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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Montenegro

Ivana Jelić

Reporting period 1 January 2014 – 1 July 2015

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1. Introduction

1.1 Basic structure of the national legal system

Montenegro is a constitutional parliamentary democracy, with a multi-party system. According to its Constitution, Montenegro is an independent and sovereign state, with a republican form of government, as well as a civil, democratic, ecological and social justice-based state, which adheres to the rule of law.¹

Montenegro had been a federal unit of the Socialist Federal Republic of Yugoslavia (SFRY) until the 1990s. Thereafter, it was one of the two republics of the Federal Republic of Yugoslavia (FRY) until 2003, when the State Union of Serbia and Montenegro was established as a result of the redefinition of the relationship between the Republic of Serbia and the Republic of Montenegro. Finally, Montenegro regained its independence after a referendum held on 21 May 2006 and the Parliament of Montenegro declared Montenegro to be an independent and sovereign state on 3 June 2006.² Its independence was recognized by the UN on 28 June 2006. After independence the official name is Montenegro (and not the Republic of Montenegro, as it used to be while it was a federal republic).

Ratified international legal instruments form an integral part of the Montenegrin internal legal system and they have supremacy over national legislation in the case of a difference in regulating relations, according to Article 9 of the Constitution.³ Montenegro has ratified all relevant international legal instruments concerning anti-discrimination and gender equality, which have become applicable in the state.

Montenegro is a candidate country for membership of the EU⁴ and is in the process of harmonizing its legal system with European standards.

The court system is regulated by the Constitution and the Law on the Courts.⁵ According to the Law, the court is a state organ with judicial competence.

Articles 14 and 15 of the Law on the Courts stipulates that the court system in Montenegro consists of 15 basic courts located in 15 municipalities (Ulcinj, Herceg Novi, Kotor, Plav, Rožaje, Cetinje, Bar, Bijelo Polje, Kolašin, Berane, Nikšić, Žabljak, Pljevlja, Podgorica and Danilovgrad), two High Courts located in Bijelo Polje (which is competent in the areas covered by the basic courts of Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje) and Podgorica (which is competent for the areas covered by the basic courts of Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi and Cetinje), as well as the Commercial Courts of Montenegro which are located in Bijelo

¹ According to the Constitution of Montenegro 2007 Article 1 par. 2. Available at <http://www.unhcr.org/refworld/type,LEGISLATION,,MNEe11b0c2,0.html>, <http://www.skupstina.me/images/dokumenti/ustav-crne-gore.pdf>

² The referendum on the independence of Montenegro was held on 21 May 2006 and the results demonstrated that more than 55 % of the whole population wanted to live in an independent state. The Declaration of Independence was adopted by the Parliament of Montenegro on 3 June 2006. Montenegro became a member state of the United Nations on 28 June 2006. Montenegro is candidate state for membership of the European Union (see footnote no. 4).

³ Article 9 of the 2007 Constitution: 'The ratified and published international agreements and generally accepted rules of international law shall form an integral part of the internal legal order, shall have supremacy over national legislation and shall apply directly when they regulate relations differently than the national legislation.'

⁴ In 2010, the Commission issued a [favourable opinion on Montenegro's application](http://ec.europa.eu/enlargement/countries/detailed-country-information/montenegro/index_en.htm). In December 2011, the Council launched the accession process with a view to opening negotiations in June 2012. The accession negotiations with Montenegro started on 29 June 2012. More at http://ec.europa.eu/enlargement/countries/detailed-country-information/montenegro/index_en.htm

⁵ Law on the Courts, *Official Gazette of the Republic of Montenegro*, Nos. 5/2002, 49/2004, 22/2008, 39/2011, 46/2013 and 48/2013.

Polje and Podgorica, the Appellate Court of Montenegro located in Podgorica, the Administrative Court of Montenegro located in Podgorica, and the Supreme Court which sits in Podgorica.⁶

Also, there is a Constitutional Court of Montenegro which protects constitutionality and legality (Constitution Articles 149-154).

The Judicial Council⁷ is an independent and autonomous judicial body which is constitutional (Constitution Articles 126, 127 and 128)⁸ Its responsibilities are to: 1) elect and dismiss judges, the president of a court and lay judges; 2) establish the cessation of judicial duties; 3) determine the number of judges and lay judges in a court; 4) deliberate on the activity report of the court, as well as applications and complaints regarding the work of the courts and to take a standpoint with regard thereto; 5) decide on the immunity of a judge; 6) propose to the Government the amount of funds for the work of the courts; 7) perform other duties stipulated by the law. It works according to the Law on the Judicial Council and Judges,⁹ which regulates the manner of appointing and dismissing members of the Judicial Council, the organization and working methods of the Judicial Council, the procedure for the appointment of judges and lay judges, certain rights and duties, the means of determining that a judicial office should be terminated, the disciplinary liability and dismissal of judges and lay judges and other issues decided upon by the Judicial Council.

1.2 List of main legislation transposing and implementing Directives

The Law on Gender Equality (LGE)¹⁰ was adopted and entered into force in July 2007. The Law was last amended in July 2015. It stipulates equality between women and men in all areas of public and private life, as well as an equal opportunities policy. The amendment in the form of the Law on Amendments to the Law on Gender Equality was adopted by Parliament on 26 June 2015. The law extended the scope of the sanctions concerning discrimination based on sex and a violation of the principle of the equal treatment of men and women in certain spheres of life, including discrimination against women due to pregnancy.

The law has now been harmonized with the Law on the Prohibition of Discrimination, the Law on the Protector of Human Rights and Freedoms, as well as the EU *acquis*. This primarily concerns the harmonization of definitions of discrimination based on sex with the definitions of direct and indirect discrimination in line with EU standards.

The law complies with ratified international treaties and other documents adopted under the auspices of the UN, the EU and the Council of Europe and particularly with the following EU Directives: Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

⁶ <http://en.sudovi.me>.

⁷ <http://sudovi.me/sscg/sudski-savjet/propisi/>.

⁸ Article 126 of the Constitution reads: 'The Judicial Council shall be an autonomous and independent authority that ensures the autonomy and independence of the courts and the judges.'

⁹ Official Gazette of Montenegro, No. 28/15. Available at <http://sudovi.me/podaci/sscg/dokumenta/2437.pdf>.

¹⁰ Law on Gender Equality, Official Gazette of Montenegro", Nos 46/07, 73/10, 40/11, 35/15.

The Law on the Prohibition of Discrimination (LPD) was adopted on 27 July 2010, establishing comprehensive systemic legal protection from discrimination in Montenegro.¹¹ It was amended on 26 March 2014,¹² after which the law is now applicable in the public and private sector (as emphasized in Article 3, par. 2). Among other grounds, the Law prohibits discrimination based on gender, gender identity, sexual orientation, marital and family status. It contains a special provision concerning discrimination based on gender identity and sexual orientation (Article 19). The law stipulates that multiple discrimination is one of the aggravated forms of discrimination, based on two or more of the above-mentioned grounds of discrimination. The definition of discrimination is laid down in Article 2 (2) as 'any unwarranted, legal or factual, direct or indirect discrimination or unequal treatment, or the omission of such treatment ... as well as an exclusion, restriction or preference' based on the discriminatory grounds listed. The right to protection from discrimination belongs to all natural and legal persons to whom the Montenegrin legislation applies. The law includes special forms of discrimination, such as: harassment and sexual harassment, segregation, hate speech, discrimination in the use of premises and spaces in public usage, discrimination in the provision of public services, discrimination in the sphere of labour, discrimination in the sphere of education and professional training, etc.

The Labour Law¹³ was adopted in 2008, and was amended several times in 2009, 2011, 2012 and 2014. It includes the prohibition of discrimination, both direct and indirect, towards persons seeking employment and employees. It actually crystalizes the general anti-discrimination provisions stipulated in the LPD, and in its Article 7 it includes the prohibition of discrimination with regard to: employment conditions and the selection of candidates for a specific job; working conditions and all rights arising from employment; education, training and development; promotion; and the termination of employment. Also, it is stipulated that the provisions of a labour contract which define discrimination in contradiction with the discriminatory grounds under the law (among which are: gender, pregnancy, marital status, family obligations and sexual orientation) are null and void. In Article 10 the Law entitles persons seeking employment and employees to initiate a lawsuit based on the anti-discrimination provisions in the law. In addition, the Law guarantees an equal salary for a man and a woman for the same work (Article 77 (2)). The Labour Law has still not been harmonized with relevant EU directives, and therefore the Government of Montenegro has decided to adopt a new law at the latest in 2017. Thus, the drafting of a new Labour Law is currently in progress.

The Law on Social and Child Protection¹⁴ was adopted in 2013 and was amended on several occasions in 2015. It prescribes the rights related to social and child protection, as well as the conditions for their realization. It defines social and child protection as being activities in the public interest to be realized at the state and local level. Among the aims of the Law, those related to gender equality are the protection of: pregnant women and girls without family support and adequate living conditions; persons who are victims of neglect, abuse, exploitation and family violence or persons who are in danger thereof; victims of human trafficking; and single parents with a child without family support and adequate living conditions. Article 7 contains principles of social and child protection among which is the prohibition of discrimination against beneficiaries of social and child protection based, *inter alia*, on their sex or sexual orientation. The latest

¹¹ Law on the Prohibition of Discrimination, *Official Gazette of Montenegro*, No. 46/2010. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86176/97053/F1577504685/Zakon%20o%20zabrani%20diskriminacije.pdf>.

¹² *The Official Gazette of Montenegro*, No. 18/2014. Available at: http://www.ombudsman.co.me/docs/izvjestaji/2014_Zakon_o_zabrani_diskriminacije.pdf.

¹³ Labour Law, *Official Gazette of Montenegro*, Nos 49/2008, 26/2009, 59/2011, 66/2012 and 31/2014.

¹⁴ Law on Social and Child Protection, *Official Gazette of Montenegro*, Nos 27/2013, 1/2015, 42/2015, 47/2015.

amendment to the Law, adopted in July 2015, establishes a fee to be paid to mothers based on the birth of three or more children.

The Law on Health Care¹⁵ was adopted in 2004 and subsequently amended in 2010 and 2015. The Law regulates the healthcare system, as well as the realization of health protection, healthcare services, the rights and obligations of patients, etc. Article 2 of the Law stipulates that one of the objectives is to provide for the availability of healthcare subject to *equal* conditions for all citizens of Montenegro. Article 10(7) regulates special healthcare protection for women in relation to family planning, pregnancy, giving birth and motherhood, as one of the priority measures of healthcare. Since there is a need for harmonization with EU standards the new Law is supposed to be adopted and should enter into force by the beginning of 2016.

The Law on Health Insurance¹⁶ was adopted in 2004 and amended in 2012. It stipulates that health insurance is compulsory for insured persons and other citizens, that there is stable financing for this compulsory health insurance and additional health insurance is introduced. The main principles of the Law are solidarity and reciprocity which relate to all citizens and other persons who have the right to health insurance according to the Law. Article 17(2) guarantees special care for women during pregnancy, giving birth and motherhood. Article 18a (2) excludes compulsory health insurance for non-medical abortions. Bearing in mind that many provision of the Law are no longer in force due to changes to some systemic laws, and that there is a need for harmonization with EU standards the new Law is supposed to be adopted and to enter into force at the beginning of 2016.

¹⁵ Law on Health Care, *Official Gazette of the Republic of Montenegro*, Nos 39/2004, 14/2010 and 47/2015.

¹⁶ Law on Health Insurance, *Official Gazette of the Republic of Montenegro*, Nos 39/2004 and 14/2012. Decisions of the CC of the Republic of Montenegro Nos 64/04 and 88/04 -23/2005-62.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes, implicitly. The Constitution of Montenegro¹⁷ from 25.10.2007 refers in its Preamble to respect for human rights and freedoms, as well as the equality of all citizens. Article 8 (1) contains the general anti-discrimination clause prohibiting direct or indirect discrimination on any grounds.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

Article 18 of the Constitution guarantees gender equality, stipulating that 'the State shall guarantee the equality of women and men and develop the policy of equal opportunities.' Also, the Constitution also contains Article 71 which guarantees that a marriage can only be concluded with the free consent of a woman and a man, as well as that a marriage is established with equality between the spouses. Implicitly, without mentioning the gender aspect, the Constitution guarantees equality before the law regardless of any specific nature or personal feature (Article 17(2)) that everyone has the right to the equal protection of one's rights and freedoms (Article 19), and that the right to vote is equal (Article 45).

The Constitution has not been drafted in accordance with gender-sensitive language.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

No, the above-mentioned articles can only be invoked against the State and not between private parties.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Montenegro has the above-mentioned general anti-discrimination law (LPD) and the specific legislation on gender equality (LGE). There is also the Law on the Prohibition of Discrimination against Persons with Disabilities, which prohibits discrimination based on disability and promotes equality between these persons and others.¹⁸

Article 2(2) of the LPD covers the following discrimination grounds: race, skin colour, national affiliation, social or ethnic origin, links with some minority people or minority national community, language, religion or belief, political or other opinion, sex, gender identity, sexual orientation, health conditions, handicap, age, financial status, marital or family status, belonging to a group or the assumption of such belonging, belonging to a political party or another organization, as well as other personal characteristics.

¹⁷ The Constitution of Montenegro, *The Official Gazette of Montenegro*, No. 01/2007.

¹⁸ Law on the Prohibition of Discrimination against Persons with Disabilities, *Official Gazette of Montenegro*, No. 44/2015.

3. Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

Article 7 of the LGE contains a definition of both: 'gender' is the socially established roles of a woman and a man in public and private life which were developed on the basis of biologically belonging to a sex; 'sex' presents a biological feature according to which human beings are differentiated into males and females.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

Article 4(3) of the LGE stipulates the following: 'any act leading to women, because of pregnancy or maternity, as well as another person because of gender reassignment, being put at a disadvantage compared to other persons during employment, self-employment, and the exercise of rights to social care and other benefits amounts to discrimination.'

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Direct sex discrimination is prohibited and defined by the LGE. Article 4(1) prohibits direct and indirect sex discrimination. Article 7(5) defines direct sex discrimination as follows: 'Discrimination on the ground of sex exists if a person or a group of persons of one sex, in the same or similar situation, are put or can be put - by an act, action or omission - in an unequal position in relation to another person or a group of persons of the other sex.'

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Pregnancy and maternity discrimination are explicitly prohibited as a form of sex discrimination by Article 4(3) of the LGE, as mentioned above. It is not classified under direct sex discrimination, but from the spirit of the Law it could be considered as such.

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant

There are no difficulties in applying the concept of direct sex discrimination in Montenegro.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Indirect sex discrimination is prohibited and defined by the LGE. The above-mentioned Article 4(1) prohibits direct and indirect sex discrimination. Article 7(6) defines indirect sex discrimination as follows: 'Indirect discrimination on grounds of sex exists if an apparently neutral provision, regulation or general act, criterion or practice puts or may put a person or a group of persons of one sex in an unequal position in relation to another person or a group of persons of the other sex, unless that provision, criterion or practice is objectively and reasonably justified by a legitimate aim, with means that are appropriate and necessary to achieve the objective, i.e. that are reasonable and

proportionate in relation to the objective to be achieved.'

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

No, statistical evidence has not been used to establish a presumption of indirect sex discrimination.

In an interview with the Deputy Ombudsman in charge of discrimination, gender equality and the protection of minority rights, it was divulged that only two cases on sex discrimination were reported in 2015 and both have been processed without a final decision by the end of 2015.

3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

Unfortunately, relevant case law is still lacking on the issue of the application of the objective justification test. From the interviews carried out with national court representatives as well as representatives of the Judicial Council, it became apparent that no cases were completed in 2015, so that it is not possible to assess the objective justification test.

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

There are difficulties in understanding and applying the concept of indirect sex discrimination due to the lack of reported cases on indirect sex discrimination, the low level of awareness, as well as a lack of relevant and detailed statistical data. Also, in the LGE there is no proportionality test requirement, so it would depend on the courts how they would apply it.

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

Article 20(1) of the LPD recognizes the following as being an aggravated/more severe form of discrimination: 'discrimination towards the same individual or group of individuals based on more grounds from Article 2 paragraph 2 of the Law (multiple discrimination).'

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

No multiple discrimination cases were decided in 2015 either by the Ombudsman or by the national courts, according to available sources as well as interviews with relevant stakeholders. From a description of the facts, one of two cases which are pending before the Ombudsman could possibly be considered to be a multiple discrimination case (an older woman in poor health being deprived of her labour rights and harassed) if sufficient evidence exists.

Most of the cases before the civil courts concerning gender as a ground of discrimination are connected with mobbing (i.e., workplace bullying),¹⁹ and none of them had finally been decided in 2015. In addition, considering the previous jurisprudence and the lack of reliable detailed statistics, it could be concluded that there is still no case law as material for an analysis of either the assessment of multiple discrimination and its recognition, or its influence so that harsher sanctions can be imposed.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, positive action is explicitly allowed in the Constitution and in several laws.

Article 8 (2,3) of the Constitution of Montenegro recognizes positive action as follows:

'Regulations and the introduction of special measures aimed at creating conditions for the exercise of national, gender and overall equality and the protection of persons who are in an unequal position on any grounds shall not be considered as discrimination.

Special measures may only be applied until the achievement of the aims for which they were undertaken.'

Positive action is also recognized as a special measure in the LPD Article 5 prescribing that 'Regulations and special measures that are aimed at creating conditions for national, gender and overall equality and the protection of persons in an unequal position on any grounds can be made or implemented and enforced, within their jurisdiction and powers, by state bodies, state administration bodies, local self-government, public enterprises and other legal entities with public authority (hereinafter: organs), as well as other legal entities and individuals.

The measures referred to in paragraph 1 of this Article shall apply in proportion to needs and opportunities and shall last until the objectives of these measures are attained.'

Article 5 of the LGE also recognizes positive action as follows: 'General and special measures adopted or undertaken for the elimination or prevention of the unequal treatment of women and men, eliminating the consequences of the unequal treatment of men and women and promoting gender equality are not considered to amount to discrimination.'

The Labour Law stipulates that positive action is positive discrimination in its Article 9.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

Bearing in mind the small number of women participating in the legislative and executive authorities in Montenegro,²⁰ gender balancing should be strengthened. As an illustration, in 2015 out of 17 ministers four were women (in charge of the Ministries of Defence, Science, Labour and Social Care, and one minister without portfolio). The Prime Minister, four Deputy Prime Ministers and the General Secretary of the Government were all men. In contrast, of the deputy ministers 44 % are women.

¹⁹ Law on the Prohibition of Harassment at Work, *Official Gazette of Montenegro*, No. 30/2012, entered into force on 17 June 2012. Before the Law was adopted, mobbing was contained in the LPD (Article 8), but did not result in any lawsuit in reality. The latter provision of the LPD was repealed in the amended Law.

²⁰ *Information on the Participation of Women in the Legislative, Executive and Judicial Power in Montenegro* (2015), Ministry of Human and Minority Rights, Podgorica.

Concerning women's participation in legislative authority at the national level, the situation is the worst in the region. Namely, out of 81 MPs, only 17 are women, which amounts to 17 %. In all of the municipalities in Montenegro, men are the dominant majority. The highest percentage of women's participating at the municipal decision-making level is 33.33 % (municipality of Danilovgrad) and the lowest is 6.25 % (municipality of Ulcinj). Only in three municipalities is this level higher than 30 % (Danilovgrad, Andrijevica and Podgorica). The average percentage of women's participation in legislative decision-making at the municipal level is 23 %.

Bearing in mind that there is no relevant case law so far, as well as the fact that positive action in terms of gender is still more present in the law than in reality, there is a need to develop a culture of gender equality as well as to improve the human rights culture in traditional Montenegro.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

There is no explicit act to stimulate an improvement in the gender balance on company boards. However, there are strategic documents aiming at an improvement in women's participation in decision-making processes, such as the Government Activity Plan for the Realization of Gender Equality (2013-2017).²¹ In addition, the Government of Montenegro adopted Guidelines for creating a favourable environment for female entrepreneurship in August 2015.²²

Also, the participation of women on company boards could be included within the concept of equal opportunities, which is promoted in anti-discriminatory legislation in Montenegro. In this regard, the relevant provision is Article 7(3) which reads: 'Equal opportunities means the absence of restrictions on grounds of sex for male and female participation in political, economic, social, cultural and other spheres of life which provides for the exercise of their rights and freedoms.'

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

The Law on the Election of Councillors and MPs²³ stipulates that the electoral list has to be composed of at least 30 % of women. Article 39a reads: 'In order to achieve the principle of gender equality, in the electoral list at least 30 % of the candidates shall be of the less represented gender.'

A selection list that does not fulfil the conditions referred to in paragraph 1 of this Article shall be deemed to be incomplete for the proclamation of the electoral list and the applicant list will be called upon to remedy the deficiencies in the list, in accordance with the law.

In the case of an applicant or electoral list that does not correct the deficiencies referred to in paragraph 2 of this Article, the Electoral Commission shall refuse to proclaim the electoral list, in accordance with this Law.'

In reality the situation is totally different, with 17 % of Parliament being made up of

²¹ Available at: <http://www.minmanj.gov.me/organizacija/nap/119190/Usvojen-Plan-aktivnosti-za-postizanje-rodne-ravnopravnosti-2013-2017.html>.

²² Ministry of Human and Minority Rights, Podgorica, 2015.

²³ Official Gazette of Montenegro, No. 46/11. Available at: <http://media.cgo-cce.org/2013/06/2-Zakon-o-izboru-odbornika-i-poslanika.pdf>.

women and with an average percentage of 23 % at the level of municipal councillors.²⁴

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Harassment is explicitly prohibited by Article 7(1) of the LPD. It constitutes a form of discrimination.

The same approach is taken by the LGE, which also contains a definition of harassment in Article 7(7a) as follows: 'harassment based on gender exists when unwanted conduct against a person or a group of persons of one sex has the purpose of or results in a violation of personal dignity, provoking fear, feelings of humiliation or offence or creating a hostile or humiliating environment for that person or group of persons, in accordance with specific law.'

Harassment at work and in connection with work is prohibited by Article 8 of the Labour Law.

According to the Law on the Prohibition of Harassment at Work, harassment is only dealt with in connection with work, thereby resulting in mobbing.²⁵ The Labour Law prohibits mobbing in Article 8a.

3.6.2 Does the definition of harassment cover a broader scope than employment in your country? If so, please specify the scope.

The definition of harassment which is included in the anti-discrimination laws does not restrict its application only to the sphere of the employment. However, it is connected with employment in general.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Sexual harassment is explicitly prohibited in the LPD by Article 7(2). It constitutes a form of discrimination.

The LGE stipulates that sexual harassment is also a form of discrimination. Article 7(8) provides a definition as follows:

'Sexual harassment is any unwanted physical, verbal or non-verbal conduct of a sexual nature, which aims at or represents a violation of personal dignity, or when creating a situation of fear or an unpleasant, hostile, humiliating or offensive situation, in accordance with the law.'

Sexual harassment at work and in connection with work is prohibited by Article 8 of the Labour Law.

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? If so, please specify the scope.

Although the above definition does not exclusively cover the field of employment, sexual harassment in practice is generally seen in connection with work.

²⁴ See above: the explanation for 3.5.2.

²⁵ See footnote 15.

- 3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

National legislation does not specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amount to discrimination.

3.7 Instruction to discriminate

- 3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

An instruction to discriminate is explicitly prohibited in Montenegrin national law.

Article 2(5) of the LPD states that giving instructions to discriminate is considered to be discrimination.

Article 4(2) of the LGE stipulates that 'discrimination based on sex is considered to be encouragement/incitement, helping and giving instructions to discriminate as well as announcing the intention thereof to a specific person or group of persons discriminated against on grounds of sex.'

An instruction is not defined by Montenegrin anti-discriminatory legislation.

- a) Scope of liability for instructions to discriminate

A person who instructs discrimination to take place is liable as well as the discriminator under the LPD (civil responsibility) and is criminally liable for the incitement of national, racial and religious hatred and intolerance under the Criminal Code.

- 3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

Although it is recognized as discrimination in Montenegrin anti-discrimination legislation, an instruction to discriminate does not frequently appear in proceedings concerning discrimination. There is no relevant case law so far.

- 3.7.3 Is incitement to discrimination explicitly prohibited in your country?

Article 2(5) of the LPD states that incitement to discriminate is considered to be discrimination.

Article 4(2) of the LGE stipulates that incitement is considered as discrimination based on sex.

Incitement is not defined by the Montenegrin anti-discriminatory legislation.

3.8 Other forms of discrimination

According to the LPD, the following are included under other forms of discrimination:

- the segregation of persons based on the discriminatory grounds listed in Article 2 (2) of the Law; as stipulated in Article 9,
- hate speech, as 'any form of expression of ideas, statements, information and opinions which spread, incite, promote or justify discrimination, hatred or violence against individuals or groups because of their personal characteristics, xenophobia,

racial hatred, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed in the form of nationalism, discrimination and hostility against minorities,' as stipulated in Article 9a.

4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

The principle of equal pay for equal work or work of equal value is implemented in national legislation.

The Labour Law stipulates in Article 77 (2) that employees, both men and women, shall be guaranteed equal earnings for the same work or work of equal value performed with an employer.

The LPD stipulates in Article 16(1) that unequal earnings for the same work or work of equal value for an individual or group of individuals, based on some of the grounds listed in Article 2(2) of the Law, shall be considered as discrimination.

It can be concluded that the stipulation regarding the principle of equal pay for equal work or work of equal value in Montenegrin legislation is generally in compliance with EU law (Recast Directive 2006/54/EC).

4.1.2 Is the concept of pay defined in national legislation?

According to Article 77(1) the Labour Law, an employee has the right to adequate pay, which is established by the law, a collective agreement and a labour contract.

The Law contains a definition of gross pay and increased pay in Article 78. Accordingly:

- 'Earnings received by an employee for work performed and the time spent at work, salaries and other benefits established in the collective agreement and labour contract are gross earnings in terms of this law;
- Earnings will be increased in accordance with the collective agreement and labour contract for working overtime hours, for night work, for previous work, for work during national and religious holidays defined by law as non-working days or for other cases stipulated by the collective agreement and labour contract.'

This definition is mostly in compliance with the definition of Article 157(2) of the TFEU. However, it does not explicitly include cash and benefits in kind, but it can be considered that it includes both.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

The national law of Montenegro does not explicitly implement Article 4 of Recast Directive 2006/54 in the provision guaranteeing equal pay for equal work. However, as mentioned, Article 77 of the Labour Law guarantees equal remuneration for the same work or work of equal value performed with an employer. However, Article 6 prohibits direct and indirect discrimination against persons seeking employment, as well as employees.

4.1.4 Is a comparator required in national law as regards equal pay?

The relevant legislation does not mention a comparator as regards equal pay.

- 4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

According to Article 77(3) of the Labour Law, work of equal value means work which requires the same level of:

- qualifications or educational level or professional qualifications,
- responsibility,
- skills,
- working conditions, and
- performance.

- 4.1.6 Does national (case) law address wage transparency in any way?

Montenegrin law has not so far addressed wage transparency.

- 4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country? If so, how?

In Montenegro, the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied.

- 4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

There is no justification for pay differences based on gender in Montenegrin legislation. The only such justification that could be lawful in accordance with the provisions of the Labour Law is the following: Articles 78 and 79 lay down increased pay (as mentioned and quoted above) for work performed and the time spent at work. According to Article 78(2) pay can be increased for work which is longer than full time, for night work, for previous work, for work during national and religious holidays defined by law as non-working days or for other stipulated cases in accordance with the collective agreement and labour contract.

According to Article 79 (1) of the Law, 'earnings for work performed and time spent at work consist of basic salary, part of the salary for the performance of the work and increased earnings, in accordance with the collective agreement and the employment contract.'

Article 79 (3) reads: 'The performance of the work is determined by the quality and volume of the work performed, as well as the commitment and attitude of the employee towards work obligations, in accordance with the collective agreement.'

In addition, as mentioned above, according to Article 78(2) pay can be increased for work which is longer than full time, for night work, for previous work, for work during national and religious holidays defined by law as non-working days or for other cases stipulated in accordance with the collective agreement and labour contract.

- 4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

Most of the evident difficulties related to the application of the principle of equal pay for equal work and work of equal value in Montenegro are connected with the non-

transparent approaches of employers concerning salaries, as well as the factual situation of illegal employment.

In addition, there is a lack of relevant case law.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

In Montenegrin legislation, the personal scope in relation to access to employment, vocational training, working conditions, etc., is partially defined in comparison with the definition from Article 14(1) of the Directive. It means that in Montenegrin legislation the personal scope is more limited than in EU law.

Article 16 of the LPD prohibits discrimination in relation to the field of employment, without mentioning access to employment, vocational training, working conditions, etc. Actually, the LPD refers to the relevant provisions of the Labour Law.

Article 5 of the Labour Law prohibits any direct or indirect discrimination against persons seeking employment and employees with respect to sex, origin, language, race, creed, colour, age, pregnancy, health status or disability, nationality, marital status, family obligations, sexual orientation, political or other opinion, social origin, property, membership of political and trade union organizations or some other personal characteristic.

Article 13b of the LGE lays down an obligation in this regard. Namely, it reads that 'organs are obliged, within the programmes on vocational training and the specialization of employees or in any other manner prescribed by law or other act, to provide for the education of employees on achieving gender equality and the realization of rights based on gender equality.'

The Law on the Prohibition of Discrimination of Persons with Disabilities includes, in its Article 22, discrimination in the field of vocational rehabilitation, labour and employment in a more explicit manner than regarding gender equality. It reads as follows:

'The following shall be considered as discrimination on grounds of disability in the field of vocational rehabilitation, work and employment:

- 1) not hiring persons with disabilities who have the same or better qualifications, professional or working ability than a person without a disability, in compliance with laws regulating the area of operation and the area of vocational rehabilitation and the employment of persons with disabilities;
- 2) limiting the access of persons with disabilities to employment, self-employment or a profession, or membership of an organization of workers or employers;
- 3) prescribing restrictive rules relating to employment and working conditions, including dismissals and earnings for persons with disabilities;
- 4) a failure to implement measures to adapt the workplace and working conditions in accordance with special regulations, in accordance with the laws regulating the area of work and the field of vocational rehabilitation and the employment of persons with disabilities; and
- 5) prescribing different and unfavourable conditions for a person or a group of persons with disabilities to exercise other rights arising from employment, in accordance with the laws regulating the area of work and the field of vocational rehabilitation and the employment of persons with disabilities.'

Although the fact that the LGE as amended provides better protection from discrimination, the details thereof are still to be defined in accordance with Art. 14(1) of Directive 2006/54, especially concerning point d of the Article.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

The material scope in relation to (access to) employment is defined in Montenegrin legislation.

Namely, the Labour Law prescribes in Article 7 that discrimination is prohibited in relation to:

- 1) employment conditions and the choice of candidates for performing a specific job;
- 2) labour conditions and all the rights deriving from the employment relationship;
- 3) education, vocational training and specialization;
- 4) job promotion;
- 5) the cancelling of an employment contract.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes, the exception on occupational activities has been implemented into Montenegrin law.

Namely, the national legislation provides for an exception for genuine and determining occupational requirements.

Article 16(3) of the LPD stipulates that 'different treatment, exclusion or giving preference due to the peculiarities of a particular job for which personal characteristics constitute a genuine and decisive precondition for performing the said job, if the objective to be achieved by this is justified, shall not be considered to constitute discrimination.'

The Labour Law in Article 9(1), entitled 'Positive Discrimination,' stipulates that a 'distinction, exclusion or preference in respect of a particular job when the nature of the work itself or the work is carried out in such conditions that the characteristics associated with any of the grounds referred to in Arts 5²⁶ and 6²⁷ of this law are a real and decisive condition for doing the work and that the objective to be achieved by this is justified, shall not be considered to be discrimination.' Also, Article 9(2) stipulates that 'the provisions of the law, collective agreements and the labour contract relating to special protection and assistance to certain categories of employees, especially those on the protection of persons with disabilities, women during pregnancy and maternity leave and absence from work for childcare, or special childcare, as well as the provisions relating to special rights for parents, adoptive parents, guardians and foster parents, shall not be considered to be discrimination.'

The duty of assessing the occupational activities according to Article 31 (3) of Recast Directive 2006/54 still does not apply to Montenegro.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

²⁶ The article on the prohibition of discrimination.

²⁷ The article on direct and indirect discrimination.

In Montenegrin law, the exception on the protection for women, in particular as regards pregnancy and maternity, has been implemented.

The Constitution of Montenegro proclaims in Article 64 (4) that women shall enjoy special protection at work. Article 69(2) of the Constitution guarantees pregnant women the right to health protection to be paid for from public revenues, unless they are covered by another form of insurance.

In addition, the Constitution in Article 73(2) stipulates that the state shall ensure conditions that encourage childbirth.

The Labour Law in Article 108 stipulates that an employed woman shall be entitled to special protection during the course of pregnancy and childbirth. In Article 108(1) the Labour Law prescribes that an employer cannot refuse to conclude an employment contract with a pregnant woman, or terminate her employment contract during her pregnancy or maternity leave.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

In Montenegro, there are many difficulties in relation to women's access to work, vocational training, employment, working conditions, etc. In practice, women are very much discriminated against concerning access to work if they are planning a family and motherhood. According to interviews with staff at the Ombudsman Institution, there have been several past and pending cases where women have often been refused a particular job, much more so than men, with the explanation that a man is more suitable for that position, or due to their family status, their motherhood, or their age. Also, in the media there have been articles on this specific aspect, as well as NGO reports.²⁸ Research by an NGO showed that some employers requested the results of a pregnancy test together with the application documents to be submitted for a particular job.²⁹

Although there are cases of women being dismissed when they become pregnant or immediately after they start or have used their pregnancy leave, no such judicial cases have been reported. Again, such cases are often (almost usually) in the private sector and especially in illegal employment.

²⁸ *Social and Economic Position of Women in Montenegro*, a report by the NGO *European Movement in Montenegro*, <http://emim.org/files/socio-ekonomski%20polozaj%20zena%20u%20crnoj%20gori.pdf>, pp. 12, 37, 42, 53, 61.

²⁹ *Ibid.*, p. 60.

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

There is no definition of a pregnant worker in Montenegrin legislation. However, there are provisions on special protection for pregnant woman.

Namely, Article 69(2) of the Constitution of Montenegro stipulates that 'a child, a pregnant woman, an elderly person and a person with a disability shall have the right to health protection from public revenues, if they do not exercise this right on some other grounds.'

Also, Article 11(2) of the Labour Law states that an employed woman is entitled to special protection during the course of pregnancy and giving birth. This provision is not consistent with the definition in Article 2 of Directive 92/85, because there is no reference to a pregnant woman having to inform her employer of her pregnancy in order to receive special protection.

On the other hand, Article 117 of the Labour Law contains an obligation for an employee to inform her/his employer in writing, one month in advance, about her/his intention to make use of maternity or parental leave, as well as adoption leave.

5.1.2 Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

In Montenegro, the protective measures mentioned in Articles 4-7 of Directive 92/85 are implemented to a certain extent.

The provision in Article 42(3) of the Labour Law could be interpreted as a measure of special protection for pregnant workers, as it states that an employed woman during her pregnancy cannot be assigned to work in another place outside the place of her residence or temporary residence. Along the same lines there is also the special protection stipulated in the above-mentioned Article 108.

The Labour Law stipulates that pregnancy is one of the discriminatory grounds (Article 5), as well as that special protection for women during pregnancy and maternal leave from work shall not be considered to amount to discrimination (Article 10 (2)).

In the Law on Health Care in Article 10 (7) the protection of women in connection with planning a family, pregnancy, giving birth and motherhood is listed as a priority of health protection.

The Labour Law provides in Article 109 that, based on the findings and recommendations of a competent medical practitioner, a woman during her pregnancy and while breastfeeding may be temporarily assigned to another job if this is in the interest of her health or the health of her child. In such a case, the woman is entitled to the same salary as before her deployment. If the employer is unable to provide another job for a pregnant or breastfeeding woman, the employee is entitled to leave that particular work with salary compensation in accordance with the collective agreement, which cannot be less than the remuneration the employee would have received at her workplace.

In Article 110 the Labour Law provides protection from having to work longer hours than full time as well as from night work. Namely, a woman during her pregnancy and a

woman who has a child under three years of age may not work longer than the full-time hours or overnight. Exceptionally, an employed woman who has a child older than two years of age may work at night only if she consents to such work in writing. Also, a parent who has a child with severe disabilities, as well as a single parent who has a child under seven years of age, may work longer than the full-time hours or at night, but only with his/her written consent.

Under Article 111a(1) of the Labour Law an employed woman may start maternity leave 45 days before the date of confinement, and at the latest 28 days before the date of confinement. If an employed woman starts to work before the expiry of the legally prescribed parental leave, she is entitled to, in addition to a regular daily break, and in agreement with the employer, the benefit of an additional 90 minutes of absence from work due to breastfeeding: Article 111a(2). This 90-minute period is a novelty of the latest amendment to the Law, certainly compared to the previous less favourable period of 60 minutes. The provision reads that the agreement of the employer is necessary, but it is unclear if that actually means that the right can only be made use of with the consent of the employer. Namely, it could be interpreted in the latter manner or that the right constitutes a duty for the employer to consent thereto. There is still no relevant case law in this respect.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes, in Montenegrin law, any dismissal is prohibited from the beginning of the pregnancy until the end of the maternity leave. This is valid for employees with the labour contract for an unlimited period.

Article 108 of the Labour Law provides protection due to pregnancy and childcare. It reads as follows:

- (1) An employer cannot refuse to conclude an employment contract with a pregnant woman, or terminate her employment contract during her pregnancy or maternity leave.
- (2) An employer may not terminate the employment contract with a parent who works half-time because of caring for a child with severe disabilities, a single parent who has a child under seven years of age or a child with a severe disability, as well as with a person who uses any of the foregoing rights.
- (3) During an absence from work due to a childcare and the use of parental leave, the employer cannot terminate the employment contract of the employee.
- (4) An employed woman whose contract of employment for a specified period of time expires during her use of the right to maternity leave shall have her employment contract extended until the right to maternity leave expires.
- (5) The employee referred to in paragraph 2 of this Article may not be declared to be a person whose services are no longer required due to the introduction of technological, economic or restructuring changes in accordance with this Act.
- (6) The situations described in paragraph 2 of this article will not affect the termination of an employment contract of an employee who has concluded a labour contract for a limited/predetermined period.

This provision is not as precise as it should be in order to be completely explicit in its interpretation. Namely, in practice this is problematic because there is still no explicit prohibition on the dismissal of a pregnant worker. In this context, in Article 108(1) the word 'cannot' should be replaced by 'must not' or 'shall not', because the existing formulation leaves a great deal of latitude for a margin of appreciation by the employer. Also, there is no explicit stipulation concerning exceptional cases which are not connected with a worker's pregnancy and which would be permitted under national legislation, with reference to the competent authority's consent in this regard.

- 5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

According to Montenegrin legislation, the employer is not allowed to dismiss an employee from the beginning of her pregnancy until the end of the maternity leave as described above, except in cases which could fall under the above cited Article 108(6) concerning the termination of an employment contract of an employee who has concluded a labour contract for a limited/predetermined period. Also, there is no reference to the employer's obligation to cite duly substantiated grounds for such a dismissal in writing.

In addition, in Article 2(3) the LGE lays down the prohibition of discrimination which is any act that places women, because of pregnancy or maternity, in a less favourable position compared to other persons concerning employment, self-employment, the exercise of rights to social care and other benefits. Article 33(1) stipulates that a fine ranging from EUR 1 000 to 10 000 shall be imposed on a legal entity if a woman, due to pregnancy or motherhood, has been placed in a less favorable position compared to other persons concerning employment, self-employment, the exercise of rights to social care and other benefits.

5.2 Maternity leave

- 5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

According to Article 111(2) of the Labour Code parental leave, including maternity leave, can last for up to 365 days from the birth of a child.

- 5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

According to Article 111a(1) of the Labour Law, an employed woman may start maternity leave 45 days before the date of confinement, and at the latest 28 days before the date of confinement.

According to Article 111(6) of the Labour Law, a mother who has recently given birth cannot cancel her maternity leave before the expiry of 45 days from the day of the birth.

- 5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

General protection at work is provided by the Labour Law in Article 102, stipulating that an employee is entitled to protection at work in accordance with the law and a collective agreement, and an employee shall not be assigned to a different workplace or to work for longer than the full-time hours or at night, if such work could be detrimental to his/her health according to the findings of the bodies which are responsible for assessing health. Employees may also not be assigned to workplaces where there is an increased risk of the emergence of a disability, occupational or other diseases; employees who (in addition to the conditions laid down by the systematization act) fulfil the necessary conditions for work in terms of health, psychological and physical abilities and age, may be assigned to such a workplace.

There is special protection due to pregnancy and childcare in Article 108, as mentioned and quoted above.

Also, special protection from overtime and night work for a mother of a child younger than three years old is stipulated in the above described Article 110 of the Labour Law.

Finally, according to Article 43f of the Labour Law, an employer is obliged to implement the regulations on the protection of health, protection at work and special protection for certain categories of employees.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) are ensured during the pregnancy and maternity leave?

Yes, the Labour Law prescribes in Article 111b(1) that during parental and maternity leave, a parent is entitled to the same salary as the salary he/she would have earned if he/she was still working, in conformity with the law and a collective agreement.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

In Article 26 the Law on Health Insurance stipulates that the allowance during sick leave is calculated as 70 % of the basic wage, and 100 % of of this wage in the case of pregnancy (in accordance with Article 28(3) of the Law).

The Labour Law in its Article 82(1) stipulates that an employee has the right to the same salary as that established by a collective agreement and the labour contract during his/her maternity or parental leave and childcare leave.

The Law on Social and Child Protection provides in its Article 51 that the amount of maternity / parental pay is equal to the average basic salary paid in the past twelve months prior to the month in which maternity/parental leave was taken, if the employee was employed continuously for at least 12 months by the employer concerned (Article 51(1)). The amount paid can be up to a maximum of two average salaries in the country during the previous year, according to the administrative authority in charge of statistics.

If an employee has continuously worked for between six and 12 months before the leave, the compensation is calculated at 70 % of the average monthly salary (Article 51(2)). If an employee has worked continuously for between three and six months before the leave, the compensation is calculated at 50 % of the average monthly salary (Article 51(3)). If an employee has worked continuously for up to three months before the leave, the compensation is calculated at 30 % of the average monthly salary (Article 51(4)). The amount paid under Article 51(2, 3, 4) can be up to a maximum amount of one average salary in the country during the previous year, according to the administrative authority in charge of statistics.

Thus, pregnancy and maternity pay is higher than that during sick leave in Montenegro.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

The statutory maternity benefits are supplemented by employers up to the normal remuneration if the employee has worked for at least 12 months continuously, and the amount of the maternity pay is equal to the average salary.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

In Montenegrin legislation, the conditions for eligibility for benefits are not applicable.

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any

improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Article 111b(2) of the Labour Law stipulates that an employer is obliged to provide that an employee, after the expiry of her/his maternity or parental leave, can return to her/his same job or to an appropriate workplace with at least the same salary.

According to Article 117(2) of the Labour Law, an employee may stop using the right to maternity or parental leave, and the employer is obliged to allow her/him to return to work, and assign her/him to appropriate tasks, within one month from the date when the employer was informed of the termination of the use of this right by the employee.

Also, according to Article 117(3) of the Labour Law, an employee who has used the right to maternity or parental leave is entitled to additional professional training, if there have been technological, economic or other changes in the working methods of the employer during the employee's absence.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes, the Labour Law provides for adoption leave in Article 116, which reads:

'One of the adoptive parents of a child under eight years of age has the right to absence from work in order to take care of a child during one year continuously from the date of the adoption of the child with wage compensation, in accordance with the law.'

5.3.2 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

Montenegrin legislation recognizes parental leave, paternity leave, adoption leave and leave to care for family members. Apart from the fact that adoptive parents are equal to parents when it comes to their rights and obligations, there are no special measures to address the specific needs of adoptive parents.

Bearing in mind that the adoption process is still complicated in Montenegro, as well as in the region as a whole, and that social awareness in this regard has to be improved and an adoption culture has to be developed, it is important to address the issue of adoption in a positive manner. Thus, the promotion of adoption is needed. In contrast, the foster family concept has been very much advertised in Montenegro through an intensive campaign³⁰ although there are still no specific norms concerning the rights with regard to foster families, except a general norm in Article 9 of the Labour Law stipulating 'positive discrimination' which mentions foster parents in the context that special protection and assistance, as well as special rights for parents, adoptive parents and foster parents are not considered to be discrimination as the concept of a foster family is a rather new concept in traditional Montenegro.

5.3.3 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Montenegrin legislation does not explicitly provide for protection against the dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave. However, this can be challenged through general anti-discrimination provisions.

³⁰ <http://crna.gora.me/tag/hraniteljstvo/>.

According to the Labour Law, there are some positive measures with regard to adoptive parents. Namely, the right to work for half of the working hours while a child is under three years of age, if that child needs additional care, is also applicable to adoptive parents (Article 113(2)). Also, the right to work for half of the working hours also applies to the adoptive parent of a child with disabilities (Article 114(1)). Such reduced working hours are considered to be full time in terms of the realization of labour rights and rights based on labour (Article 114(2)).

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

Directive 2010/18 has not been explicitly implemented in Montenegro. According to the Government's plan, it will be implemented in the new Labour Law to be adopted at the latest in 2017.

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

The Labour Law in its Article 111 recognizes the right to parental leave as follows:

- '(1) Parental leave is the right of a parent to make use of a leave of absence from work due to caring for a child.
- (2) Parental leave may be used for up to 365 days after the birth.
- (3) A parent can start working before the expiry of the period of absence referred to in paragraph 2 of this article, but not before the expiry of 45 days from the date of birth.
- (4) In the case referred to in paragraph 3 of this Article, the parent has no right to continue to use parental leave.
- (5) If a parent interrupts using the parental leave in terms of paragraph 3 of this Article, the other parent is entitled to use the unused part of the parental leave referred to in paragraph 2 of this Article.
- (6) The mother of the child cannot cancel maternity leave before the expiry of 45 days from the date of birth.'

This applies to both the public and the private sector in Montenegro.

Considering the wording of the above provision, especially par. 6 of the quoted Article, it can be assumed that a father making use of parental leave can cancel the maternity leave before the expiry of 45 days from the date of birth, which is interpreted as such in practice. Par. 3 of the same Article leads to a certain confusion in this regard, however.

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

The scope of the Labour Law includes all these contracts.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

According to the above-mentioned legislation, the total duration of parental leave lasts from 45 days after the birth of a baby until the expiry of 365 days from the day of commencing maternity leave in both the public and the private sector.

5.4.5 Is the right of parental leave individual for each of the parents?

The right to parental leave is recognized as an individual right of parents, but only one parent is entitled to use it for the child. Also, if one parent stops her/his parental leave, the other parent is entitled to use the unused part of the parental leave for up to 365 days.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

The parental leave can be taken by a parent who works full time in order to care for his/her child. It cannot be taken in a piecemeal fashion.

Article 113 of the Labour Law lays down the possibility of working half time for a parent, an adoptive parent or a person to whom the competent guardianship authority has entrusted the care of a child with special care needs and until the child is three years old.

In addition, Article 114 of the Labour Law stipulates that part-time work is a right for a parent, an adoptive parent or a person to whom the competent guardianship authority has entrusted the care of a child with disabilities, or the person taking care of another person with severe disabilities in accordance with special regulations.

Also, according to Article 114(2) the working time referred to in both of the above described Articles shall be considered to be full time for exercising rights from work and on the basis of work.

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

The notification period for using the right to parental leave is one month, according to Article 117(1) of the Labour Law. A one-month period is also prescribed for an employer to provide for an adequate return to work for a parent who is returning from this leave (Article 117(2)). In reality, however, there are problems, especially concerning the latter.

5.4.8 Is there a work and/or length of service requirement in order to benefit from parental leave?

There is no work and/or length of service requirement in order to benefit from parental leave.

The Law on Social and Child Protection determines the amount of the monthly compensation in Article 51, as described under 5.2.5.

5.4.9 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

No, there are no such situations in Montenegrin legislation.

5.4.10 Are there special arrangements for small firms?

No, to date there are no special arrangements for small firms. However, there are requests from employers in this regard, explaining that the legislation has to be amended

with regard to establishing special arrangements for small firms that would remove existing business barriers.

5.4.11 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

The Labour Law stipulates that a working parent has the right to work for half of the working hours if the child needs additional care, and this applies until the child reaches three years of age (Article 113(2)).

The parent has the right to work for half of the working hours if he/she has a child with disabilities (Article 114(1)).

Both of the above are considered to be full time in terms of the realization of labour rights and rights based on labour (Article 114(2)).

5.4.12 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

The above-mentioned LGE Article 4(3) in connection with Article 33(1) mean that pregnancy and motherhood must not be a ground for less favorable treatment with respect to employment, self-employment, the realization of rights from social protection as well as other rights.

In addition, the protection of workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave can be challenged through the general anti-discrimination provisions.

5.4.13 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes, they do according to Montenegrin legislation. Explicitly, Article 111b(2) of the Labour Law stipulates that an employer is obliged to provide that an employee, after the expiry of her/his maternity or parental leave, can return to the same job or to appropriate workplace with at least the same salary.

5.4.14 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Yes, all the rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave.

5.4.15 What is the status of the employment contract or employment relationship for the period of the parental leave?

The employment contract remains in force for the duration of the paternity leave and cannot be terminated (Article 108(3) of the Labour Law).

5.4.16 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Yes, there is continuity concerning the entitlement to social security cover under the different schemes, in particular healthcare, during the period of parental leave. There is synergy between the Law on Social and Child Protection, the Law on Health Protection, the Labour Law and the Law on Health Insurance, as described above.

In addition, in the case of unpaid leave Article 118 of the Labour Law states as follows:

- '(1) One of the parents has the right to be absent from work until the child reaches the age of three years, and if the parent who has started using this right terminates it before the expiry of the said period, he/she shall not be further entitled to it.
- (2) During the absence from work, in terms of paragraph 1 of this Article, the employee is entitled to health, pension and disability insurance, and other rights and obligations are suspended.
- (3) Funds for healthcare, a pension and disability insurance under paragraph 2 of this Article shall be paid from the funds of the health, pension and disability insurance schemes.
- (4) During the absence from work under paragraph 1 of this Article, the employee is not entitled to the compensation of his/her remuneration/salary.'

5.4.17 Is parental leave remunerated by the employer? If so, how much and in which sectors?

According to the Labour Law Article 82(1), in the course of paternity leave, a mother and/or father are entitled to compensation for earnings in order to take care of a child, in conformity with the law. The employer has the right to have the above compensation of earnings refunded: Article 82(2). The parental leave is paid by the employer, who has the paid amount refunded from the State budget.

5.4.18 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

Yes, the social security system in Montenegro provides for an allowance during parental leave, both in the public and the private sector.

According to Article 51 of the Law on Social and Child Protection, the amount of the allowance is different, as follows:

- 'The amount of the funds to be refunded to the employer after payment to the employee, who before exercising this right was employed:
- 1) for at least 12 continuous months, the average salary of the employee during the 12 months preceding the month of exercising the right to maternity or parental leave;
- 2) from 6 to 12 continuous months, 70 % of the average salary of the employee during the work preceding the month of exercising the right to maternity or parental leave;
- 3) from 3 to 6 continuous months, 50 % of the average salary of the employee during the work preceding the month of exercising the right to maternity or parental leave;
- 4) up to 3 continuous months, 30 % of the average salary of the employee during the work preceding the exercise of the right to maternity or parental leave.

The amount of the funds referred to in paragraph 1, item 1 of this Article may be p to two average salaries in the country during the previous year, according to the administrative authority responsible for statistics.

The amount of the funds referred to in paragraph 1 points 2), 3) and 4) of this Article may be up to one average employee's salary in the country during the previous year, according to the administrative authority in charge of statistics.'

According to Article 52 of the Law on Social and Child Protection, for a person engaged in an entrepreneurial activity as a sole employee, the wage compensation for maternity or parental leave is paid by the Social Work Centre, and the amount thereof shall be calculated in accordance with the above quoted Article 51.

The Law also provides compensation on the ground of childbirth, if one of the parents is registered at the Employment Service or is a student (Article 54). Such a parent may be entitled to a monthly fee based on the child's birth until the child reaches the age of one. The amount is EUR 63.50 per month.

5.4.19 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

In Montenegro, the respective legislation provides more favourable provisions in relation to the duration of maternity and paternity leave, unpaid leave in order to take care of a child until that child reaches the age of three, as well as leave to care for a child who needs special additional care and a child with a disability.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes, the Labour Law in Article 72 prescribes that an employee has paid leave from work in the case of childbirth. The duration of the paid leave is regulated by the collective agreement and it is usually one week. Also, bearing in mind that it is paid leave, this means that the salary is compensated in full during the leave.

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Not explicitly. However, general anti-discrimination protection in the respective legislation applies with regard to protection against dismissal for workers who take paternity leave and the enjoyment of their rights after the end of paternity leave.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

According to Article 72 of the Labour Law, an employee has the right to paid leave in case of urgent family reasons, such as a case of sickness or an accident, as well as a death.

Consequently, an employee is entitled to leave from work with pay (paid leave) in the case of the serious illness of a close family member, and the duration of such paid leave shall be determined by the collective agreement and the employment contract.

Furthermore, an employee is entitled to paid leave of seven working days for the death of an immediate family member. For the purpose of the interpretation of Article 72, members of the immediate family shall be considered to be a spouse, children (legitimate, illegitimate, adopted and stepchildren), brothers, sisters, parents, adoptive parents or guardians.

In addition, the Labour Law in Article 112 stipulates protection in the case of a stillbirth. Namely, it is guaranteed that if an employed woman delivers a dead baby or if the child

dies before the expiry of the maternity leave, she is entitled to extend the maternity leave for as long as is necessary, according to the findings of a certified medical specialist, to recover from childbirth and the psychological effects of the loss of a child, and this will be at least 45 days, during which time she is entitled to all the rights arising from maternity leave.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

In Montenegrin legislation, surrogacy is still not defined and recognized. Thus, parental leave is not available in the case of surrogacy in Montenegro.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

In Montenegrin legislation, maternity leave cannot be shared. Also, maternity leave cannot be taken on a part-time basis.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent ?

In Montenegrin legislation, there is a possibility for one parent to transfer part of the parental leave to the other parent in accordance with Article 111(5), which has been explained above.

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

The Labour Law Article 113 stipulates the possibility of a working parent or working adoptive parent to work on a basis of half-time working hours, due to need for additional care, but only until the child reaches the age of three.

An additional case referred to in Article 114 of the Labour Law is the right to work reduced half-time working hours due to a child's disabilities and that child has to be taken care of by a parent or an adoptive parent. The same applies to a person who takes care of another person with a serious disability.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

There is no such provision which explicitly provides a legal right to adjust working time patterns (temporarily or otherwise) on request.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

The right to work from home or remotely (temporarily or otherwise) on request will depend on an agreement with the employer.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can "bank" hours to take time off in the future?

There are no other legal rights to flexible working arrangements in Montenegrin legislation.

6. Occupational pension schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

In Montenegro there are neither occupational pension insurances, nor discrimination on grounds of sex in occupational social security schemes.

6.2 Is the personal scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

N/A.

6.3 Is the material scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

N/A.

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

No.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

No.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

N/A.

7. Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Yes, the principle of equal treatment for men and women in matters of social security is implemented in national legislation.

The Law on Social and Child Protection stipulates the prohibition of discriminating against a beneficiary of social protection, based on, *inter alia*, sex as one of the main principles of social protection.

The LGE prescribes in Article 4(1) that gender-based discrimination is any legal or factual, direct and indirect unjustified differentiation or unequal treatment or a failure to deal with it (exclusion, restriction or prioritizing) aimed at hindering, jeopardizing, preventing or denying the exercise or enjoyment of human rights and freedoms for a person or a group of persons in the social area, among others. Article 21 stipulates that especially in the area of labour, social and health protection, gender-based equality has to be planned by the Government.

7.2 Is the personal scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The personal scope of the Montenegrin law on statutory social security schemes is broader. Namely, Article 4 of the Law on Social and Child Protection contains a long list of individuals who enjoy special protection under the Law.

In concrete terms, in achieving the objectives of social and child protection, the Law especially protects:

1) a minor:

- without parental care;
- whose parent is unable to care for him/her;
- who is experiencing difficulties in his/her development
- who is in conflict with the law;
- who misuses alcohol, drugs or other intoxicating substances;
- who is a victim of abuse, neglect, violence and exploitation, or is at risk of becoming such a victim;
- who is a victim of trafficking;
- whose parents do not agree on ways to exercise their parental rights;
- who has found a place of residence without the consent of their parents, adoptive parents or guardians;
- who is pregnant without family support and appropriate living conditions;
- who is a single parent with a child without family support and appropriate living conditions;
- who, due to special circumstances and social risks, require social protection.

2) an adult and an elderly person:

- with disabilities;
- who abuse alcohol, drugs or other intoxicating substances;
- who are victims of neglect, abuse, exploitation and violence in the family or is at risk of becoming such a victim;
- who are victims of trafficking in people;
- who are homeless;
- who are pregnant without family support and appropriate living conditions;
- who is a single parent with a child without family support and appropriate living conditions;

- who, due to special circumstances and social risk, require an appropriate form of social protection.

7.3 Is the material scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The material scope of Montenegrin law relating to statutory social security schemes is broader than specified in Article 3 (1-2) of Directive 79/9. According to Article 2 of the Law on Social and Child Protection, this scheme is dedicated to an individual or a family with disadvantaged personal and family circumstances, which includes prevention, assistance in the realization of basic living needs and support.

7.4 Have the exclusions from the material scope as specified in Article 7 of Directive 79/7 been implemented in national law? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

Montenegrin law does not make use of the exclusions from the material scope as specified in Article 7 of Directive 79/7.

7.5 Is sex used as an actuarial factor in statutory social security schemes?

No, sex is not used as an actuarial factor in statutory social security schemes.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

Occupational social security schemes have not yet been recognized in Montenegro.

According to the Screening Report Montenegro, Chapter 19 – *Social policy and employment*, further legal adjustments are, however, necessary, e.g. aligning several definitions with those of the Anti-discrimination Law and further bringing the legislation into line with the EU *acquis*, notably concerning questions relating to occupational social security schemes (Directive 2006/54/EC) and statutory social security schemes (Directive 79/7/EEC).³¹

³¹ http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/screening_report_montenegro_ch19.pdf, p. 13.

8. Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

Directive 2010/41/EU has not been explicitly implemented in the law of Montenegro.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

Montenegrin legislation does not define self-employment.

The LGE mentions self-employment as one of the situations in which a person who is pregnant or a mother, as well as person who changed sex, could be discriminated against (Article 4(3)). Also, a fine in the case of this discrimination can be imposed (Article 33(1)).

The Labour Law and the LPD do not regulate self-employment.

Some laws use, instead of the term 'self-employer,' the word 'entrepreneur' (under the Labour Law in the context of sanctions), without defining it.

The Law on Social and Child Protection mentions an entrepreneur in the context of salary compensation for an employee who is engaged in an entrepreneurial activity when on maternity or parental leave (Article 52) and compensation for salary with half-time working hours in the case of an employee who is engaged in an entrepreneurial activity (Article 56).

The Law on Contributions for Compulsory Social Insurance³² defines 'entrepreneurial activity' as a commercial activity performed by an entrepreneur, and the 'entrepreneur' as a natural person who performs economic activities for the purpose of making a profit in accordance with the law (Article 4 (11, 13)). According to this law, entrepreneurs are compulsory payers of contributions towards a pension and disability insurance (Article 5 (12)), additional contributions towards a pension and disability insurance (Article 8 (2)) and health insurance (Article 6 (12)). Also, entrepreneurs are obliged to contribute to insurance against unemployment (Article 7(9)).

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

All self-employed workers are considered to be part of the same category. Montenegrin legislation does not recognize life partners.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment more restricted or broader than specified in Article 4 Directive 2010/41/EU?

Article 4 Directive 2010/41/EU has not been explicitly implemented in the context of self-employment in Montenegro.

³² Official Gazette of Montenegro, Nos 13/07, 79/08, 86/09, 78/10, 40/11, 14/12.

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

Montenegro has taken advantage of the power to take positive actions with a view to ensuring full equality in practice between men and women in working life.

The LGE in Article 4(5) stipulates that the right of women to maternity protection, as well as the right to be given special protection at work for biological characteristics shall not be considered to be sex discrimination.

Article 5 of the LGE stipulates that general and special measures, adopted or undertaken for the elimination or prevention of the unequal treatment of women and men, for eliminating the consequences of inequality in treatment between women and men and for the promotion of gender equality, shall not be considered to be sex discrimination.

In addition, the Government of Montenegro has adopted Guidelines for creating a favourable environment for female entrepreneurship in local communities,³³ as it supports women's entrepreneurship. Apart from the constant need to raise self-awareness and to promote a culture of human rights, the main problems are connected to the difficulty in obtaining funds for entrepreneurship, disadvantaged traditional lending models, the lack of knowledge and skills for entrepreneurship, the traditional way of living in villages with a focus on the husband (the property is in husband's name in general), etc.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Montenegro has a single system for social protection in which self-employed workers / entrepreneurs are also covered.

A self-employed woman has a right to maternity leave and parental leave of up to 365 days, as well as the right to leave for nursing a child, and the equal provisions in the Labour Law apply to all employed or self-employed women (Article 111 and 111a of the Labour Law explained above).

During maternity and paternity leave a self-employed woman has a right to compensation, as stipulated in the Law on Social and Child Protection in Articles 52 and 56 discussed above.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

In Montenegrin law, Article 8 of Directive 2010/41/EU regarding maternity benefits for the self-employed has been implemented.

Just as other employed women, a self-employed woman has a right to maternity leave and parental leave for up to 365 days, and the right to leave (for up to 90 minutes) for nursing a child, as described above.

According to the Law on Social and Child Protection, during maternity and paternity leave a self-employed woman has a right to compensation, which is prescribed in Article 52, as follows:

³³ Ministry of Human and Minority Rights (2015), *Guidelines for creating a favorable environment for female entrepreneurship in local communities*, Government of Montenegro, Podgorica.

'A person engaged in entrepreneurial activity as a sole employee, has a right to wage compensation for maternity or parental leave to be paid for by the Centre for Social Work.

The pay rate referred to in paragraph 1 of this Article shall be determined in accordance with Article 51 of this Law.'³⁴

The maternity allowance for employed and self-employed women is provided on a mandatory basis.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

In Montenegro, occupational social security is not recognized and Montenegrin law does not implement the provisions regarding occupational social security for self-employed persons.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

N/A.

8.10 Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

In Montenegrin law, Article 14 (1) a) of Recast Directive 2006/54 has not been explicitly implemented as regards self-employment.

According to Screening Report Montenegro, Chapter 19 – *Social policy and employment*, further legal adjustments are, however, necessary, e.g. aligning several definitions with those in the Anti-discrimination Law and further bringing the legislation into line with the EU *acquis*, notably concerning questions relating to equal pay and occupational social security schemes (Directive 2006/54/EC), self-employed activities (Directive 2010/41/EU) and statutory social security schemes (Directive 79/7/EEC).³⁵

³⁴ Article 51 is explained in 5.2.5 above.

³⁵ http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/screening_report_montenegro_ch19.pdf, p. 13.

9. Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

The LGE does not contain provisions on the prohibition of direct and indirect discrimination on the grounds of sex in access to goods and services.

The LPD Article 11 regulates discrimination on grounds such as sex in the provision of public and private services and goods. The relevant article reads:

'Discrimination in the provision of public and private goods and services, on the grounds of Article 2, paragraph 2,³⁶ shall amount to:

- 1) hindering or preventing the provision of goods and services;
- 2) a refusal to provide goods and services;
- 3) making the goods and services conditional upon certain terms which are not required of other persons or groups;
- 4) intentionally delaying or postponing the provision of goods and services, although the person or group of persons has requested and fulfilled the requirements for the timely provision of the goods and services before other persons or groups have done so.'

The Law on the Prohibition of Discrimination towards Persons with Disabilities in Article 14 prohibits discrimination in the provision of public and private goods and services, without mentioning sex, which could be considered to be included in this context because of the connection with other anti-discriminatory norms and due to the spirit of the Law.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

The material scope of the Montenegrin law relating to access to goods and services is not more restricted than specified in Article 3 of Directive 2004/113, as it covers goods and services.

There was no relevant case law in 2015.

9.3 Have the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education, been implemented in national law?

In Montenegro, there are no explicit exceptions from the material scope regarding the content of media, advertising and education.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

In Montenegrin law, differences in treatment in the provision of goods and services are not justified, except in the case of indirect discrimination when the different provision, criterion or practice is justified by a lawful objective and the means of achieving that objective are appropriate/proportionate and necessary (Article 2(4) of the LPD).

³⁶ Sex is one of them.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

Montenegrin law does not explicitly ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurances and related financial services shall not result in differences in individuals' premiums and benefits. However, from the anti-discriminatory legislation, gender discrimination is forbidden in all life spheres. Therefore, it can be concluded that no discrimination occurs in this regard in Montenegro and that the law does not allow for an exception in this regard.

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

In Montenegro, there is no interpretation of this exception.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

Montenegro has not adopted positive action measures explicitly in relation to access to and the supply of goods and services. However, there is a general provision in the LGE in Article 5, which states that if some general and special measures are adopted or undertaken in order to eliminate and prevent unequal treatment between women and men, to eliminate the consequences of unequal treatment between women and men and to promote gender equality, they shall not be considered to be discrimination.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

Montenegrin legislation (LGE Article 4(3)) makes a specific reference to pregnancy and maternity in relation to the enjoyment of labour rights, rights from social protection and other rights. There is no explicit mention of the right to access to and the supply of goods and services as a form of gender discrimination. There are no registered cases in this regard.

10. Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

Yes. Montenegro signed the Istanbul Convention on 11/05/2011, ratified it on 22/04/2013 and it entered into force on 01/08/2014. No reservations or declarations were made.

The pre-existing legal framework in Montenegro was focused on the Law on Protection from Domestic Violence, which came into force in August 2010.³⁷ Also, there is still no reference to violence against women, but only to domestic violence (violence in the family) in the Criminal Code,³⁸ which has relevant provisions in Articles 77a, 77b, 142(31) and 220.

Article 77a of the Code stipulates that a restraining order shall be imposed on the perpetrator of domestic violence, and Article 77b stipulates that the perpetrator of domestic violence shall be removed from the apartment or other dwelling.

Article 142(31) of the Code provides scope within the meaning of a 'family member' so that this expression shall also mean former spouses, blood relatives and relatives from full adoption in the direct line without limitation and in the collateral line to the fourth degree, relatives by incomplete adoption, relatives by marriage to the second degree, persons living in the same family household and persons who have a common child or a child about to be born, although they have never lived in the same household.

Article 220 of the Code contains a definition of domestic violence which covers only physical violence and violence against mental integrity, but not psychological, economic or sexual violence, which is not in line with the Convention. Also, according to the Code, the circle of family members is narrower than the standard of the Convention, so there is need for an amendment to the Code also in this regard.

In addition, the Protocol on the behaviour of institutions in cases of domestic violence was signed on 25 November 2011. Since then, every November 16 days of activism against violence against women and domestic violence have been organized by the Government of Montenegro, international organizations' representations in Montenegro and NGOs in order for the activities of multidisciplinary teams to be more visible and to have a better influence on the public. Also, a campaign on raising public awareness has been organized in Montenegro since 2007.

The Law on Protection from Domestic Violence makes no reference to violence against women and provides only a general definition of domestic violence (Article 8). The same applies in the Criminal Code.³⁹ The Protocol also does not contain an authentic definition of violence against women, but refers only to the valid legislation, which contains a gender-neutral definition of violence. Bearing in mind that women are much more often the victims of violence than men, this should be pointed out, which is in line with the Convention.

There is a problem with the overlapping of the provisions of the above-mentioned two legal acts, which results in a problem in practice concerning the qualification of domestic violence. Namely, in practice, there is often the dilemma of whether an act of violence

³⁷ *Official Gazette of Montenegro*, Nos 46/2010, 40/2011-1.

³⁸ *Official Gazette of Republic of Montenegro*, Nos 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

³⁹ *Official Gazette of Republic of Montenegro*, Nos 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 40/2013, 56/2013.

should be prosecuted as a transgression (under the Law) or as a criminal offence (under the Criminal Code). A clarification concerning the legal norms and their harmonization is needed. In monitoring criminal proceedings in the field of violence against women, which was done by the NGO sector in Montenegro, it was shown that there is no uniform practice on the qualification of such a violent act, but that the decision depends on the sensitivity of the violence and the training of the competent police officers and prosecutors.⁴⁰ This situation should be changed in both respects - legislation on clarification and harmonization should be enacted and the persons in charge of such decision making should be properly trained.

Also, the introduction of the civil liability of civil servants for a breach of the provisions of the Law on Protection from Domestic Violence should be introduced.

In order for the Montenegrin legislation concerned to be in compliance with the Convention, an organ in charge of coordinating implementation and evaluating policies and measures in accordance with the Convention should be established.

Bearing in mind that the above-mentioned aspects form just a part of the explanation and an illustration of the need to harmonize the pre-existing Montenegrin legislation with the Convention, it must be emphasized that a systemic approach to amending criminal legislation, as well as family law, free legal aid and by-laws is needed.

Additionally, the awareness of society and the self-awareness of women should be strengthened. Traditional lifestyles and a patriarchal mentality in Montenegro, which are still dominant in rural areas, but are also present in urban areas, are not in favour of considering a man's behaviour towards his wife or daughter to be violence. Still, every third woman is a victim of domestic violence, as reported in the media, by the Government of Montenegro, by some political parties and by NGOs.⁴¹ The report by the prominent NGO *Sigurna ženska kuća (Safe Women's House)* for 2015 emphasized that 488 women who had experienced family violence had asked this NGO for help.⁴²

No legal provision was introduced after Montenegro ratified the Istanbul Convention. Amendments to the Law on Protection from Domestic Violence are planned by the end of 2015⁴³ and they have already been elaborated and are to be adopted soon. Also, better protection from domestic violence has been planned and reported in the Medium-term report on the implementation of recommendations of the second cycle universal periodic review for 2015, carried out by the Government of Montenegro, the NGO sector and the UN System in Montenegro.⁴⁴

⁴⁰ Women's Safe House (2015), *Analysis of the compliance of the legislative and strategic framework of Montenegro with the Council of Europe Convention on the prevention and elimination of violence against women and domestic violence*, Podgorica, p. 7. Available at: <http://www.test2983482.cdtmn.org/publikacije/analiza-uskladenosti/>

⁴¹ http://www.gov.me/Nadjacajmo_tisinu_Zaustavimo_nasilje_u_porodici/ , <http://www.cdm.me/drustvo/crna-gora/svaka-treca-zena-u-crnoj-gori-zrtva-nasilja> , <http://radiojadrano.com/alarmantno-svaka-treca-zena-u-crnoj-gori-zrtva-nasilja/> , <http://www.vijesti.me/vijesti/sdp-porazavaju-je-podatak-da-je-u-crnoj-gori-svaka-treca-zena-zrtva-nasilja-862148> , <http://onogost.me/drustvo/u-crnoj-gori-je-svaka-treca-zena-zrtva-nasilja-u-porodici> ,

⁴² Data on the number of reported cases of violence for 2015, available at: <http://www.test2983482.cdtmn.org/izvjestaji/podaci-o-broju-prijavljenih-slucajeva-nasilja-za-2015-godinu/>

⁴³ Ministry of Labour and Social Care (2011), *Strategy on the Protection from Family Violence – 2011-2015*, , Government of Montenegro, Podgorica, p. 9, and Ministry of Human and Minority Rights (2013), *Plan for Achieving Gender Equality in Montenegro (2013-2017 PAPRR)*, , Government of Montenegro.

⁴⁴ <http://gamn.org/upr/files/upr-srednjerocni-izvjestaj.pdf>

11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

The provisions on victimisation have been implemented in Montenegrin legislation. Although the term 'victimisation' is not used either in the LPD or in the LGE, both legal acts contain the relevant provision.

LPD Article 4 reads:

'No person may suffer detrimental consequences as a result of reporting cases of discrimination, testifying before the competent authorities or offering evidence in the proceedings in an examined case of discrimination.

Those persons are protected from any detrimental treatment or consequences as a reaction to a complaint or proceedings conducted because of a violation of the principle of non-discrimination.'

LGE Article 6 stipulates the following:

'No person may suffer detrimental consequences as a result of filing a complaint of discrimination or providing testimony thereof, alerting the public to discrimination based on sex or providing any other form of support to the proceedings conducted on discrimination on that basis.'

Those provisions have not so far been interpreted in any relevant case law.

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

A shift of the burden of proof in sex discrimination cases is provided in the legislation of Montenegro. Actually, the LGE does not regulate this, but the general anti-discrimination legislation will apply.

In Article 29 (1) the LPD lays down a shift of the burden of proof in discrimination cases, as follows:

'If the plaintiff proves in all probability that the defendant has committed an act of discrimination, the burden of proving that no violation of equality rights and equality before the law has taken place, as a result of such an act, shifts to the defendant.'

However, the above-mentioned is only valid in the process before the Ombudsman, bearing in mind that it is stipulated in Article 29 (2) that 'the provision of paragraph 1 of the Article shall not apply to misdemeanours and criminal proceedings.'

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

In Montenegro, the applicable sanctions in sex discrimination cases are laid down in the LGE in Article 33 and 33a.

Article 33 reads:

A fine to the amount of EUR 1 000 to 10 000 shall be imposed on a legal entity if a woman due to pregnancy or maternity, or a person because of gender reassignment, has been placed in a less favourable position compared to other persons, during employment, self-employment, the exercise of rights to social protection and other rights

For the offence referred to in paragraph 1 of this Article, the responsible person in the legal entity, state body, state administration and local self-government authority shall be fined to the amount of EUR 150 to 2 000.

For the offence referred to in paragraph 1 of this Article, an entrepreneur shall be fined to the amount of EUR 150 to 3 000.'

Article 33a reads:

'A fine ranging from EUR 500 to 5 000 shall be imposed on a legal entity if:

1) in its work it does not use gender-sensitive language, or in laws on employment or a contract of employment, acts on the election or appointment of persons, as well as in acts on the election of academic titles, acts on deployment and other acts deciding on the rights and obligations of employees and other public documents and records, it does not express the titles of all jobs, occupations, titles and functions, in the natural gender (Article 13a);

2) it does not provide for training to employees in achieving gender equality (Article 13b);

3) statistical data and information collected, recorded and processed are not expressed/aggregated by gender (Article 14 paragraph 1);

4) it does not submit to the Ministry, within the prescribed period, a report on achieving gender equality within its jurisdiction (Article 22, paragraph 1, item 4);

5) it does not specify the officer who will perform a coordinating activity in gender equality issues, or who participates in the preparation and implementation of the Action Plans (Article 23).

For the offence referred to in paragraph 1 of this Article, the responsible person in the legal entity, state authority, state administration and local government bodies shall be fined to amount of EUR 150 to 1 000 euros.

For the offence referred to in paragraph 1 of this Article, the entrepreneur shall be fined to amount of EUR 150 to 1 500.'

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

In practice, cases of discrimination are not treated as urgently as they should be. Two reported cases at the Ombudsman's Office from 2015 had not been resolved by the end of year, for example. The reason for this can be found in the slow reaction of state organs or other respondents, the massive amount of bureaucracy, etc.

On the other hand, the amount of the fines is inappropriately low compared to long, uncertain and often ineffective proceedings.

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

In Montenegro, access to the courts is safeguarded for alleged victims of sex discrimination. The LGE does not contain any relevant provisions bearing in mind that the provisions of the LPD are valid here as well.

The LPD in Articles 24-30 provides judicial protection against discrimination.

Accordingly, anyone who believes that a violation in the form of discriminatory treatment by an authority, a company, another legal person, an entrepreneur or a natural person has taken place has the right to the protection of the court, in accordance with the law.

The procedure is initiated by means of a complaint. The judicial procedure is civil proceedings, unless this law provides otherwise, and the procedure shall be urgent. Revision is always permitted in the dispute for protection against discrimination.

In the judicial procedure for protection against discrimination, the territorial jurisdiction, apart from the court with general territorial jurisdiction, belongs to the court on whose territory the plaintiff resides or has its seat.

In practice, cases are not treated as being urgent and the proceedings last for a long time, sometimes resulting in victims being in an even worse position, because their anguish lasts for longer, their position in society is difficult due to the still dominant traditional mentality and victims are often left in the position of having to await any satisfaction. Also, there are problems concerning the small number of the cases which are reported, due to an unwillingness on the part of victims to resort to the courts, the lack of knowledge about the existing legal anti-discrimination framework, traditional stereotypes which consider victim behaviour to be normal and consequently a greater degree of tolerance, a lack of family support in some cases, a lack of understanding in the community, etc.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

Access to the courts is safeguarded in cases of anti-discrimination, but not especially for gender equality interest groups and other legal entities in Montenegrin law. The relevant provisions of the LPD also apply to gender discrimination, due to the lack of such provisions in the LGE.

Only with the consent of a discrimination person can a civil lawsuit be initiated, on his/her behalf, by an organization engaged in the protection of human rights (Article 30 of the LPD).

In my opinion, there should be more detailed provisions, as well as those that are directed specifically towards gender discrimination, in order for access to the courts to be adequately safeguarded for anti-discrimination/gender equality interest groups or other legal entities. The problem is usually linked to the traditional mentality and a lack of awareness concerning the possibility of judicial protection, as well as a lack of confidence in the courts mainly due to long proceedings. Due to this, there is no relevant case law as yet.

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

The Law on Free Legal Aid⁴⁵ applies to alleged victims of gender discrimination as well as to others whose financial situation means that they cannot afford to pay for legal services.

In addition, victims of gender discrimination usually receive free legal aid from NGOs specializing in gender equality protection. Such aid takes the form of information, legal advice and representation. According to the report on reported cases of violence in 2015 by the NGO *Sigurna zenska kuca* (Safe Women's House),⁴⁶ 220 women received free legal assistance from this NGO.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

In Montenegro, the Protector of Human Rights and Freedoms of Montenegro, i.e. the Institution of the Human Rights and Freedoms of Montenegro Ombudsman Institution⁴⁷ is in charge of the implementation of Montenegrin anti-discriminatory gender legislation, as well as the requirements of EU gender equality law. There are two main responsibilities with regard to discrimination: to prevent and to protect from discrimination.

The Institution of the Human Rights and Freedoms of Montenegro (the Ombudsman) was established by a law which was passed by the Assembly of Montenegro on 10 July 2003. The Ombudsman performs his duties on the basis of the Constitution and the laws and adheres to the principles of justice and fairness in the course of his work.

The Ombudsman has competence to deal with all grounds of discrimination enshrined in the LPD and LGE. One of four Deputy Ombudsmen is in charge of discrimination cases.

The Ombudsman is an independent, autonomous state body elected by Parliament, which has a wide mandate in the area of the promotion of equality and anti-discrimination in all areas of social life. The Institution is entrusted with protecting and promoting human rights and freedoms when these have been violated by means of an enactment, an act or a failure to act on the part of the state authorities, local self-government authorities, public services and other holders of public authority. In addition to this function, the mission of the Ombudsman also includes awareness raising regarding the importance of the rule of law and the consistent protection of human rights and freedoms and, in general terms, bringing about legal certainty, lawful and impartial work of the state authorities before which citizens exercise their rights, freedoms, duties and legal interests.

The Ombudsman has a range of measures, out of which the most relevant are receiving and considering claims regarding discrimination, providing an opinion and recommendations in concrete cases as a sort of pre-trial arrangement / solution, providing information to a complainant on his/her rights and possibilities of initiating a court procedure or other type of protection measure, and filing complaints for protection from discrimination on behalf of but with the approval of the discriminated person.

⁴⁵ Official Gazette of Montenegro, No. 20/2011.

⁴⁶ Information on Reported Cases of Violence in 2015/Podaci o broju prijavljenih slucajeva nasilja za 2015 godinu, Available at: <http://www.test2983482.cdtmn.org/izvjestaji/podaci-o-broju-prijavljenih-slucajeva-nasilja-za-2015-godinu/>

⁴⁷ <http://www.ombudsman.co.me>

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

The social partners in Montenegro play an important role in ensuring compliance with and the enforcement of gender equality law. The Office for Gender Equality of the Government of Montenegro is very active. It organizes seminars, round-table discussions, publishes brochures, and cooperates with governmental bodies, NGOs and international organizations on different matters. Also, the NGO sector is very active and vocal.

There are no legislative provisions concerned.

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

According to the Labour Law Article 4, the provisions of all collective agreements cannot be contrary to the law. Relevant acts in this context are the Labour Law specifying the minimum rights of employees and the General Collective Agreement,⁴⁸ which is not designed to implement gender equality law. In addition, special collective agreements could be used to provide more extensive rights for employees, but not less than in the Law.

⁴⁸ *Official Gazette of Montenegro*, No. 04/2014.

12. Overall assessment

The anti-discrimination legislative framework of Montenegro is, in general, very much in accordance with the EU gender equality *acquis*. The latest amendments to the LGE, which entered into force on 7 July 2015,⁴⁹ brought anti-discrimination gender legislation into a more harmonized position with regard to EU standards.

Positive measures are defined very extensively in many laws, as explained above. Some legislative solutions are more favourable for female workers, such as the duration of maternity and paternity leave and leave for childcare and caring for a child with a disability. On the other hand, it is not possible to use the maternity leave in a piecemeal fashion or part time.

Although Montenegro has demonstrated quite a degree of success in harmonizing its law with the EU standards, there are still some gaps in the existing legislation. For example, there are no relevant provisions on some important phenomena, such as self-employment, occupational social security, etc. Also, surrogacy is still not defined or allowed in Montenegro.

On the other side, there is a huge gap between the legislative framework and the implementation of the existing legislation. Bearing in mind the modest number of cases reported to the Ombudsman concerning gender equality rights (only two), as well as no judgment by the courts with regard to the above, it can be concluded that gender equality awareness and a culture of human rights have to be improved, in order to comprehensively combat sex discrimination and gender stereotypes.

In addition, the implementation of existing legislation must be strengthened in practice, as well as the necessary amendments of existing laws in order to meet a higher level of gender equality protection, as well as the assertiveness and awareness concerned.

Bearing in mind the existing situation with regard to gender equality in Montenegro, it would be advisable for the institutional framework to be strengthened (if not in the sense of establishing a specialized commissioner for gender equality issues, then at least by providing for more staff and more training with regard to the existing institution of the Ombudsman). It is important in the future to introduce additional measures aimed at ensuring and promoting gender equality in certain areas of social life, where the unequal representation of women and men is a burden and an obstacle to realizing equality. In addition, it is necessary to improve the promotion of gender-sensitive politics and to educate both genders in relevant matters. Finally, in order to develop a culture of human rights and gender equality in Montenegro, it would be necessary to educate the youth. Bearing in mind that at schools and universities there are no relevant courses to cover the issue of gender equality, the role of the NGO sector is more important. In Montenegro, they are doing a very good job in respect of promoting gender equality and providing assistance and protection to women in need, such as the NGOs *Safe Women's House*⁵⁰ and the *Women's Rights Centre*.⁵¹

⁴⁹ *Official Gazette of Montenegro*, No. 35/2015.

⁵⁰ <http://www.test2983482.cdtmn.org>.

⁵¹ <http://www.wrcentre.com/press.php>.

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