Law on Prohibition Against Discrimination of Persons with Disabilities must be primarily harmonized with UN Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention

### **Content**

**Law development:** One of the main reasons for the adoption of the new Law on Prohibition against Discrimination of Persons with Disabilities (LPADPD) is the harmonization of national legislation with international documents on human rights, especially with the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.<sup>1</sup> Taking into consideration the request of non-governmental organizations dealing with the protection of rights of persons with

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<sup>1</sup> Montenegro signed and ratified UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention. Convention and Optional Protocol to the Convention were signed in December, 2006 and ratified in November 2009.

disabilities that the Ministry for Human and Minority Rights should be competent for preparing the new Law, the Ministry started with Law development during 2014. After consultations with non-governmental organizations, a draft version of the Law was prepared and the Bill on the LPADPD was adopted by the Government on 4 June 2015 and sent to the Parliament. The Parliament of Montenegro adopted the LPADPD during its regular session on 26 June. The Law was then published in the Official Gazette (No. 35/15) and entered into force on 14 July.

The key changes in the Law are related to improving certain definitions and terminology on discrimination of persons with disabilities as well as providing stronger accountability of the perpetrators of discriminatory acts against persons with disabilities before judicial authorities. In Article 4 of the LPADPD, definitions of direct and indirect discrimination on the basis of disability are harmonized with the definition prescribed by the Law on Prohibition of Discrimination (Official Gazette of Montenegro, No. 18/14). The new Law also provides new forms of discrimination on the ground of disability, such as: calling, supporting, abetting somebody to discriminate (incitement), giving instructions, and announcing the possibility that a disabled person or group of persons with disabilities shall be discriminated. The Law also provides that, the consent of a person with disabilities to accept to be discriminated does not relieve the person who discriminates of liability. The new Law prescribes the concept of misdemeanour protection. The old LPADPD did not provide sanctions and criminal provisions for acts of discrimination, fact that was especially stressed by many domestic experts, civil society and international organizations. Article 28 of the new LPADPD prescribes the sanctions for committed discrimination. These legal solutions prescribe new forms of discrimination such as discrimination against a group of persons with disabilities that are in the same situation and discriminated by one person, discrimination against persons with disabilities who are in different situations and discriminated by one person as well as belittling and insulting persons with disabilities. In this way, the scope and level of protection of a person or group of persons with disabilities will be raised to a higher level.

**Key points of analysis:** One of the measures defined under the Action Plan for Negotiation Chapter 23<sup>2</sup> was aimed at improving the legal framework on the prohibition against discrimination of persons with disabilities. According to this measure, the new LPADPD incorporated certain definitions and terminology on discrimination of persons with disabilities harmonized with international documents, as well as provisions providing stronger accountability regarding the perpetrators of discriminatory acts against persons with disabilities before judicial authorities.

**Internet link source:** Law on Prohibition Against Discrimination of Persons with Disabilities, Official Gazette of Montenegro, No. 35/15; web link: [http://www.skupstina.me/~skupcg/skupstina/cms/site\\_data/DOC25/ZAKONI%20I%20IZ%20VJESTAJI/844/844\\_0.PDF](http://www.skupstina.me/~skupcg/skupstina/cms/site_data/DOC25/ZAKONI%20I%20IZ%20VJESTAJI/844/844_0.PDF) Last accessed 31 July 2015

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<sup>2</sup> Action plans for Chapters 23 and 24 are very important strategic reform-oriented documents providing an overview of Montenegro's future activities in meeting EU accession commitments in the areas of judiciary, fundamental rights, justice, freedom and security, which have been labelled the most important areas of the EU *acquis communautaire* for accession countries.