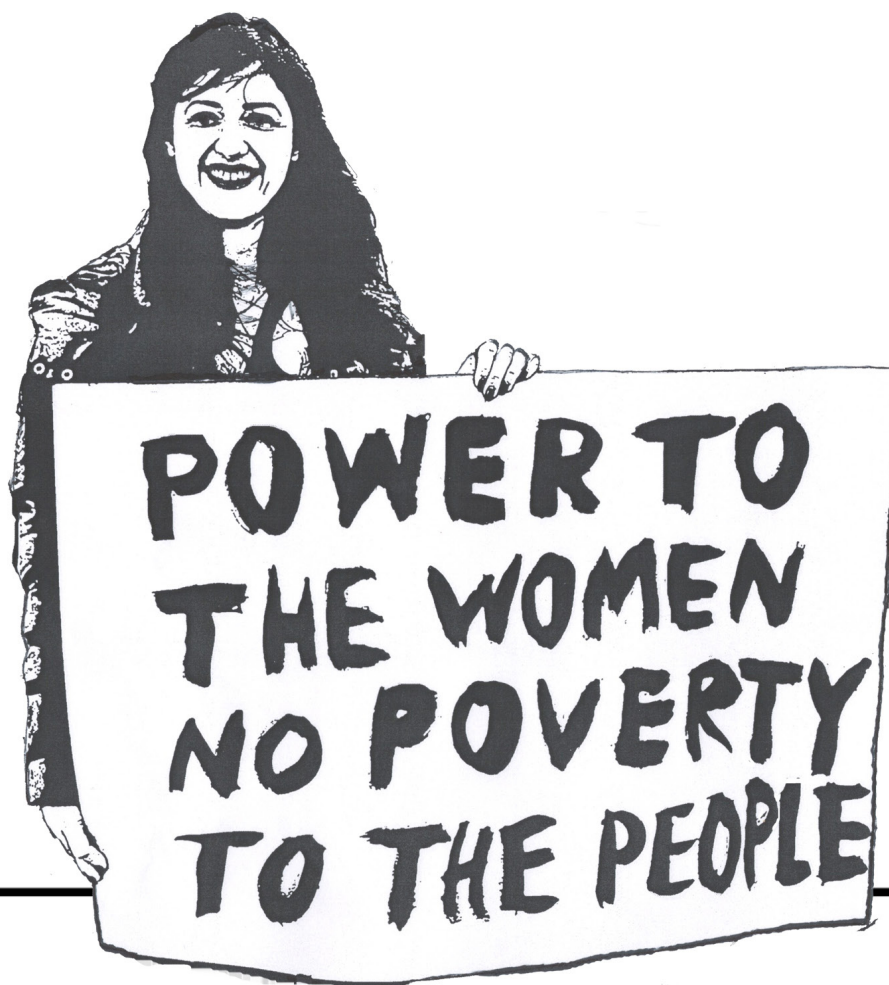


**NGO SHADOW REPORT  
ON THE IMPLEMENTATION OF THE CONVENTION ON  
THE ELIMINATION OF ALL FORMS OF DISCRIMINATION  
AGAINST WOMEN (CEDAW) IN MONTENEGRO**

Submitted for the 67th CEDAW Committee Session  
3-21 July 2017





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This report is submitted on the behalf  
of the following organisations:  
*Women's Rights Center*  
*Centre For Roma Initiatives*  
*Women's Safe House*  
*SOS Hotline for Victims of Violence, Nikšić*  
*Spektra*  
*Queer Montenegro*

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Women's Rights Centre

Centre For Roma Initiatives

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Podgorica, June 2017

## EXECUTIVE SUMMARY

This report contains the exploration of the progress made within areas covered by the following articles: Article 2-7, 11, 14, 16 and General Recommendation 19. Yet, before embarking on the detailed examination of these, the brief summary of the complete report, including the sets of recommendations, is offered below.

### ARTICLE 2 - OBLIGATIONS TO ELIMINATE DISCRIMINATION

General remarks:

The measures for the adoption and implementation of legislation to prevent discrimination based on sex, sexual orientation, gender identity from the Law on Prohibition of Discrimination (LPD) and the Law on Gender Equality (LGE) undertaken by the state, were insufficient. They mainly consisted of educational activities directed at state institutions' personnel, yet were not followed by adequate evaluation and impact assessment. The conducted campaigns were sporadic and without real impact on public awareness.

The Convention on the Elimination of All Forms of Discrimination against Women is claimed to be the source of measures in the strategic documents that relate directly to women as legal subjects, but it is not applied directly, by reference to its provisions in court proceedings.

The Gender Equality Law (2007), after 8 years of implementation, has no effect on the actual equality of men and women.

### RECOMMENDATIONS:

- Improve public information on the prohibition of discrimination based on gender (and on the most common examples of discrimination), as well as on the rights to equality, in order to stimulate women to advocate for their rights.
- Ensure an independent and consistent evaluation of implementation of existing legal regulations and strategic documents.
- Ensure direct application of Convention and international law in cases where relations are regulated differently from domestic legislation.
- Provide continuous, specialised and gender-responsive training for representatives of all competent institutions, which, in addition to legal procedures, will also provide an understanding of the problem of discrimination.
- Continue to strengthen the capacities of the Ombudsperson for the treatment of cases of discrimination based on sex and strengthen the cooperation between Ombudsperson and women's NGOs dealing with issues of discrimination and gender-based violence.
- Amend the definition of rape in the Criminal Code to comply with the CEDAW Committee recommendation, so that lack of consent takes central place within the legal definition of rape.
- Adopt other proposals of non-governmental organisations for amendments to the Criminal Code. Ensure gender impact analysis of laws and policies, according to the Article 3 of Gender Equality Law.

### ARTICLE 3 - MEASURES OF THE DEVELOPMENT AND THE ADVANCEMENT OF WOMEN

General remarks:

The State is inconsistent in implementing gender equality policies and the State budget lacks funding for their implementation. The majority of activities in the area of gender equality are implemented by NGOs and international organisations, such as UNDP and OSCE, with support of international and EU funding. The political power of the key gender equality mechanisms (Gender Equality

Department and Parliamentary Committee for Gender Equality) is low and lacks influence on other institutions responsible for enacting gender equality policies. The newly established institutional mechanism for the implementation of gender equality policy, the National Council for Gender Equality, has not as of yet meet the expectations of civil society.

#### RECOMMENDATIONS:

- The Council for Gender equality needs to strategically articulate women's interests before all State institutions and international bodies.
- The lack of human rights proficiency of the Department for Gender Equality personnel requires a thorough overhaul. Financial resources are also needed.
- It is necessary that the Department for Gender Equality makes proper use of its competencies by becoming more involved in the decision-making of Government.
- Make relevant strategic documents gender sensitive. Include measures related to marginalised groups of women. Make sure that policies from national strategies are harmonised with the local strategies.
- Regular and publicly available reports on gender equality at all levels, that would include information on the number and the extent of activities, clear and measurable indicators that would allow for monitoring of resources spent (both from the budget and donors) and the results, as well as evaluation of the extent of fulfilment of implementation of the Gender Equality and Action Plan.
- The Parliamentary Committee for Gender Equality should intensify activities regarding the creation of proposals for amending laws that improve the position of women. Provide regular monitoring of the implementation of legal provisions with major implications for women.
- All bodies should support the development and the autonomy of women's non-governmental organisations.

#### ARTICLE 4 - TEMPORARY SPECIAL MEASURES

##### General remarks:

Some limited progress has been made when it comes to the application of temporary special measures, yet there is still tangible resistance to, and misunderstanding of, the very purpose of positive discrimination amongst political and social actors. The progress referred to above is related predominantly to the introduction of the quota system for women political candidates. However, no special measures have been adopted for higher inclusion of women in the labour market, especially for disadvantaged groups.

#### RECOMMENDATIONS:

- Timely change of the legislative framework, which would provide for better political representation of women, at least 40 per cent in the Parliament and local assemblies.
- Introduce incentives for employment and economic empowerment of women.
- Introduce temporary special measures for participation of marginalised and disadvantaged women in political and public life and labour market.

#### ARTICLE 5 - SEX ROLES AND STEREOTYPES

##### General remarks:

Traditionalism and traditional gender roles are deeply entrenched in the Montenegrin culture. Women's role is that of main caregivers at home while their participation in the labour market and

in the public sphere is still not encouraged by the family members and society. Gender-stereotyped roles are mirrored in the large discrepancy in the distribution of family and home duties between women and men. A mother's cult in Montenegrin society makes it difficult for both men and women to become conscious of own position, it excludes fathers from the active role in parenthood and limits women in their public actions.

Son preference in families reflects discriminatory socio-economic practices and traditions. It is common that sons alone inherit property and carry on the family name. Such traditions place huge pressure on women to give birth to sons and resulted in increase of sex selective abortions.

#### RECOMMENDATIONS:

- Support the campaign and educate on the importance of the deconstruction of the myth of motherhood and motivate men for care of children.
- Enable learning on gender equality at all levels of education
- Develop counselling services for adolescents, pregnant women, and family planning.
- Introduce programmes for responsible parenthood within primary health care.
- Encourage the choice of occupation atypical for the given gender.
- Provide research on prevalence on selective abortions
- Continuously raise awareness on consequences of selective abortions on society

#### ARTICLE 6 - TRAFFICKING IN WOMEN

##### General remarks:

The efforts of Government of Montenegro invested in combating trafficking in human beings proved to be insufficient. The official, repetitive attitude of the authorities is that organised trafficking does not exist in Montenegro, and that such cases were random and individual. Combating trafficking in human beings becomes further complicated by the fact that there is no valid data upon which to determine the scale of the problem, especially since many forms of exploitation occur within the grey economy. Such data proved insufficient for understanding the overall situation relating to the prevalence of trafficking in human beings in the country and region.

#### RECOMMENDATIONS:

- The state should provide specialised free legal aid to possible trafficking victims. This would secure better protection for them, make it much more likely that their rights (as victims of crime) are respected, and also contribute to them feeling safe and being able to trust the various institutions involved in the criminal justice system.
- Ensure consistent implementation of existing legislation in terms of protecting the safety and integrity of THB victims in criminal proceedings;
- Establish a practice of the use of special forms of interrogation of victims to avoid confrontation and encountering of victims with perpetrators, and exclude the public every time, even when legal requirements are met and when case circumstances require so, not only when it comes to underage victims, in order to avoid secondary victimisation.
- Implement measures in improving and further harmonising the domestic legal framework with international standards in the area of protection of THB victims;
- Amend the Law on compensation of victims of violent crimes and establish a fund for compensation, in order to enable the victims to exercise their right to compensation from the State, in situations when that compensation cannot be provided from other sources;
- Ensure that the training on international standards of treatment of victims is incorporated in annual programmes of mandatory education in the judiciary and prosecutor's office, in order to ensure proper understanding of the position and rights of THB victims;

- Increase efforts in order to identify possible victims and ensure continuous cooperation with NGOs dealing with the protection of rights of THB victims;
- Conduct regular and independent monitoring of court practice, not only through analysis of statistical and qualitative data on the conduct of courts and the prosecutor's office in these cases, but through systematic monitoring of cases by every institution included in the process of victim protection and prosecution of perpetrators.
- Provide specialised legal assistance and legal representation to THB victims and monitor the quality of provided assistance.
- Ensure the rights of a woman to have a female lawyer to represent her, if that is what the victim wants.
- Ensure the respect of the principle of "impunity" of THB victims for criminal offences related to their situation.
- It is especially necessary to provide adequate monitoring of data related to exercising the right to compensation, as well as to the number of THB victims who used their right to free legal assistance prior and during the court proceeding.
- Ensure efficient implementation of legal provisions concerning property confiscation of persons convicted for criminal offences related to human trafficking.
- Urgently initiate preparation of adequate programmes of resocialisation, reintegration and monitoring of the victim's status after the completion of court proceedings and after leaving the Shelter for THB victims;
- Ensure independent monitoring and reporting on activities and results of the fight against THB in Montenegro.

## ARTICLE 7 - POLITICAL AND PUBLIC LIFE

### General remarks:

Women remain considerably underrepresented in the political and public life of Montenegro. The legislative framework is inadequate. The election law, although recently amended with a view to improving the political representation of women in the Parliament and local assemblies, failed to yield significant results. Other measures aimed at strengthening women's participation in the political and public life of the country had a limited effect. The competent institutions lack the necessary administrative, expert, and financial capacities to effectively implement the existing gender equality policies. Lack of progress in this area is the result of an evident lack of political will to effectively address this problem, including through the implementation of recommendations of national stakeholders and relevant international organisations.

### RECOMMENDATIONS:

- Demonstrate political commitment to achieving gender equality through the implementation of relevant recommendations of national stakeholders and international organisations (women's rights NGOs, Ombudsperson, CEDAW committee, the EU, OSCE/ODIHR, etc.). These include – but are not limited to – meaningful and timely changes of the legislative framework which would provide for better political representation of women - at least 40 percent in Parliament and local assemblies.
- Strengthening financial and expert capacities of the competent institutions to carry out their mandate effectively;
- Providing incentives for political parties to promote women to senior positions within their respective party structures and increase visibility of female candidates during election campaigns;
- Fostering public and expert discussions on the political participation of women and relevant media reporting with a view to eliminate the stereotypes concerning the role of women in society.



## ARTICLE 11 – EMPLOYMENT

### General remarks:

Women in Montenegro are underrepresented in the labour force. Their employment rates and activity rates remain lower than for men. The legal and policy framework is inadequate. A number of projects and programmes devised to support women's economic empowerment and labour market participation were implemented with limited success. The absence of gender mainstreaming and gender impact assessment for social and employment policies is a serious issue of concern.

For e.g. recent regulatory changes in the social care system further worsened the persisting gender imbalance by introducing measures which discouraged women from working and resulted in early withdrawal of some 17 000 women from the labour force. Occupational segregation on the labour market continues to be an issue and women continue to be exposed to various forms of gender discrimination, including discrimination based on marital status and motherhood, which continues to hinder women's access to labour market and career advancement. Although discrimination goes unreported, its effects are clearly visible from the persistent gender differences in wages and the conspicuous absence of women from high managerial positions. The customary law that favours male to female family members regarding inheritance continues to be widespread.

### RECOMMENDATIONS:

- Improve the legal and policy framework for economic empowerment of women and step up capacities for gender mainstreaming of policies, service delivery and budgets with a view to enhance gender equality and women's economic rights;
- Show real commitment to fighting gender-based discrimination in the labour market, including through strengthening capacities of complaint mechanisms and improving the track record of reported and processed cases of gender discrimination;
- Discourage practices which hinder economic security and rights of women, especially regarding employment and improve implementation of existing laws and policies that promote and protect these rights;
- Repeal the legislative measures discouraging women's participation in the labour market and increase the allocations for active labour market measures targeting women, including the hard to employ categories.

## ARTICLE 14 - RURAL WOMEN

### General remarks:

According to the 2011 Census 34,5 per cent of women live outside urban areas. Yet official data on the lives and challenges of rural women is not available. Scarce academic resources as well as the available testimonies of rural women demonstrate that the position of women in rural area in Montenegro is particularly difficult - they perform both the agricultural work and household chores in difficult conditions, often lacking basic facilities such as electricity or running water (washing, cleaning, child rearing and running the household). Moreover, they have very limited access to services and are often socially excluded.

### RECOMMENDATIONS:

- Adopt comprehensive programmes for economic empowerment of rural women (ensure income for women for working on agricultural holdings, social and health insurance and pension).
- Encourage entrepreneurship among rural women, easier access to credits and tax incentives.
- Have special care and protection for elderly rural women.

- Ensure participation of rural women in drafting local development plans.
- Ensure access to all forms of health protection and regular provision of medical services.
- Organize preventive health check-ups for rural women at a community level at least once a year.
- Raise awareness amongst rural women of their rights. Devote special attention to education and protection of girls living in villages.
- Launch campaigns and educational programmes (workshops, panels..) on the issue of violence against women targeting rural women.
- Ensure access to free services (legal aid, intermediaries in institutions, emotional support) for rural women victims of domestic violence.
- Organize educational programmes to overcome the traditional, patriarchal relation between men and women in rural areas.
- Organize programmes for rural women to be socially engaged and ensure some public areas are used for the needs of women's associations and clubs.
- Organize programmes for training, retraining and further training for occupations in demand on the labour market for rural women.
- Organize a large number of cultural events for rural women (creative workshops, film screenings, theatre performances, literary nights).
- Ensure rural women can include their children in programmes, to enable them to spend their free time in an organised and creative manner (kindergartens, playgrounds, healthy lifestyle programmes).

## ARTICLE 16 - MARRIAGE AND FAMILY LIFE

### General remarks:

One of the key country features is the prevailing traditional gender division of roles within the Montenegrin family. Family and home duties are largely regarded as women's responsibilities. Women on average spend 3.7 hours a day performing care work (for married women this figure amounts to 4.5 hours per day), while men (either married or not) spend on average only 1,5 hours. Out of the total number of people who claim to never perform domestic chores (11% of the population), the large majority (96%) are men<sup>1</sup>.

The customary law that denies the right of women to inherit property in favour of male family members is still widespread, and has a huge impact on the economic position of women in Montenegro.

The living conditions of the self-supporting mothers (who make up 92.86% of single parents) and their children are particularly harsh. Besides struggling to reconcile work and parental responsibilities, they have difficulties obtaining alimony due to the inability of the legal system to determine undeclared employment and the exact amount of the salary of the parent who is obliged to provide child support. As a result, around 60% of fathers fail to provide child support for more than 24 months<sup>2</sup>.

### RECOMMENDATIONS:

- Amend legislation to ensure transferable paternity leave for fathers.
- Strongly promote equality of women and men in sharing responsibilities for family life.
- Amend legislation to enable the efficient exercise of the right to payment of child support by the parent who does not live with the child.

1 Research Socio-economic position of women in Montenegro, 2013, Ipsos Strategic Marketing for NGO European Movement in Montenegro

2 T. Saveljic and J. Hajdukovic, Study 'Alimony – the right of every child and every parent's obligation', project implemented by Women's Safe House, with financial support from the European Union through the Centre for Civic Education (CCE) and the Civic Initiatives (GI), Podgorica, November 2014, available at: <https://docs.google.com/file/d/0B6HPdSi5m-iwcGk3QVFJMU1hUDQ/edit>

- Establish an Agency for Enforcement in Collecting Alimony and define efficient sanctions for non-payment of alimony.
- Amend legislation to introduce incentives for specific support services for self-supporting mothers and their children.

## ROMA AND EGYPTIAN WOMEN (ARTICLE 3)

### General remarks:

The most vulnerable group in Montenegrin society are Roma and Egyptian women. Due to traditions and specific social, economic and cultural conditions, they suffer double discrimination and face numerous obstacles in education and the development of their capabilities, which reduces their prospects for employment and economic independence. There are almost no Roma and Egyptian women in prominent positions in public life.

### RECOMMENDATIONS:

- Establish sound monitoring of the implementation of strategic documents related to the position of RE women and define clear performance indicators for specific programmes.
- Introduce mechanisms of protection against discrimination and domestic violence against Roma women.
- Educate the media for objective, professional and analytical coverage of the problems of the Roma population and the status of Roma women, within their families and community, devoid of stereotypical statements and messages containing traces of segregation.
- Establish a sound registration system for members of the Roma community to determine the exact number of Roma in Montenegro.
- Provide programmes for the Roma community on the obligation and importance of education of children, human rights and discrimination.
- Conduct programmes to strengthen activism and social engagement of Roma women.
- Empower representatives of the Roma community in order to become included in the work of specific institutions.
- Design programmes to create conditions to prevent signing girls out of schools.
- Conduct additional training and capacity development programmes for Roma associations already active.

## WOMEN WITH DISABILITIES (ARTICLE 3)

Montenegro certainly falls amongst the group of countries where persons with disabilities have constantly been excluded from social life. Families contributed greatly to this by the predominant attitude that persons with disabilities do not have the same needs as others and that due to their limited capabilities they need constant support and assistance. There has also been a problem associated with parents (but also other family members), who were ashamed of the family member with disabilities. As of late, the attitude towards persons with disabilities is changing, mostly due to pressure non-governmental organisations established by people with disabilities, which play an ever more active role in the social and political scene. Here, as is the case with other sectors within the society, greater attention is paid to men and specific difficulties and needs of women with disabilities remain marginalised. Women are particularly deprived of their right to sexual life and motherhood. In their families, and the wider community alike, it is implied they should renounce such needs

### RECOMMENDATIONS:

- Introduce legal incentives for the participation of women with disabilities in the areas of political actions, employment, health and education.

- Ensure funding for personal assistance for women and girls with disabilities.
- Set up support groups for women with disabilities. Ensure accessibility of public areas and workplaces for women with disabilities.
- Ensure access to education, social and health services for women with disabilities.
- Integrate women with disabilities in the national machinery for gender equality and in drafting strategic and policy framework for women.

### THE STATUS OF LESBIAN WOMEN (ARTICLE 3)

#### General remarks:

Discrimination and violence is further increased if characteristics that indicate LBTQ identity are attributed to women, which places them in a very unfavourable position, within the administrative system, as well as society as a whole. Lesbian, bisexual and transgender women in particular are affected by gender role divisions and patriarchy, which force them into invisibility, where they hide their identity in order to protect their safety, preserve their employment or the prospect of gaining employment, to avoid violence in the street or even in the family. LBT women have been creating the history of the LGBT movement in Montenegro from the shadow for years. They act upon and implement most activities, while the public discourse is dominated by the voice of GB men. Hetero-normative systems of behavioural patterns are still prevalent within the LGBT movement. Although significantly larger in numbers, the voices of LBT women remain subdued by the male representatives of the LGBT community.

#### RECOMMENDATIONS:

- The State should ensure the implementation of specific measures for protection against violence, especially family violence, regarding LBT women.
- The State should provide legal gender recognition based on self-determination for all transgender persons.
- Guaranteed sustainability of social support services for LBT women should be provided by the State.
- The State should provide specific health care services to LBT women, especially with regards HIV prevention.
- Provide equal opportunities for education and employment for LBT women.

### GENERAL RECOMMENDATION 19 – VIOLENCE AGAINST WOMEN

#### General remarks:

Montenegro ratified the Istanbul Convention, which came into force on August 1, 2014. Non-governmental organisations working on this report continuously monitor the work of institutions in the area of protection against domestic violence. The key findings of the institution's conduct in these cases are extremely worrying - they demonstrate a complete lack of physical protection for victims, even after repeated reports of violence to the police and other competent institutions. NGOs noted a failure of institutions to comply with the principle of urgency, a complete lack of risk assessment, a very small number of issued protection measures for victims and a lenient penal policy. The often discriminatory attitude of institutions to women with experiences of violence and the fact that a large number of victims are not familiar with the procedures, are only some of the key reasons for a loss of trust in State institutions and the withdrawal of victims from further involvement in proceedings.

## RECOMMENDATIONS:

- Ensure adequate human, financial and administrative resources for the implementation laws and policies.
- Revise and strengthen the criminal policy for domestic violence offences.
- Criminalise rape in a family context, including marital rape as a qualified form of rape.
- Extend the circle of protected persons within the framework of criminal and misdemeanour protection, by including persons who have been emotionally violated, no matter whether they lived in the same household.
- Provide regular supervision over the execution of conditional sentences and protective measures and in cases of non-compliance urgently initiate the procedure for the revocation of a suspended sentence or criminal proceedings for non-compliance with protective measures.
- Establish assistance and support services for victims after they leave the situation of violence: financial assistance, housing, education, training and employment assistance.
- Ensure a sufficient number of safe places for women and children victims of violence.
- Establish crisis centres for rape victims and victims of sexual violence and prescribe protocols for respective institutions on how to support rape victims.
- Develop unique procedures and forms for collecting data on gender-based violence amongst relevant institutions and develop a unique database on gender-based violence.
- Fully harmonise domestic legislation with the standards of the Council of Europe Convention on preventing and combating violence against women and domestic violence.
- Involve specialised women's NGOs in relevant bodies for monitoring the implementation of the Istanbul Convention.

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## INTRODUCTION

The following NGO Report is the second such report since Montenegro declared its independence in 2006. The first State report was presented to the UN CEDAW Committee on its 50th Session, held from October 3-21, 2011, four years after the agreed upon deadline<sup>3</sup>. This report refers to the period from 2012 to June 2017, and expresses critical views of the Montenegrin non-governmental organisations on the steps undertaken to implement the recommendations contained in CEDAW Committee Concluding Observations from 2011, including additional recommendations for the paragraphs 19 and 23 from 2014, in relation to the II Periodic State Report on the implementation of the articles of the Convention.

Input to this report has been provided by non-governmental organisations engaged in specific areas of women's rights: Women's Safe House and SOS Hotline for Women and Children Victims of Violence Nikšić, which have contributed data on violence; Centre For Roma Initiatives, which contributed on the position of Roma Women with a particular focus on violence and multiple discrimination against Roma women, and child forced marriages in Roma communities; Spektra and Queer Montenegro, which contributed on the position of LBT Women. The rest of the Convention was covered by Women's Rights Centre, which coordinated the process and edited the report.

Besides the input from NGOs, the report used other relevant sources of information: administrative data, official statistics, publicly available research and analysis, provided mostly by NGOs and international organisations, legal and policy documents, Ombudsperson annual reports, state reports, media articles, as well as independent evaluation reports on Human Rights Mechanisms in Montenegro, obtained through the Law on Free Access to Information.

Financial support was provided by Kvinna Till Kvinna and OAK foundations.

## CONTEXT

Despite strong international support to the process of Montenegro EU accession, internal changes have been made mainly on a rhetoric level, especially concerning: efficiency and proactive usage of gender equality mechanisms; protection, support and access to justice of victims of gender-based discrimination and violence, political participation, employment, development and the advancement of women, particularly women from disadvantaged groups, such as Roma women, etc.

However, formal advancements have been made, such as: the adoption of international human rights standards, laws, regulations and programme documents. However, these tools still lack supportive implementation mechanisms and state funding. In order to legitimate this discrepancy between established mechanisms for attaining gender equality and its application, the Government often supplements arguments of an economic nature (e.g. lack of funds) and sometimes refers to a „lack of capacity“. The State report contains the lists of implemented activities, without any impact analysis or the transparent information on funding sources, mainly provided by international donors such as the European Commission, UNDP, OSCE and NGO projects.

Neither the ruling parties that constitute the Government, nor most opposition parties, are sufficiently interested in improving the women's social, economic and political condition and are failing to find

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<sup>3</sup> The deadline for submitting Report (Under the Article 18 of the CEDAW Convention) was 23 October 2007, that is a year after the Convention entered into force in relation to Montenegro.

the right way to represent them. This problem was particularly illustrated by the lack of support to the Women's Rights Centre initiative for amending the Electoral Law in 2013, aimed at ensuring that in each group of three candidates on electoral lists, at least one candidate was a woman. Although this occasioned a perfect opportunity for the implementation of the Committee Recommendation in paragraph 23(a), related to the participation of women in political and public life, the ruling party that held a majority in the Montenegrin Parliament failed to support the initiative. This is contrary to the written information the State submitted to the Committee on June 13, 2016.

Instead of supporting the legal initiative, the ruling party devised an amendment proposing that in each group of four candidates, at least one candidate should be a woman, thus significantly decreasing the proposed percentage for further inclusion of women in decision-making processes. This was the second time in 3 years that the ruling party sabotaged the attempt to amend electoral law in a way that would ensure the election of at least 30 per cent of women in national and local parliaments. The legal changes resulted in only 23 per cent of MPs being women after the parliamentary elections held in October 2016.

The problem of poverty persists in Montenegro, especially amongst disadvantaged, Roma women and single mothers. Official data is missing since the last poverty analysis provided by the Statistical Office of Montenegro in 2013. The austerity measures and efforts of the Government to make savings often hits women hardest, affecting them adversely for a lifetime. This was the case with the changes to the Law on Social and Child Protection from 2013, via which maternity leave benefits were reduced, as well as with the Law on Health Protection in 2015, which was aimed at reducing the allowance for maternity leave, but was stopped due to the negative reaction of NGOs. This occurred again with numerous changes to the Law on Social and Child Protection. Namely, within the period of two years the Law was changed 3 times, initially to introduce so-called "mothers' benefits" (2015), then to reduce them (January 2017), and finally to abolish them (June 2017). This led to social disturbances, and to the long-lasting "protests of mothers", which for unclarified reasons does not feature in the State report. The protest could have been significantly abated if the state carefully and competently devised social policies. Ignoring arguments from NGOs regarding the discriminatory provisions of the Law on Social and Child Protection by the state and the opposition parties, as well as the lack of reaction of the authorities when the "protest of mothers" radicalised and turned into 14 days of hunger strikes in front of the Parliament, is a true reflection of the discriminatory attitude of the Montenegrin Government towards women and gender equality policies, lacking a genuine interest, a commitment to funding and the necessary analytical approach. The delayed reaction of the Constitutional Court and its unclear decision on the abolition of mothers' benefits have contributed to the overall atmosphere of legal uncertainty that compromised the already acquired mothers' rights in favour of the government's saving measures.

The protests have also surfaced the true character of the transitional period in Montenegro: the non-transparent privatisation, insolvency, massive bankruptcy followed by the loss of labour and social rights. The files documenting these non-transparent, unconscientious and inadequate privatisation endeavours are scarce and fragmented. However, the consequential reality of these endeavours manifests in the form of the multiplying, and often failing, attempts of women workers to exercise their rights and receive labour remuneration, something that becomes increasingly outside of women's reach. Violation of labour rights, especially by the so called 'transitional entrepreneurs', are an everyday occurrence – employment compensation, paid overtime hours, entitlement to holiday and annual leave, reimbursements and social protection programmes are exclusively within the domain of „the good will“ of private employers and infrequently, if ever, applied.

The government is turning a blind eye to every other issue concerning the status of women. This particularly refers to the institutional mechanisms (Department for Gender Equality within the Ministry of Human and Minority Rights and Parliamentary Board for Gender Equality and new Gender Equality Council) that continue to fail to react to discriminatory practices, such as selective



abortions, institutional failure to protect women from violence and other forms of women's human rights violations.

The Government still does not demonstrate an intent to support the development of the women civil sector despite the fact that non-governmental organisations implement a significant number of strategic measures and legal obligations of the state through their projects and their own resources. The status of NGOs is further aggravated by the Law Proposals on NGOs and on NGOs financing, recently adopted by the Government of Montenegro, that have further limited the possibility of establishing and financing NGOs.

## ARTICLE 2 - OBLIGATIONS TO ELIMINATE DISCRIMINATION

### General remarks:

The measures for the adoption and implementation of legislation to prevent discrimination based on sex, sexual orientation, gender identity from the Law on Prohibition of Discrimination (LPD) and the Law on Gender Equality (LGE) undertaken by the state, were insufficient. They mainly consisted of educational activities directed at state institutions' personnel, yet were not followed by adequate evaluation and impact assessment. The conducted campaigns were sporadic and without real impact on public awareness.

The Convention on the Elimination of All Forms of Discrimination against Women is claimed to be the source of measures in the strategic documents that relate directly to women as legal subjects, but it is not applied directly, by reference to its provisions in court proceedings.

The Gender Equality Law (2007), after 8 years of implementation, has no effect on the actual equality of men and women.

### Reasoning:

One of the key provisions of the Law on Gender Equality imposed an obligation on the state, local government bodies, and other public authorities, that at all stages of planning, adopting and implementing decisions and activities within their competence, they would evaluate their impact on the position of women and men. This provision was not implemented and there was no sanction imposed. The most illustrative example of the lack of implementation of this provision is the adoption of amendments to the Law on Social and Child Protection (2015), which introduced the right to benefits for mothers of three and more children. The stated law was adopted without a basic assessment being offered, such as an estimate of the costs of its implementation, or a provision of data on the number of women entitled to benefits being provided, not to mention the complete lack of gender impact assessment that could have predicted its long-term impact on the position of women. This resulted in the State allocating EUR 76 million annually to the mothers' benefits, which in turn necessitated budget rebalancing. The aforementioned law has also caused the withdrawal of women from the labour market - some 4600 women left their jobs in favour of benefits and 4100 have waived their right to a pension. Moreover, the Law contains discriminatory provisions, which is why several persons filed complaints to Ombudsperson, based on discrimination committed by a statutory act and regulations for its execution. The Constitutional Court of Montenegro declared the law as unconstitutional in April 2017, 15 months after its coming to force. (Detailed exploration of the impact of the Law on Social and Child Protection and the benefits for mothers can be found under Article 11 - Employment.)

A matter of concern is the recent adoption of the Law Proposal on Amendments to the Criminal Code of Montenegro, which does not comply with the CEDAW Committee's recommendation, as it fails to ensure that the definition<sup>4</sup> of rape is constituted by a lack of consent. It also failed to

recognise marital rape as a criminal offence. The Ministry of Justice also rejected other amendments submitted by women's NGOs.

According to the Ombudsperson's Annual Report for 2015, there were 8 complaints related to gender-based discrimination, mostly related to discriminatory provisions of the controversial Law on Social and Child Protection. In 2016 even fewer complaints were registered - only 3, but no violation of law has been established in any of these cases.

#### Key issues:

- In the period between the submission of the I Periodic report until June 2017, there were no cases of discrimination based on sex brought before Montenegrin Courts.
- There were no court proceedings during which the provisions of the Convention were directly invoked or applied.
- The Law On Gender Equality was not adequately applied in practice. According to NGO information and available reports of Human Rights and Freedoms, no judicial proceedings have been initiated for violating those provisions of the Gender Equality Law for which sanctions are prescribed.
- There are no publicly available reports on the effects of the implementation of Gender Equality Law.
- The Amendments of the Law on Social and Child Protection were adopted without gender impact analysis and contained discriminatory provisions.
- The newly adopted Law Proposal on Amendments to the Criminal Code was not aligned with the Convention.
- The number of complaints pertaining to gender discrimination, filed with the Protector of Human Rights and Freedoms, remains low<sup>5</sup>. This indicates that there is not enough awareness on gender discrimination and of protection mechanisms, but also points to a low degree of citizen trust in the work of the institutions responsible for protection.

#### RECOMMENDATIONS:

- Improve public information on the prohibition of discrimination based on gender (and on the most common examples of discrimination), as well as on the rights to equality, in order to stimulate women to advocate for their rights.
- Ensure an independent and consistent evaluation of implementation of existing legal regulations and strategic documents.
- Ensure direct application of Convention and international law in cases where relations are regulated differently from domestic legislation.
- Provide continuous, specialised and gender-responsive training for representatives of all competent institutions, which, in addition to legal procedures, will also provide an understanding of the problem of discrimination.
- Continue to strengthen the capacities of the Ombudsperson for the treatment of cases of discrimination based on sex and strengthen the co-operation between Ombudsperson and women's NGOs dealing with issues of discrimination and gender-based violence.
- Amend the definition of rape in the Criminal Code to comply with the CEDAW Committee recommendation, so that lack of consent takes central place within the legal definition of rape.

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<http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rId=276562&rType=2>

<sup>5</sup> In 2016, the Women's Rights Center submitted 8 complaints to Ombudsperson regarding the conduct of social work centers in cases of domestic violence. One complaint was related to the proceedings of the Basic Court in Podgorica. In three cases, the Ombudsperson found violation of the procedure, in 2 cases no response was received, in 2 cases no injuries were found and in one case he recommended addressing the social inspection. The Women's Rights Center also filed 12 complaints, referring to discriminatory changes to the Law on Social and Child Protection. The violations were found in 8 cases, while in 4 cases, beneficiaries did not submit a consent to the Protector's proceedings.

- Adopt other proposals of NGOs for amendments to the Criminal Code. Ensure gender impact analysis of laws and policies, according to the Article 3 of Gender Equality Law.

### ARTICLE 3 - MEASURES FOR THE DEVELOPMENT AND THE ADVANCEMENT OF WOMEN

#### General remarks:

The State is inconsistent in implementing gender equality policies and the State budget lacks funding for their implementation. The majority of activities in the area of gender equality are implemented by NGOs and international organisations, such as UNDP and OSCE, with support of international and EU funding. The political power of the key gender equality mechanisms (Gender Equality Department and Parliamentary Committee for Gender Equality) is low and lacks influence on other institutions responsible for enacting gender equality policies. The newly established institutional mechanism for the implementation of gender equality policy, the National Council for Gender Equality, has not as of yet meet the expectations of civil society.

#### Key issues:

— Since its inception in November 2016, the National Council for Gender Equality had no meetings or consultations on resolving many important issues for women in Montenegro. The new Action Plan for Gender Equality for the period 2017-2021 has been adopted without being previously considered by the members of this body. This was also the case with the earlier Gender Equality Commission, which points to the declarative role of these mechanisms, which lack a significant mandate to deal with the issues affecting the position of women.

— The Gender Equality Department that operates within the Ministry of Human and Minority Rights, has heavily “informally outsourced” the implementation of its mandate to civil society<sup>6</sup>. However, it failed to provide any form of financial compensation (in the form of grants, for instance) to women’s NGOs for the work performed. The situation has thus deteriorated, with NGOs becoming demotivated to continue the provision of any form of further support. The very limited budget of the Department (in 2013 the budget amounted to 54,682.65 euros, 57,994.30 euros in 2014, to be almost halved in 2015 - 27,603.25 euros) was mainly spent on consultancy services, projects and studies; education of civil servants on gender equality, roundtable discussions on anti-trafficking, etc<sup>7</sup>.

— The Parliamentary Committee for Gender Equality tends to be more passive then before.<sup>8</sup> It failed to fulfil its especially important role - monitoring the practices of the competent authorities and institutions when it comes to the application of laws and policies on gender equality and women’s human rights. During the last year, not a single control hearing was scheduled, although women’s NGOs noted serious human rights violations committed by representatives of state institutions who failed to provide protection from violence.

— Neither the Department nor the Committee reacted to the State’s and the Constitutional Court’s indifferent attitude towards the justified protest of mothers (please see Article 11 for more details on the protest) even when it radicalised and turned into a hunger strike that threatened to seriously endanger their health.

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6 Source: Peer review mission on the capacity of the Ministry of Human Rights Podgorica 22-26 March 2015, and March 2016 Peer Assessment Report, Ivana Roagna.

7 Ibid

8 A women was murdered by her ex husband despite numerous reports filed to police and social services. Case files available at SOS Hotline for Women and Children Victims of Violence Nikšić.

— Implementation of Local Action Plans for Gender Equality is also limited. There are no specific financial resources that will be provided annually from the budget but very generally state that funds are provided from municipal funds from partnerships with private companies (the business sector), or are donor funds.

— The results of implementation of the current gender equality action plan are almost imperceptible in practice. The 2016 report<sup>9</sup> is focused on activities, rather than the results and outcomes.

#### RECOMMENDATIONS:

- The Council for Gender equality needs to strategically articulate women's interests before all State institutions and international bodies.
- The lack of human rights proficiency of the Department for Gender Equality personnel requires a thorough overhaul. Financial resources are also needed.
- It is necessary that the Department for Gender Equality makes proper use of its competencies by becoming more involved in the decision-making of Government.
- Make relevant strategic documents gender sensitive. Include measures related to marginalised groups of women. Make sure that policies from national strategies are harmonised with the local strategies.
- Regular and publicly available reports on gender equality at all levels, that would include information on the number and the extent of activities, clear and measurable indicators that would allow for monitoring of resources spent (both from the budget and donors) and the results, as well as evaluation of the extent of fulfilment of implementation of the Gender Equality and Action Plan.
- The Parliamentary Committee for Gender Equality should intensify activities regarding the creation of proposals for amending laws that improve the position of women. Provide regular monitoring of the implementation of legal provisions with major implications for women.
- All bodies should support the development and the autonomy of women's non-governmental organisations.

#### ARTICLE 4 - TEMPORARY SPECIAL MEASURES

##### General remarks:

Some limited progress has been made when it comes to the application of temporary special measures, yet there is still tangible resistance to, and misunderstanding of, the very purpose of positive discrimination amongst political and social actors. The progress referred to above is related predominantly to the introduction of the quota system for women political candidates. However, no special measures have been adopted for higher inclusion of women in the labour market, especially for disadvantaged groups.

##### Reasoning:

After the quota system, which guaranteed 30% of places on electoral lists for candidates of the less represented gender,<sup>10</sup> failed to deliver expected results (as women won only 14 out of 81 (17%))

<sup>9</sup> The Report on the Implementation of the Plan of Action for Gender Equality in Montenegro (APAGE 2013-2017) for the year 2015, adopted by the Montenegrin Government in March 2016.

<sup>10</sup> The quota system for women, which was intended to increase political participation of women in the Parliament and local assemblies, was introduced for the first time through amendments to the Law on the election of councillors and MPs in 2011. Despite the warnings of women's rights NGOs that this measure would not ensure the minimum of 30% of women in the Parliament/local assemblies because there was no legal obligation to place female candidates higher up on the electoral list, there was no political will to introduce the necessary safeguards which would grant

seats in the national Parliament following the 2012 parliamentary elections) because the political parties placed most of their female candidates at the very bottom of their list, just to meet the formal criterion - new amendments to election law were adopted in 2014. Some progress was made by introducing a legal commitment for political entities to have at least one candidate from the less represented gender amongst every four candidates on the electoral list in order for these to be verified by the competent electoral commission.<sup>11</sup> Additional safeguards were introduced to maintain the achieved number of women in the Parliament/Local Assemblies through provisions which guarantee that an MP/Councillor belonging to the less represented gender, if need be, should be replaced with the next-in-the-line candidate from the electoral list in question belonging to the same gender.<sup>12</sup> This legal solution was a hard-to-achieve compromise, after the solution proposed by the women's rights NGOs and the Ombudsperson, respectively, to have women amongst every three candidates on the electoral lists, did not gain the necessary support of MPs, including the female ones. Owing to these amendments, following 2016 parliamentary elections, the number of women MPs increased from the previous 17% to current 23.5%. At the local level, the percentage of female councillors was increased from 15% prior to 2014 to the current 26%.<sup>13</sup> Unlike in the previous convocation of the parliament, in the current composition of all parliamentary working bodies there is at least one woman MP.

#### RECOMMENDATIONS:

- Timely change of the legislative framework, which would provide for better political representation of women, at least 40 per cent in the Parliament and local assemblies.
- Introduce incentives for employment and economic empowerment of women.
- Introduce temporary special measures for participation of marginalised and disadvantaged women in political and public life and labour market.

#### ARTICLE 5 - SEX ROLES AND STEREOTYPES

##### General remarks:

*Traditionalism and traditional gender roles are deeply entrenched in the Montenegrin culture. Women's role is that of main caregivers at home while their participation in the labour market and in the public sphere is still not encouraged by the family members and society. Gender-stereotyped roles are mirrored in the large discrepancy in the distribution of family and home duties between women and men. A mother's cult in Montenegrin society makes it difficult for both men and women to become conscious of own position, it excludes fathers from the active role in parenthood and limits women in their public actions.*

*Son preference in families reflects discriminatory socio-economic practices and traditions. It is common that sons alone inherit property and carry on the family name. Such traditions place huge pressure on women to give birth to sons and resulted in increase of sex selective abortions.*

##### Key issues:

Under the influence of modern trends, behaviour patterns related to gender roles have changed, but

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female candidates a plausible chance of getting elected.

11 Article 39a of the Law on election of councillors and MPs.

12 Article 104 of the Law on election of councillors and MPs.

13 After the elections in 14 out of 23 local self-government, which were held in line with the 2014 amendments to the Law on election of councillors and MPs, the percentage of women councillors increased from 15% to the current 26%. Source: 2016 Human Rights Bulletin of the Ministry of Human and Minority Rights, p. 106. Available online (in the local language) at: <http://www.mmp.gov.me/rubrike/Publikacije>.

domestic labour is still regarded as the exclusive task of women;

— Families support stereotypes in the choice of occupation and women are rarely found in non-typical jobs;

— Sex selective abortions are the matter of concern. Montenegro is ranked among the countries with the largest imbalance between male and female births by the UN Population Fund<sup>14</sup>. Council of Europe called on the Montenegrin authorities to educate health professionals and adopt strict guidelines in order to prevent selective abortions<sup>15</sup>. According to the UN, some 100 girls are born for every 110 boys in Montenegro, while the usual ratio is 100 to 102-104. The sex-selective abortion has been prohibited in Montenegro since 2009 and the abuse of pre-natal determination of the sex of an unborn child is treated as a criminal offence. However, the state is not doing enough to raise awareness of the detriment of this harmful practice.

#### RECOMMENDATIONS:

- Support the campaign and educate on the importance of the deconstruction of the myth of motherhood and motivate men for care of children.
- Enable learning on gender equality at all levels of education
- Develop counselling services for adolescents, pregnant women, and family planning.
- Introduce programmes for responsible parenthood within primary health care.
- Encourage the choice of occupation atypical for the given gender.
- Provide research on prevalence on selective abortions
- Continuously raise awareness on consequences of selective abortions on society

#### ARTICLE 6 - TRAFFICKING IN WOMEN

##### General remarks:

*The efforts of Government of Montenegro invested in combating trafficking in human beings proved to be insufficient. The official, repetitive attitude of the authorities is that organised trafficking does not exist in Montenegro, and that such cases were random and individual. Combating trafficking in human beings becomes further complicated by the fact that there is no valid data upon which to determine the scale of the problem, especially since many forms of exploitation occur within the grey economy. Such data proved insufficient for understanding the overall situation relating to the prevalence of trafficking in human beings in the country and region.*

##### Reasoning:

The number of court proceedings relating to trafficking offences has gradually decreased over the years, as well as the number of persons identified as victims of this criminal offence. This would have been positive news if the evidence was available to confirm that the rates of trafficking had declined, but this is far from being certain. Until 2013, statistical data only mentioned formally identified victims of human trafficking, while, since 2013, they have registered possible victims as well. Having said that, in 2014 and 2015, five possible victims were registered, two in 2014, and three in 2015 - all of them Roma girls aged under 18.

The prosecution qualified one case as labour exploitation in the household, and the other four as

<sup>14</sup> Sex Imbalances at Birth: Current trends, consequences and policy implications, UNFPA 2012, page 2, available at: <http://www.unfpa.org/sites/default/files/pub-pdf/Sex%20Imbalances%20at%20Birth.%20PDF%20UNFPA%20APRO%20publication%202012.pdf>

<sup>15</sup> <http://www.balkaninsight.com/en/article/council-of-europe-urges-montenegro-to-quit-gender-selective-abortion#sthash.w8DL84OP.dpuf>

unlawful marriage<sup>16</sup>, which means that not a single prosecution was initiated for human trafficking, resulting in the fact that in the period from 2014 to June 2017 there were no formally identified victims of human trafficking.

However, statistics from the NGO, Centre for Roma Initiatives (CRI), provides a different picture to that of the official statistics. CRI registered 19 cases of child forced marriages within 13 months, between January 2015 and February 2016, and all of them were reported to relevant authorities (police, prosecutors, Centres for Social Work). Some of these cases were not prosecuted at all<sup>17</sup>. In practice, little has been done by the Centres for Social Work to support the girls' reintegration or to prevent them from being re-victimized by their family members.

#### The case of S.Č<sup>18</sup>

The case of a Moldovan citizen, S.Č., who was assisted as a victim of trafficking in 2002, revealed the involvement in THB of Montenegrin high ranking officials. In 2015, she was convicted in absentia for perjury. The

trial was conducted in her absence and S.Č was twice acquitted by the Basic Court in Podgorica, before the High Court assigned the case to another judge of the Basic Court, who convicted her and imposed a sentence in absentia. The parties appealed, and the High Court changed the sentence to one year's imprisonment, without the possibility of delayed execution. At the request of Human Rights Action, Women's Rights Centre and Women's Safe House, the Supreme State Prosecutor submitted a request for protection of legality against the mentioned judgment before The Supreme Court of Montenegro, but the Supreme Court rejected that claim as groundless<sup>19</sup>. An international arrest warrant was issued against S.Č. The biased conduct of Montenegro's judiciary in this case has undermined the trust of trafficking victims in the country's institutions and discouraged them from seeking protection or assistance. The Analysis of final judgment against S.Č. provided by NGO Human Rights Actions, is available at the following link: <http://www.hraction.org/wp-content/uploads/ANALYSIS-Moldovan-victim-S-C-did-not-have-a-fair-trial-HRA-WRC-WSH.pdf>

16 Family Law of Montenegro (Official gazette of Montenegro", no. 1/2007 i 53/2016) marriage cannot be established with a person under the age of 18. In exceptional cases and under special conditions prescribed by a special law, court may permit the marriage to a child older than 16, in accordance with a special law. A minor under 16 years is not allowed to marry. Law on amendments to the Criminal Code of Montenegro amended the definition of human trafficking by adding "conclusion of the illicit marriage" and "slavery or other similar position" as a form of exploitation.

17 Statistics of NGO Centre for Roma Initiatives sent electronically to WRC at 11 November 2016, which continuously monitors cases of child forced marriages in Roma community

18 Published in 2003, a report on Montenegro by the Counter-Trafficking Regional Clearing Point provided information about this case: "Until the 'Moldovan case' erupted in December 2001, trafficking cases primarily surfaced through police operations. In the aftermath of the 'Moldovan case', working relationships between counter-trafficking actors eroded, and law enforcement units have not referred a single case to service providers since the case arose" (Counter-Trafficking Regional Clearing Point [Stability Pact Task Force on Trafficking in Human Beings], First Annual Report on Victims of Trafficking in South Eastern Europe. Country Report, Montenegro, 2003). The following year, a different regional monitoring report (B. Limanowska, Trafficking of Human Beings in South Eastern Europe: 2004 Focus on Prevention. UNICEF, OHCHR and OSCE/ODIHR, 2005) observed with respect to Montenegro that, "While government representatives accused NGOs of overestimating the numbers of unidentified victims of trafficking, NGOs suggested that, regardless of the MoU signed between the police and NGOs, victims were not being identified properly and in many cases trafficked people were being deported to Serbia as illegal migrants. Since the 'Moldovan case', there have been only two confirmed cases of trafficking in Montenegro: one Roma child victim that was in transit and a Ukrainian woman who has been in Montenegro for the last 5 years". A subsequent regional monitoring report noted that, "In two cases in 2004 and one case in 2003, (the now famous Moldovan case) victims were resettled in a third country" (R. Surtees, Counter-Trafficking Regional Clearing Point, Second Annual Report on Victims of Trafficking in South Eastern Europe, IOM, 2005). Amnesty International also provided a statement on this case on 21 November 2014, available at: <http://www.refworld.org/pdf/d/5475931c4.pdf>.

19 The Supreme Court Judgement KZZ br.11/15 from 22.09.2015

## Key issues:

— The data show that in recent years there has been an evident decline in the number of formally registered THB victims, which does not reflect the reality of the condition in the area of human trafficking in this country.

— The UN Committee on social, economic and cultural rights<sup>20</sup> expressed concern regarding limited capacities for implementation of the laws and victim identification, the small number of court proceedings and lenient sentences given to perpetrators of human trafficking.

— The major problem remains rehabilitation and reintegration of victims, due to very limited resources for these programmes.<sup>21</sup> According to the information that WRC obtained from the Montenegrin courts<sup>22</sup>, so far no victims (potential or officially identified) have benefitted from free legal aid, nor received legal representation and counselling.

— The case of S.Č. who was accused for perjury in 2015, has undermined the trust of trafficking victims in the country's institutions and discouraged them from seeking protection or assistance.

— There is a tendency for prosecuting criminal offence trafficking in human beings under articles 209 or 210 of the CC (Solicitation and making arrangements for sex act, i.e. Mediation in prostitution) that resulted in lower sentences than in THB cases.<sup>23</sup>

— The penal policy is inadequate. Statistical data referring to the period from 2004 to 2015, show that out of 65 persons prosecuted for the criminal offence of trafficking in human beings, 59 of them were accused, out of which only 34 were convicted in 18 final judgments - only half of the initial number. The average sentence for the criminal offence trafficking in human beings is 4,1 years, given that in most cases (9 out of 16 observed) sentence length ranges from 3 to 6 years, which shows that in practice lenient prison sentences are imposed, although they are within the statutory range<sup>24</sup>.

— Corrupt links between representatives of state bodies and human traffickers in specific cases were not adequately investigated, as shown in the Analysis of judgements<sup>25</sup>, as well as in the noted case S.C.<sup>26</sup>.

— In the mentioned case a principle of impunity for THB victims was not respected for the

20 Concluding Observations (no. 18, 19 and 20) on the Initial Report of Montenegro issued on 12th December 2014: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMNE%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMNE%2fCO%2f1&Lang=en)

21 Information obtained through communication of WRC with the shelter staff

22 The responses to the Women's Rights Centre's requests to free access to information by: the Supreme Court of Montenegro Su V.br.254 / 16, the Basic Court in Kotoru Posl.br.V-Su.256 / 2016, the Basic Court of Kolasin Su.br.123 / 16, the Basic Court in Berane VSU br.324716, the Basic Court in Danilovgrad I-Su no.34 / 16, the Basic Court in Herceg Novi I-1 Su 24/16, the Basic Court in Pljevlja Su.br.63 / 2016

23 GRETA report from 2012 (page.40): „According to prosecutors, charges under above mentioned articles are less difficult to prove and therefore easier to make a judgment based on them. As an example, so called case “Afrodita” was listed which included two night clubs.“

24 The Report Monitoring and Evaluation of Anti-Trafficking Laws and Policies and Their Implementation in Montenegro in 2014 and 2015, was prepared by Women's Rights Center and published in May 2016, available at: [www.womensrightscenter.org](http://www.womensrightscenter.org)

25 The Analysis was conducted in 2016, by Women's Rights Center. It was based on the judgments WRC received from the courts on the basis of the Law on free access to information and those published on the web portal [www.sudovi.me](http://www.sudovi.me), which were possible to find based on the case numbers. The analysis includes total of 11 court cases through 11 first-instance and 6 second instance court decisions. Analysed decisions refer to criminal offence of Trafficking in human beings from the article 444 paragraph 6 of the Criminal Code of Montenegro, whereas the decision K.no 2/2012 also refers to the criminal offences Mediation in prostitution from the article 210 paragraph 1 of CC, Criminal association from the article 401 of CC, Misuse of Authority from the article 416 of CC. Judgment 392/2011 refers as well to a criminal offence Rape from the article 204 paragraph 3 of CC.

We were not able to obtain the remaining 6 second instance judgments through the request for free access to information, nor via web portal.

26 <http://www.vijesti.me/vijesti/vdt-da-podnese-zahtjev-za-zastitu-zakonitosti-protiv-presude-u-slucaju-sc-831409>



criminal offence, which is directly related to her situation as a victim, nor was she provided with protection against retaliation. The Analysis of judgements has shown that the process of evidence presentation for the criminal offence THB still largely relies on witnesses/injured parties and their testimony. Thus, for example, the judgment of acquittal in K.no 35/2009 was based on the rejection of testimony of the victim as unsuitable for establishing relevant facts in the proceeding. Namely, the victim was giving different statements in various phases of the proceeding (in terms of describing the house in which she was held by the accused, and time she spent in that house), justifying it with fear of threats from the accused and time lapse between those statements (6 years have passed from giving her statement before an investigating judge and statement at the main hearing), but such an explanation by the victim (and prosecution representative) was not accepted by the First Instance Court, expressing the attitude that the “court cannot base a decision on statements that have discrepancies, but only on clear and specific statements”.

- Observed judgments show that the public was rarely excluded during the hearing of a victim, except when strictly prescribed by law, as in cases of interrogation of minors, in order to protect their interests and family life. Analysis of witness’ statements quoted in judgments shows that victims tend to avoid giving testimony, and they are doing it out of fear from perpetrators of criminal retribution, but also because of the feeling of being exposed to ridicule, disgust and contempt in their communities if they testify. In spite of that, provisions of the Criminal Procedure Code in terms of interrogation of witnesses - victims of criminal offences against sexual freedom, and special methods of examining the witness (use of technical devices without presence of other participants, examining in separate premises etc.) were not applied in any of the cases, even though a number of courts included in the analysis are equipped with such technology which enables the questioning of a victim without direct confrontation with the accused, and which guarantees a higher level of protection, privacy and safety.

#### RECOMMENDATIONS:

- The state should provide specialised free legal aid to possible trafficking victims. This would secure better protection for them, make it much more likely that their rights (as victims of crime) are respected, and also contribute to them feeling safe and being able to trust the various institutions involved in the criminal justice system.
- Ensure consistent implementation of existing legislation in terms of protecting the safety and integrity of THB victims in criminal proceedings;
- Establish a practice of the use of special forms of interrogation of victims to avoid confrontation and encountering of victims with perpetrators, and exclude the public every time, even when legal requirements are met and when case circumstances require so, not only when it comes to underage victims, in order to avoid secondary victimisation.
- Implement measures in improving and further harmonising the domestic legal framework with international standards in the area of protection of THB victims;
- Amend the Law on compensation of victims of violent crimes and establish a fund for compensation, in order to enable the victims to exercise their right to compensation from the State, in situations when that compensation cannot be provided from other sources;
- Ensure that the training on international standards of treatment of victims is incorporated in annual programmes of mandatory education in the judiciary and prosecutor’s office, in order to ensure proper understanding of the position and rights of THB victims;
- Increase efforts in order to identify possible victims and ensure continuous cooperation with NGOs dealing with the protection of rights of THB victims;
- Conduct regular and independent monitoring of court practice, not only through analysis of statistical and qualitative data on the conduct of courts and the prosecutor’s office in these cases, but through systematic monitoring of cases by every institution included in the process of victim protection and prosecution of perpetrators.
- Provide specialised legal assistance and legal representation to THB victims and monitor the quality of provided assistance.

- Ensure the rights of a woman to have a female lawyer to represent her, if that is what the victim wants.
- Ensure the respect of the principle of “impunity” of THB victims for criminal offences related to their situation.
- It is especially necessary to provide adequate monitoring of data related to exercising the right to compensation, as well as to the number of THB victims who used their right to free legal assistance prior and during the court proceeding.
- Ensure efficient implementation of legal provisions concerning property confiscation of persons convicted for criminal offences related to human trafficking.
- Urgently initiate preparation of adequate programmes of resocialisation, reintegration and monitoring of the victim’s status after the completion of court proceedings and after leaving the Shelter for THB victims;
- Ensure independent monitoring and reporting on activities and results of the fight against THB in Montenegro.
- Change the Criminal Code in a way that prescribes legal proceedings to be conducted in a victim’s place of residence rather than perpetrator’s.

## ARTICLE 7 - POLITICAL AND PUBLIC LIFE

### General remarks:

*Women remain considerably underrepresented in the political and public life of Montenegro. The legislative framework is inadequate. The election law, although recently amended with a view to improving the political representation of women in the Parliament and local assemblies, failed to yield significant results. Other measures aimed at strengthening women’s participation in the political and public life of the country had a limited effect. The competent institutions lack the necessary administrative, expert, and financial capacities to effectively implement the existing gender equality policies. Lack of progress in this area is the result of an evident lack of political will to effectively address this problem, including through the implementation of recommendations of national stakeholders and relevant international organisations.*

### Reasoning:

Despite comprising 50.6% of the population, women in Montenegro hold only 19 out of 81 (23.5%) seats in the national Parliament<sup>27</sup>, which currently places it in 77th place on the Inter-Parliamentary Union’s list of 193 countries classified by descending order of the percentage of women in Parliaments<sup>28</sup>. The highest ranking positions in the Parliament are covered by men, notably the position of Parliament Speaker and all three Deputy Parliament Speakers. They are heads of only three (out of 14) standing parliamentary committees.<sup>29</sup> There are only four female Ministers in the Government of Montenegro<sup>30</sup>, while the highest ranking positions in the Cabinet are covered by men, notably the position of Prime Minister and all three Deputy Prime Ministers.<sup>31</sup> Even though the number of female cabinet members is the same as in the previous government (4), the percentage

27 Full list of MPs is available on the official website of the Parliament of Montenegro at: <http://www.skupstina.me/index.php/en/parliament/members-of-parliament/members-of-parliament>

28 The world average is around 23%, while the European average is 26.3%. For more information see: <http://www.ipu.org/wmn-e/classif.htm>

29 Women are chairs of the parliamentary legislative committee, gender equality committee, anti-corruption committee, while all other committees, including for defence and security and economy finance and budget are headed by men. Source: Official website of the Parliament of Montenegro: <http://www.skupstina.me/index.php/en/>

30 Minister of Economy, Minister of Public Administration, Minister of Science, and Minister without portfolio.

31 Full list of Cabinet members is available on the official website of the Government of Montenegro at: <http://www.gov.me/en/homepage/Cabinet-members?alphabet=lat>

of women in the Cabinet has actually decreased due to the increase in the overall number of Cabinet members. Women comprise 207 out of 786 councillors in the local assemblies (26.3%).<sup>32</sup> Currently, only 2 out of 23 municipalities are headed by women<sup>33</sup>.

Political parties in Montenegro are dominated by men. Women's involvement in party leadership and politics at all levels continues to be low. There is only one woman president of a political party. Although the founding documents of the majority of political parties in Montenegro declaratively promote the principle of gender equality, none of the political parties have established special party measures and other incentives aimed at encouraging more active participation of women in intra-party and general political processes.<sup>34</sup> The number of female candidates on the electoral lists of political parties for the latest parliamentary elections was 360 out of 1120 (32.14%). No candidate list for the 2016 parliamentary elections was led by a woman. In its 2016 Report on Montenegro, the European Commission also underlined that the electoral lists for the 2016 parliamentary elections 'complied exclusively with the minimum requirements in term of gender equality'<sup>35</sup>. In its report on 2016 Parliamentary elections, ODIHR inter alia noted that the representation of women in the electoral administration was low.<sup>36</sup>

Even though the 2013-2017 action plan on gender equality focused mainly on closing the gender gap in political life and on awareness raising, the aftermath of the 2016 elections did not demonstrate significant progress in terms of closing this gender gap in practice. The lack of adequate financial and human resources to effectively implement gender equality policies was also acknowledged in the reports of relevant international organisations, including of the UN committee on economic, social and cultural rights.<sup>37</sup>

#### Key issues:

- Inadequate legislative framework, which fails to guarantee the political participation of women at a sufficiently high level.
- Inadequate capacities of the competent institutions to effectively implement gender equality policies, programmes and projects aimed at improving women's participation in political and public life and changing the persisting stereotypes concerning the role and position of women in society.
- Lack of political will amongst the decision makers (including the female ones) to attach a

32 Source: 'Women and men in Montenegro', Monstat, 2016, p. 118, available in ENG and MNE at: <https://www.monstat.org/userfiles/file/publikacije/ZENE%20I%20MUSKARCI%20U%20CRNOJ%20GORI%20-%202016%20za%20STAMPU.pdf>. Information on the number of female councillors contained in the study (data from 2015) was updated for the purpose of this report based on Decisions of relevant Municipal Assemblies on verifications of councillor mandates in five Municipalities where the local elections were held since (i.e. in 2015 and 2016: Tivat, Kotor, Budva, Andrijevica, and Gusinje).

33 Coastal Municipality of Tivat and Northern Municipality of Gusinje.

34 See 'Rodno ogledalo partija', a study written by Mr. Vlado Dedovic for purposes of UNDP in Montenegro, page 29.

35 See: 2016 Report on Montenegro, European Commission, November 2016, Available online at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf), p. 7;

36 In its report, ODIHR noted that women made only 3 out of 11 State Election Commission permanent members and 37 out of 115 permanent Municipal Election Commission members. Out of 23 Municipal Election Commission presidents, only 3 were women. Polling boards were chaired by men in 75% of polling stations observed by the OSCE/ODIHR election observation mission. See OSCE/ODIHR election observation mission final report on Montenegro parliamentary elections of 16 October 2016, available at: <http://www.osce.org/odihr/elections/montenegro/295511?download=true>, p.1.

37 Concluding observations on the initial report of Montenegro: Committee on Economic, Social and Cultural Rights, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW%2B%2FeLm11xyg2q0D%2FphyJscM4CvDMktxMxyKGD71%2FA%2Bp%2FgPRgSELYWeFiHPjScjy2gumWRVAFbCY0Ycu8Xs2KgPdMtGQ0VXs7RoHPLzuPs7%2F>

high level of importance, and ensure genuine adherence to, the gender equality principle when it comes to effectively addressing the problem of poor participation of women in the political and public life of the country.

— Limited public discussion on gender equality topics, including the political participation of women, who are generally considered less important and receive limited media coverage.

— Given the circumstances, women's rights NGOs alone have modest chances of generating enough public pressure on the decision makers without adequate support from other national and international stakeholders.

#### RECOMMENDATIONS:

- Demonstrate political commitment to achieving gender equality through the implementation of relevant recommendations of national stakeholders and international organisations (women's rights NGOs, Ombudsperson, CEDAW committee, the EU, OSCE/ODIHR, etc.). These include – but are not limited to – meaningful and timely changes of the legislative framework which would provide for better political representation of women - at least 40 percent in Parliament and local assemblies.
- Strengthening financial and expert capacities of the competent institutions to carry out their mandate effectively;
- Providing incentives for political parties to promote women to senior positions within their respective party structures and increase visibility of female candidates during election campaigns;
- Fostering public and expert discussions on the political participation of women and relevant media reporting with a view to eliminate the stereotypes concerning the role of women in society.

#### ARTICLE 11 – EMPLOYMENT

##### General remarks:

Women in Montenegro are underrepresented in the labour force. Their employment rates and activity rates remain lower than for men. The legal and policy framework is inadequate. A number of projects and programmes devised to support women's economic empowerment and labour market participation were implemented with limited success. The absence of gender mainstreaming and gender impact assessment for social and employment policies is a serious issue of concern. For e.g. recent regulatory changes in the social care system further worsened the persisting gender imbalance by introducing measures which discouraged women from working and resulted in early withdrawal of some 17 000 women from the labour force. Occupational segregation on the labour market continues to be an issue and women continue to be exposed to various forms of gender discrimination, including discrimination based on marital status and motherhood, which continues to hinder women's access to labour market and career advancement. Although discrimination goes unreported, its effects are clearly visible from the persistent gender differences in wages and the conspicuous absence of women from high managerial positions. The customary law that favours male to female family members regarding inheritance continues to be widespread.

##### Reasoning:

Even though women constitute a majority (50.6% of the population), especially in the working age population of 15 years + (51.2%), they continue to be less represented than men in the labour market. In 2016, women made 45% (100 900 out of 224 200) of the employed labour force in Montenegro.<sup>38</sup> The overall employment rate of the working age population was 39.4% for women and 50.5% for men.<sup>39</sup> The existing policies and projects aimed at encouraging women's participation in the

38 Labour Force Surveys 2011-2016, Monstat, p.3. Available at: <http://www.monstat.org/cg/page.php?id=660&pageid=22>

39 Labour Force Survey, Monstat, 2016 p.6.

labour market yielded limited results, as women labour force continues to be less active in working and seeking employment than men.<sup>40</sup> In 2016, activity rate for working age women (47.6%) was considerably lower than for men (61.8%).<sup>41</sup> Generally speaking, activity rates are lowest in the northern region (38.8% for women and 58.6% for men).<sup>42</sup>

The persisting gender imbalance was additionally worsened by recent regulatory changes in the social care system – notably the introduction of life-long social benefits for mothers of 3+ children (see Example 1) - which inter alia had negative repercussions on women participation in the labour market.<sup>43</sup> In 2016, over 17 000 women had left employment and the labour force in exchange for these social benefits.<sup>44</sup> Out of over 22 000 women who were awarded social benefits for mothers of 3+ children, 12 981 received them on grounds of spending 15+ years as unemployed, 4 309 women had left their jobs in exchange for the benefits, while 4 761 suspended their pension rights to become eligible for these social payments. See: Statement of Assistant Minister for Labour and Social Welfare Goran Kusevija for daily newspaper ‘Dan’, published on 20 April 2017, p. 11.

Women’s labour market participation is additionally hampered by gender-based discrimination, which negatively affects their labour rights and seriously hinders their economic empowerment. Women continue to be less represented in high-level positions in the Parliament, government (central and local), at managerial positions and management boards of political parties, as well as at high level positions in the judiciary and public services. According to 2015 Monstat study Women and Men in Montenegro, women made only 22% of legislators, senior officials and managers in the country<sup>45</sup>.

Instead of taking an upward trend, over the years the percentage of women in high-level positions has actually decreased (2013: 25%; 2011:30.8%).<sup>46</sup> Absence of women from high-level managerial positions continued also in those sectors where they constitute an overwhelming majority of employees<sup>47</sup>.

40 According to data contained in Labour Force Surveys, published annually by the Bureau for Statistics Monstat, although the overall number of persons seeking employment has grown over the past few years, women continue to be less active labour force than men. In 2016, women made 59% of the total inactive labour force in the country (134 000 out of 22 4000), which is the highest percent in the past five years (2015: 57.9%; 2014: 58.2%; 2013: 57.8%; 2012: 57.9%; 2011: 57.9%). See: Labour Force Surveys 2011-2016, Monstat. Available at: <http://www.monstat.org/cg/page.php?id=660&pageid=22>

41 Labour Force Survey, Monstat, 2016 p.9.

42 Labour Force Survey, Monstat, 2016 p.5.

43 European Commission Report on Montenegro, p. 27. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_montenegro.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf); Western Balkans Regular Economic Report, World Bank Group, available at: <http://pubdocs.worldbank.org/en/310431491458109659/WBRER-11-v6.pdf>; and MONTENEGRO COUNTRY PARTNERSHIP FRAMEWORK, World Bank, p. 9. Available at: <http://documents.worldbank.org/curated/en/715681467996758549/pdf/105039-CPS-P152920-PUBLIC-R2016-0095-2.pdf>

44 Out of over 22 000 women who were awarded social benefits for mothers of 3+ children, 12 981 received them on grounds of spending 15+ years as unemployed, 4 309 women had left their jobs in exchange for the benefits, while 4 761 suspended their pension rights to become eligible for these social payments. See: Statement of Assistant Minister for Labour and Social Welfare Goran Kusevija for daily newspaper ‘Dan’, published on 20 April 2017, p. 11.

45 Women and men in Montenegro from 2015, published in 2016, Monstat, p. 98 Available at: <http://www.monstat.org/userfiles/file/publikacije/ZENE%20I%20MUSKARCI%20U%20CRNOJ%20GORI%20-%202016%20za%20STAMPU.pdf>

46 Women and Men in Montenegro from 2013, published in 2014, Monstat. Women and men in Montenegro from 2011, published in 2012. Monstat. Available at:

<https://www.monstat.org/userfiles/file/publikacije/ZENE%20I%20MUSKARCI%20U%20CRNOJ%20GORI%202012.pdf>

47 For e.g. in the education sector women make a majority of employees (75.3% in total), of which 96.1% in pre-school institutions, 71% in elementary schools, and 65.4% in high schools. However, when it comes to decision making positions (directors), women constitute an absolute minority, except in pre-school institutions (see Women and

It is important to underline that the reason women are less represented in the most senior positions is not for the lack of education and skills. The same study shows that women make 58.6% of professionals in the public service.<sup>48</sup> At the same time, the majority of employed workforce with university education are women (53.5%)<sup>49</sup>

Even though certain steps were made with regards to increasing the overall number of women in the Parliament and local assemblies following October 2016 parliamentary elections (see also under political representation), these numbers are still far from satisfactory. The aforementioned issues were also recognised in the Government Information on participation of women in legislative, executive and judicial branch of government in Montenegro, which acknowledged that difficulties, which women face on the labour market are among the most important indicators of unequal status of women in Montenegro<sup>50</sup>. Recent reports of the Ombudsman<sup>51</sup> as well as of the relevant international organisations, including the EU<sup>52</sup> and the World Bank<sup>53</sup> recently also took note of this problem.

Male workers in Montenegro earn more than females.<sup>54</sup> According to official state statistics, average earnings of women to average earnings of men were 86.1% in 2013 and 86.8% in 2011.<sup>55</sup> It is interesting to note that, unlike the previous studies, the latest Monstat study on Women and Men in Montenegro from 2015 (published in 2016) does not contain information on the wage gap.<sup>56</sup> Here as well, the wage gap is 'not explained by workers' characteristics (e.g., education and experience), indicating that discrimination may play a role.<sup>57</sup>

In its 2016 Report, the Ombudsman also noted that generally speaking women more often accept jobs, which are less paid, temporary and with worse working conditions.<sup>58</sup> If we consider the number of women who chose to renounce their wage (over 4000) in exchange for the relatively low social benefits for mothers of 3+ children (see below), it becomes clear that the sum they were able to make working is not very high either, i.e. probably either less or the same as the social benefits.

As regards discrimination on the grounds of marital status or motherhood, even though such practices are forbidden by law, according to results of a survey conducted in 2011 as many as 34% of surveyed employers admitted that they 'sometimes' or 'often' ask female job applicants for information on

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Men in Montenegro from 2015, p. 64 According to information provided by the Ministry of education, in pre-school institutions there are 3 male and 15 female directors; in elementary schools 117 male and 44 female directors, and in high-schools 40 male and 8 female directors. See: Information on participation of women in legislative, executive and judicial branch of government in Montenegro from July 2015, page 6. Available at: [http://www.gov.me/sjednice\\_vlade/123](http://www.gov.me/sjednice_vlade/123) under point 17

48 Women and men in Montenegro from 2015, p. 98.

49 Labour Force Survey, Monstat, 2016 p.16.

50 Information on participation of women in legislative, executive and judicial branch of government in Montenegro from July 2015, p. 6.

51 See for example Report on work of the Ombudsman for 2016, p. 167. Available at: [http://www.ombudsman.co.me/docs/1491305524\\_final-izvjestaj-za-2016-04.pdf](http://www.ombudsman.co.me/docs/1491305524_final-izvjestaj-za-2016-04.pdf)

52 See for example 2016 European Commission Report on Montenegro.

53 See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 5. Available online at: <http://documents.worldbank.org/curated/en/394781468332438138/pdf/786780WP0P13340ic0June020130Revised.pdf>

54 See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 35-42.

55 Women and Men in Montenegro from 2013 and Women and men in Montenegro from 2011. p. 99.

56 See: Women and Men in Montenegro from 2015.

57 See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 6.

58 See for example Report on work of the Ombudsman for 2016, p. 167.

the family status, while 16% even ask for pregnancy tests.<sup>59</sup>

However, discrimination is still very rarely reported, if at all. In 2016, a total of 49 complaints were filed to the Ombudsman's Office in relation to alleged violation of labour rights, 20 of which were filed by women.<sup>60</sup> Labour inspectorate even reported to having received much fewer complaints on grounds of discrimination.<sup>61</sup>

The legal framework is far from perfect. For example, the Labour law itself contains discriminatory measures as it does not count the time spent on maternity leave in two years of employment necessary to make a transition from temporary to permanent work contract.<sup>62</sup> The Law on social and child protection provides for paid maternity leave, but only up to the amount of two average salaries. In February 2017, average net salary was EUR 511<sup>63</sup>, which means that women who earn more than 1022 EUR per month will not (even though they pay 100% of taxes on their salaries) receive maternity leave payments in the amount of their average monthly salary for the past 12 months, as is the case for those who earn less<sup>64</sup>.

Professional segregation is another persisting issue of concern. Some professions continue to be typically female or typically male. In Montenegro, women are dominant in healthcare and social protection, education, other social and personal services (61.8%), financial and insurance activities (59%), wholesale and retail (57%), and professional, scientific and technical activities (54.6%).<sup>65</sup> Women also constitute 60% of the total number of family workers.<sup>66</sup>

In Montenegro, only 9.6% of women have their own businesses.<sup>67</sup> In its report on Montenegro, the World Bank recognised gender gaps in access to economic opportunities, underlining that women self-employ less and have lower rates of firm ownership and management.<sup>68</sup> Limited success in economic empowerment of women is also owed to the fact that only 4% of women are owners of immovable property in Montenegro<sup>69</sup>.

Even though the law provides for the same inheritance and ownership rights for both women and men, the astonishingly low percent of women who own immovable property is a clear indication that the tradition of passing the heritage only to male members of the family has proven to be a very difficult one to overcome. In its Report for 2016, the Ombudsman also acknowledged detrimental effects of unequal economic status and property ownership differences on economic gender equality.<sup>70</sup>

59 See: 'Gender gap in pay and income' (2011). Findings reported in the study 'Socio-economic status of women in Montenegro', European Movement in Montenegro, 2011.

60 Report on work of the Ombudsman for 2016, p. 105.

61 In 2012: no data, in 2013: 1 (filed by a woman), in 2014: 1 (gender not specified), 2015: 4 (gender not specified), 2016: 3 (gender not specified). See: Annual reports on the work of Directorate for inspection affairs for the period 2012-2016. In their report for 2016, under the section labour inspection, Directorate for inspection affairs noted that particular attention in their inspection work was given to the 'special protection of women', but no further information was provided on what this 'special protection' consisted of, or what were the results.

62 Labour Law ("Official Gazette of Montenegro", no. 49/08)

63 See Monstat's latest press release on average wages, published on 30 March 2017. Available online at: <https://www.monstat.org/userfiles/file/zarade/2017/2/februar%20%202017%20saop%C5%A1tenje%20zarade.pdf>

64 See Article 51 of the Law on social and child protection.

65 Labour Force Survey, Monstat, 2016 p.11.

66 Labour Force Survey, Monstat, 2016 p.4.

67 See: 2016 Human Rights Bulten, Ministry of human and minority rights. Available at: <http://www.minmanj.gov.me/pretraga/166940/Biltlen-o-ljudskim-pravima-2016.html>

68 See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 5.

69 See: The 2016 Human Rights Bulten, Ministry of Human and Minority Rights.

Economic inactivity is particularly high for women of lower educational attainment (primary schooling or less), ethnic minorities, and older women.<sup>71</sup> For women belonging to RAE population, which are exposed to multiple discrimination<sup>72</sup>, challenges related to accessing the labour market and achieving greater levels of economic empowerment are even greater. Another vulnerable group are women in rural areas whose labour is often left unaccounted for and who have limited access to economic opportunities.

#### Key issues:

- Difficult access to labour market, resulting in higher unemployment rates and lower activity rates for women;
- Deterioration of labour rights - unpaid extra working hours, entitlement to holiday and annual leave, reimbursements and social protection programmes are exclusively within the domain of „the good will“ of private employers
- Different forms of discrimination (including on grounds of marital status and motherhood) resulting in a gender pay gap and underrepresentation of women in high-level positions in the public and private sector;
- Inadequate legal and policy framework;
- Inadequate support system in terms of available childcare institutions and flexible work arrangements;
- Professional segregation;
- Persisting practices which reinforce traditional roles of women as mothers and housewives, who rarely inherit family property;
- Multiple discrimination of RAE women, which makes their access to labour market and economic empowerment an even more challenging task.

Example 1 – Social benefits for mothers of 3+ children: Amendments to the Law on Social and Child protection from 2015 introduced life-time social benefits for mothers of three or more children where women who have three children and 25 years of employment and women who have four or more children and at least 15 years of employment are entitled to monthly payments in the amount of EUR 336 (70% of the average month net salary), while mothers of three or more children who were registered as unemployed for 15 years or more are entitled to monthly payments in the amount of EUR 192 (40% of the average monthly net salary).<sup>73</sup>

The life-long social benefits for mothers of 3+ children not only provided disincentives for women’s participation in the labour market, and through it also in the social life of the country, but also diminished the levels of emancipation of women by giving priority to their role as mothers and housewives through financial rewards for those who choose the social benefits over employment.<sup>74</sup>

70 Report on work of the Ombudsman for 2016, p. 108.

71 See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 5.

72 See for example: 2016 European Commission Report on Montenegro, p. 25.

73 See: Articles 54a and 54b of the Law on Social and Child Protection. Implementation of the law started on 1 January 2016. Meanwhile, as a result of government austerity measures (see also below), the social benefits for mothers were reduced by 21% and 25%, respectively (i.e. from 336 to 264 and from EUR 192 to EUR 144).

74 In its Opinion on the amendments to the Law on Social and Child protection, the Ombudsman inter alia said the following: ‘[c]onsidering consequences of measures contained in Article 54a and 54b of the Law [regulating social benefits for mothers of 3+ children] it is important to note that providing women who had three or more children with the right to life-time social benefits promotes gender stereotypes, supports the cult of a mother, and sends a message to women who – for which ever reason – did not give birth to three or more children that they are less worthy. This goes against the principle of gender equality contained in Article 18 of the Constitution whose implementation includes abolishing gender stereotypes on the societal role of women.’ See of the Opinion of the Ombudsman of 30 June 2016,



Meanwhile, as a result of government austerity measures, the social benefits for mothers were reduced by 21% and 25%, respectively (i.e. from 336 to 264 and from EUR 192 to EUR 144).<sup>75</sup> This led to several-weeks-long protests of women, who demanded for the benefits to be restored to their original amounts, but without any success.

In the end, following 16 months of implementation, on 19 April 2017 the Constitutional Court annulled the amendments for not being in line with the constitution. However, the subsequent annulment of the amendments does not change the fact that legislation such as this one, which proved to have far-reaching effects on the lives of a great number of women, as well as on the state budget, are prepared and adopted without any gender analysis or fiscal impact assessment. Furthermore, apart from the president of the Parliament Gender Equality Committee, none of the relevant stakeholders (including the line Ministry and the Ombudsman) commented on the amendments in the drafting phase. Only women NGO in their Public Statement<sup>76</sup> that was set to all relevant stakeholders, provided arguments against the law and were asking for necessary fiscal and gender impact analysis. Finally, even though the decision of the Constitutional Court rendered the discriminatory provisions void, the damage that was done to thousands of women, in particular those who made irreversible decisions to leave their jobs in exchange for the benefits.

These – as it turns out unconstitutional – amendments are a shining example of irresponsible policy-making which had far-reaching consequences on the lives of thousands of women in Montenegro and their families. Over 86% of women who were granted these social benefits are over 40 years old.<sup>77</sup> Both those who had jobs and those who spent 15+ years without work will become unemployed, with slim chances of getting a job, especially in northern parts of the country where unemployment is high and access to good jobs in the regular employment market is extremely limited. Through no fault of their own, all these women found themselves in a state of legal uncertainty. As a result of reckless decisions of state institutions, nobody was able to tell for sure whether – after the Constitutional Court has ruled the amendments unconstitutional – the social benefits for mothers of 3+ will be abolished entirely, paid only to those who have already acquired the right to receive them – and in which amount. In the meantime, the government devised a third solution through the new changes of the Law on social and child protection in June 2017, that cut the benefits.

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p. 12. Available at: [http://www.ombudsman.co.me/docs/1472201593\\_diskriminacija-sk.pdf#sthash.14wsllwC.dpuf](http://www.ombudsman.co.me/docs/1472201593_diskriminacija-sk.pdf#sthash.14wsllwC.dpuf). Social benefits were also widely criticized by the relevant national stakeholders for being discriminatory against other women and men. These include women NGOs and other civil society representatives, Ombudsman, political parties, etc. See for example: Open letter of the Centre for Women's Rights (February 2017); Statement of women's rights NGOs on draft amendments to the Law on Social and Child Protection (April 2015); Interview with Institute Alternative Director Stevo Muk for Monitor (31. March 2017); Ombudsman's opinion on amendments to the Law on social and child protection, 30 July 2016; Report on work of the Ombudsman for 2016; and Ombudsman' Press Release on social benefits for mothers of 7 April 2017.

<sup>75</sup> Previously, a number of domestic stakeholders and international organisations, notably the EU and the World Bank, criticized the social benefits for mothers from the perspective of adverse effects they have on the labour market and fiscal stability of the country. See for example: 2016 European Commission Report on Montenegro, p. 27. and Montenegro Country Partnership Framework, World Bank, p. 9. Available at: <http://documents.worldbank.org/curated/en/715681467996758549/pdf/105039-CPS-P152920-PUBLIC-R2016-0095-2.pdf>

<sup>76</sup> The Women's Rights Centre, Anima and Women's Safe House were strongly against that law, because we were aware of its strong negative implications on the long-term empowerment and position of women. In a letter to the Montenegrin Government and MPs, sent in April 2015, we requested them to stop the adoption of the Law and to provide a financial and gender impact analysis.

<sup>77</sup> See: Statement of Assistant Minister for Labour and Social Welfare Goran Kušević for Daily Newspaper 'Dan', published on 20 April 2017, p. 11.

## RECOMMENDATIONS:

- Improve the legal and policy framework for economic empowerment of women and step up capacities for gender mainstreaming of policies, service delivery and budgets with a view to enhance gender equality and women's economic rights;
- Show real commitment to fighting gender-based discrimination in the labour market, including through strengthening capacities of complaint mechanisms and improving the track record of reported and processed cases of gender discrimination;
- Discourage practices which hinder economic security and rights of women, especially regarding employment and improve implementation of existing laws and policies that promote and protect these rights;
- Repeal the legislative measures discouraging women's participation in the labour market and increase the allocations for active labour market measures targeting women, including the hard to employ categories.

## ARTICLE 14 - RURAL WOMEN

## General remarks:

According to the 2011 Census 34,5 per cent of women live outside urban areas. Yet official data on the lives and challenges of rural women is not available. Scarce academic resources as well as the available testimonies of rural women demonstrate that the position of women in rural area in Montenegro is particularly difficult - they perform both the agricultural work and household chores in difficult conditions, often lacking basic facilities such as electricity or running water (washing, cleaning, child rearing and running the household). Moreover, they have very limited access to services and are often socially excluded.

## Reasoning:

On agricultural family farms, women account for 39.6% of the total labour force, of which 23.7% are aged 65 or over. Only 17% of the younger population (below the age of 34) opts for living in rural areas and engaging in agricultural work, as young people tend to gravitate towards predominantly urban areas in pursuit of employment. Issues such as property ownership, which remains exceptionally low for women, as well as low participation in decision-making on agricultural production on the farm, are perceived as the main inhibitors for the women who wish to make a living in rural and agricultural areas. Only 12,87% of women own a farm and this number is increasingly declining. Survey results conducted in three municipalities in 2015 (Pljevlja, Bijelo Polje and Kolašin) demonstrate that men comprise the overwhelming majority of farm holders, accounting for 86.6%. The percentage of women engaging in agricultural work increases slightly during the picking season, 16.26% compared to 83.74% of men.<sup>78</sup>

## Key issues:

— The average workday for a woman in a village lasts between 12-15 hours, during which they perform backbreaking agricultural labour, housework, care for the elderly, children and wider family.

— Access to health care in some rural areas is almost non-existent. Women in villages do not only suffer from a lack of timely and adequate medical treatment but they are also very often prevented from realising their rights. One of the examples that aptly illustrates this problem concerns a disabled women who could not realise her right to receive adequate care, because she could not

78 A.Despotovic, M.Joksimovic, and M.Jovanović Socio-Demographic Characteristics of Female Population in Rural Areas of Montenegro. , Agriculture & Forestry, Vol. 61 Issue 1: 175-181, 2015, Podgorica

“appear personally before the disability committee”<sup>79</sup>. There is no provision of regular services relating to reproductive health, screenings, no education in family planning, contraception, STDs, etc.

— Rural women are more exposed to all forms of violence (sexual, domestic, economic, etc.) and do not have access to specialised support services.

— Rural women lack the opportunity to include children in certain educational programmes, so they can spend their spare time in an organised and creative manner (kindergartens, playrooms, creative workshops).

— Rural women are excluded from social and public life and are missing from decision-making on major rural issues.

## RECOMMENDATIONS:

- Adopt comprehensive programmes for economic empowerment of rural women (ensure income for women for working on agricultural holdings, social and health insurance and pension).
- Encourage entrepreneurship among rural women, easier access to credits and tax incentives. Have special care and protection for elderly rural women. Ensure participation of rural women in drafting local development plans. Ensure access to all forms of health protection and regular provision of medical services.
- Organize preventive health check-ups for rural women at a community level at least once a year.
- Raise awareness amongst rural women of their rights. Devote special attention to education and protection of girls living in villages.
- Launch campaigns and educational programmes (workshops, panels...) on the issue of violence against women targeting rural women. Ensure access to free services (legal aid, intermediaries in institutions, emotional support) for rural women victims of domestic violence.
- Organize educational programmes to overcome the traditional, patriarchal relation between men and women in rural areas.
- Organize programmes for rural women to be socially engaged and ensure some public areas are used for the needs of women’s associations and clubs.
- Organize programmes for training, retraining and further training for occupations in demand on the labour market for rural women.
- Organize a large number of cultural events for rural women (creative workshops, film screenings, theatre performances, literary nights).
- Ensure rural women can include their children in programmes, to enable them to spend their free time in an organised and creative manner (kindergartens, playgrounds, healthy lifestyle programmes).

## ARTICLE 16 - MARRIAGE AND FAMILY LIFE

### General remarks:

*One of the key country features is the prevailing traditional gender division of roles within the Montenegrin family. Family and home duties are largely regarded as women’s responsibilities. Women on average spend 3.7 hours a day performing care work (for married women this figure amounts to 4.5 hours per day), while men (either married or not) spend on average only 1,5 hours. Out of the total number of people who claim to never perform domestic chores (11% of the population), the large majority (96%) are men.*<sup>80</sup>

*The customary law that denies the right of women to inherit property in favour of male family*

<sup>79</sup> Milojka P.Perović, Article “Bez uticaja na svoj život” Portal Vijesti 15.10. 2015: <http://www.vijesti.me/forum/bez-uticaja-na-svoj-zivot-855899>

<sup>80</sup> Research Socio-economic position of women in Montenegro, 2013, Ipsos Strategic Marketing for NGO European Movement in Montenegro

members is still widespread, and has a huge impact on the economic position of women in Montenegro. The living conditions of the self-supporting mothers (who make up 92.86% of single parents) and their children are particularly harsh. Besides struggling to reconcile work and parental responsibilities, they have difficulties obtaining alimony due to the inability of the legal system to determine undeclared employment and the exact amount of the salary of the parent who is obliged to provide child support. As a result, around 60% of fathers fail to provide child support for more than 24 months.<sup>81</sup>

Key issues:

— The Montenegrin legal framework still does not recognise the non-transferable parental leave reserved for fathers. The right to parental leave is recognised as an individual right of parents, but only one parent is entitled to use it for the child. Also, if one parent discontinues her/his parental leave, the other parent is entitled to use the unused part of the parental leave for up to 365 days. Since 2011, when parental leave was introduced<sup>82</sup>, only a small number of men in Montenegro have used it - in 2013, only 106 men (1%) compared to 10,000 women (data of the Ministry of Labour and Social Welfare).

— A parent has the right to compensation in the amount of earnings that would be normally generated if s/he continued to work. According to the Law on Social and Child Protection<sup>83</sup>, adopted in 2013, the State does not reimburse to the employer the full amount of earnings for working women on maternity leave if their wage is higher than two average wages in the country, unlike what is set out in the Labour Law. The law has been criticised for discriminating against women who earn more than the fixed threshold.

— The number of high-quality childcare facilities, which are affordable to most, is still inadequate. Taking all this into account, for a number of women – especially those whose earnings are insufficient to ‘justify’ their employment over the life of a housewife – motherhood equates to exit from the labour market, to which they may or may not return at a later stage.

— The poverty and harsh living conditions of self-supporting mothers (who make up 92.86% of single parents) and their children are widely present, particularly due to difficulties of obtaining alimony. Around 60% of the fathers failed to provide child support for more than 24 months.

— Women are the main caregivers at home. 93% of family carers (caring for children and the elderly) are women. 89% of inactive women aged 15-64 are inactive because of their personal and family responsibilities<sup>84</sup>. Involvement of fathers in early childhood development is quite low.

## RECOMMENDATIONS:

- Amend legislation to ensure transferable paternity leave for fathers.
- Strongly promote equality of women and men in sharing responsibilities for family life.
- Introduce legal incentives that would guarantee women’s right to inherit property.
- Amend legislation to enable the efficient exercise of the right to payment of child support by the parent who does not live with the child.
- Establish an Agency for Enforcement in Collecting Alimony and define efficient sanctions for non-payment of alimony.
- Amend legislation to introduce incentives for specific support services for self-supporting mothers and their children.

81 T. Saveljic and J. Hajdukovic, Study ‘Alimony – the right of every child and every parent’s obligation’, project implemented by Women’s Safe House, with financial support from the European Union through the Centre for Civic Education (CCE) and the Civic Initiatives (GI), Podgorica, November 2014, available at: <https://docs.google.com/file/d/0B6HPdSi5m-iwcGk3QVFJMU1hUDQ/edit>

82 Labour legislation (Laws nos. 49/2008 and 26/2009) was amended (Laws nos. 59/2011 and 66/2012).

83 Law on Social and Child Protection (Official Gazette of the Republic Montenegro, no. 27/13).

84 The research Socio-economic position of women in Montenegro 2013, IPSOS for NGO European Movement in Montenegro

## ROMA AND EGYPTIAN WOMEN (ARTICLE 3)

### General remarks:

The most vulnerable group in Montenegrin society are Roma and Egyptian women. Due to traditions and specific social, economic and cultural conditions, they suffer double discrimination and face numerous obstacles in education and the development of their capabilities, which reduces their prospects for employment and economic independence. There are almost no Roma and Egyptian women in prominent positions in public life.

### Violence against Roma women:

The NGO Centre for Roma Initiatives presented the publication “Family Violence in the Roma and Egyptian Communities in Montenegro” in October 2014. The aim of the publication is to provide a description of the position of women from Roma and Egyptian populations in the field of domestic violence. Within this publication are published the results of research conducted by the Centre for Roma Initiative (2014), “Contracted marriage is stronger than law”. The research found that Roma women and Egyptians are constantly confronted with violence within their ethnic community (by their fathers, brothers, wives, widows, and even mothers-in-law). As a common cause of domestic violence, the respondents first mentioned ‘tradition’ in 32.4% of cases, alcohol 18.4%, narcotics 2.2%, poverty 6.5% and low education 1.6%. These answers illustrate the fact that a woman in a Roma and Egyptian family has always had a subordinate position and been exposed to various layers and intersections of violence. The Roma women have, through primary socialisation, accepted matrices of violent behaviour as completely natural. On the other hand, multiple forms of discrimination and the evident isolation of the majority population of Roma women prevent them from addressing institutions and seeking protection. Women do not know where and how to realise their rights. Often they do not know that a right to life without violence and discrimination belongs to them.

### Child Forced Marriages:

The Centre for Roma Initiatives conducted a national survey<sup>85</sup> about the problem of child arranged marriages in four municipalities (Nikšić, Podgorica, Berane and Ulcinj) with a sample of 643 members of the Roma and Egyptian populations. The survey demonstrates that 72.4% of respondents were married by the time they were 18, in most cases between 12 and 17 years of age. This data confirms the hypothesis that within Roma and Egyptian ethnic communities child marriages are an established model of behaviour that causes a string of far-reaching consequences, especially for Roma and Egyptian girls and women. The survey has shown that during the child marriage arrangements, a certain amount of money is transacted, and, according to the answers of respondents, it ranges between 200 and 400 euros, while in 25,3% of cases the sum was higher than 4000 euros.

## RECOMMENDATIONS:

- Establish sound monitoring of the implementation of strategic documents related to the position of RE women and define clear performance indicators for specific programmes.
- Introduce mechanisms of protection against discrimination and domestic violence against Roma women.
- Educate the media for objective, professional and analytical coverage of the problems of the Roma population and the status of Roma women, within their families and community, devoid of stereotypical statements and messages containing traces of segregation.
- Establish a sound registration system for members of the Roma community to determine the exact number of Roma in Montenegro.
- Provide programmes for the Roma community on the obligation and importance of education

85 Survey available at the following link: <http://crink.me/wp-includes/PDF/Ugovoreni%20brakovi.pdf>

of children, human rights and discrimination.

- Conduct programmes to strengthen activism and social engagement of Roma women.
- Empower representatives of the Roma community in order to become included in the work of specific institutions.
- Design programmes to create conditions to prevent signing girls out of schools.
- Conduct additional training and capacity development programmes for Roma associations already active.

### WOMEN WITH DISABILITIES (ARTICLE 3)

Montenegro certainly falls amongst the group of countries where persons with disabilities have constantly been excluded from social life. Families contributed greatly to this by the predominant attitude that persons with disabilities do not have the same needs as others and that due to their limited capabilities they need constant support and assistance. There has also been a problem associated with parents (but also other family members), who were ashamed of the family member with disabilities. As of late, the attitude towards persons with disabilities is changing, mostly due to pressure non-governmental organisations established by people with disabilities, which play an ever more active role in the social and political scene. Here, as is the case with other sectors within the society, greater attention is paid to men and specific difficulties and needs of women with disabilities remain marginalised. Women are particularly deprived of their right to sexual life and motherhood. In their families, and the wider community alike, it is implied they should renounce such needs. According to the measured extent of vulnerability with regards to discrimination, persons with disabilities are ranked third after the elderly and people with an opposition-oriented political affiliation.<sup>86</sup>

Montenegro adopted the Strategy for the Integration of Persons with Disabilities from 2016 to 2020<sup>87</sup>, however the aforementioned document is worded in a completely gender neutral manner, as if the challenges facing disabled men and women are identical. Given the particularly vulnerable position of women with disabilities, the Strategy should have ensured measures that specifically apply to women with disabilities.

### RECOMMENDATIONS:

- Introduce legal incentives for the participation of women with disabilities in the areas of political actions, employment, health and education.
- Ensure funding for personal assistance for women and girls with disabilities.
- Set up support groups for women with disabilities. Ensure accessibility of public areas and workplaces for women with disabilities.
- Ensure access to education, social and health services for women with disabilities.
- Integrate women with disabilities in the national machinery for gender equality and in drafting strategic and policy framework for women.

<sup>86</sup> M.Bešić, Discrimination Patterns in Montenegro, March 2017, publisher: CEDEM, available at: [http://www.cedem.me/images/jDownloads\\_new/Diskriminacija\\_analiticki%20izvestaj%20-%20eng.pdf](http://www.cedem.me/images/jDownloads_new/Diskriminacija_analiticki%20izvestaj%20-%20eng.pdf)

<sup>87</sup> The document is available here:

[www.mrs.gov.me/.../FileDownload.aspx?...Strategija%20za%20integraciju%20osoba](http://www.mrs.gov.me/.../FileDownload.aspx?...Strategija%20za%20integraciju%20osoba)

## THE STATUS OF LESBIAN WOMEN (ARTICLE 3)

Discrimination and violence is further increased if characteristics that indicate LBTQ identity are attributed to women, which places them in a very unfavourable position, within the administrative system, as well as society as a whole. Lesbian, bisexual and transgender women in particular are affected by gender role divisions and patriarchy, which force them into invisibility, where they hide their identity in order to protect their safety, preserve their employment or the prospect of gaining employment, to avoid violence in the street or even in the family. LBT women have been creating the history of the LGBT movement in Montenegro from the shadow for years. They act upon and implement most activities, while the public discourse is dominated by the voice of GB men. Hetero-normative systems of behavioural patterns are still prevalent within the LGBT movement. Although significantly larger in numbers, the voices of LBT women remain subdued by the male representatives of the LGBT community.

In Montenegro, trans women still face a high degree of discrimination and stigma, due to strict binary gender roles, which are rooted in patriarchy, as well as high levels of misogyny, homophobia and transphobia that are present in the society. The social discrimination that trans women face, as well as their lack of visibility, is a strong indicator that they are the most sensitive group within the Montenegrin transgender community. Unlike trans men, who are much more socially accepted, trans women are far more likely to be exposed to violence and discrimination, due to their gender expression and perceived gender, which in many cases makes Montenegrin society an unsafe place for them to live and work. Violence against trans women is often not reported, due to fear of exposing their identity, which could lead to further discrimination in society.

In Montenegro, in order to achieve legal gender recognition and change sex markers in legal documents, it is still required for a person to go through sterilisation, which leaves many trans persons in a legal gap with documents that do not correspond to their gender identity. This results in many problems with accessing social services, such as health care, social protection, bank accounts, post office, etc. Recently, the Ministry of Internal Affairs has denied access to change of first name for a trans woman, manipulating her into choosing a gender-neutral name, even though the Law on personal names provides a right for all persons to choose their first names without any restrictions. In this case, Queer Montenegro filed a complaint to the Ombudsperson, and is now waiting for a decision on whether the Ministry has violated the aforementioned Law and denied access to human rights for this particular trans person.

## RECOMMENDATIONS:

- The State should ensure the implementation of specific measures for protection against violence, especially family violence, regarding LBT women.
- The State should provide legal gender recognition based on self-determination for all transgender persons.
- Guaranteed sustainability of social support services for LBT women should be provided by the State.
- The State should provide specific health care services to LBT women, especially with regards HIV prevention.
- Provide equal opportunities for education and employment for LBT women.

## GENERAL RECOMMENDATION 19 – VIOLENCE AGAINST WOMEN

## General remarks:

Montenegro ratified the Istanbul Convention, which came into force on August 1, 2014. Non-governmental organisations working on this report continuously monitor the work of institutions in the area of protection against domestic violence. The key findings of the institution's conduct in these cases are extremely worrying - they demonstrate a complete lack of physical protection for victims, even after repeated reports of violence to the police and other competent institutions. NGOs noted a failure of institutions to comply with the principle of urgency, a complete lack of risk assessment, a very small number of issued protection measures for victims and a lenient penal policy. The often discriminatory attitude of institutions to women with experiences of violence and the fact that a large number of victims are not familiar with the procedures, are only some of the key reasons for a loss of trust in State institutions and the withdrawal of victims from further involvement in proceedings.

## Reasoning:

In the period between 2011 and February 2017, at least 21 women were killed. 85% of femicides were committed in a family context, of which 67% were perpetrated by intimate partners, while in other cases the offenders were male family members - a father, a grandson and a daughter's former partner.<sup>88</sup>

In the period between 2015 and 2017, male partner violence resulted in the murder of five women, an attempted murder of two women and two children, and the murder of another family member. In 4 cases, perpetrators were repeatedly reported to the police and other competent institutions that failed to protect the victims.

Non-governmental organisations, Women's Safe House, SOS Nikšić and the Women's Rights Centre have filed 12 criminal charges against civil servants who did not use their legal powers to protect the fundamental right to life of victims of domestic violence. Criminal applications were filed on 15.11.2016. By the time this report was submitted, the state prosecutor's office rejected 6 criminal reports. Appellate procedures are ongoing for two criminal reports before the Constitutional Court of Montenegro, and the remaining four before the Higher and Supreme Court. Out of the remaining 4 applications, one was forwarded to the Special State Prosecutor's Office, and for the remaining three information from has not been forthcoming.

The data released by the Ministry of Justice in September 2016,<sup>89</sup> indicate a very mild penal policy, which means that there is a deep institutional misunderstanding of the nature of violence, as well as its consequences for the victim, family members, and society as a whole. Namely, in the period 2010-2015, the Misdemeanour Courts worked on a total of 5,015 cases. In 982 cases the courts issued acquittals (20%) and rejected 41 cases (19.6%). In 223 cases, the procedure was suspended (5.17%), while in 35 cases a request for the initiation of proceedings (0.81%) was rejected. There were 1,428 fines (33,10%), 414 warnings (9,59%), 28 education and disciplinary measures (0,64%) and 480 conditional sentences (11,12%) issued, while in only 378, or 8.76% of cases, were prison sentences issued. In addition, the percentage of protective measures imposed in a misdemeanour procedure and the provision of physical protection measures for victims (anti-stalking measures, restraining orders, removal of the violator from a common residence) is worryingly low in relation to the total number of prosecuted cases of domestic violence between 2010 - 2015 - such protective measures occur in only 17% of cases.

88 The state does not keep statistics on femicide and there are no official data available. Information was collected by the NGO Women's Rights Centre through the media reports analysis.

89 The report was prepared by the Ministry of Justice with the support of UNICEF Office in Podgorica. It is available at the following link: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>



The Supreme Court's record <sup>90</sup> of final decisions in criminal proceedings for family and family violence for the years 2015 and 2016 shows that out of the total number of cases the courts processed (457), convictions amounted to only 65%, out of which up to 70% were conditional sentences, warnings, fines and work in the public interest. Only one third constitute prison sentences. This data is particularly worrying when we know that criminal proceedings are initiated only for the harshest violence, most often involving severe bodily injury, while most of the cases are solved through misdemeanour proceedings.

According to available statistics, the security measures of Removal from Common Residence and Restraining Order <sup>91</sup> prescribed by the Criminal Code of Montenegro, have not been issued by the Montenegrin courts in any case of family violence. These measures come into effect only after the court decision comes into force, thus victims have no opportunity to be granted protective measures during the course of criminal proceedings.

### Data collection

A Ministry of Justice Report <sup>92</sup> states that most institutions lack electronic data collection systems, with the exception of the police and the Ministry of Labour and Social Welfare. However, the electronic database of the police is still not updated to comply with the Law on Protection against Domestic Violence in the field of data collection. The Ministry of Labour and Social Welfare has only recently started (2014/2015) to collect data on social protection in relation to victims of domestic violence, while data for the period before 2014, are not available. Health institutions also do not have an up-to-date, organised, electronic system for data collection and reporting on domestic violence, as data indicate the nature of the injury, but not the circumstances under which it occurred. The same stands for educational institutions and misdemeanour courts that still collect data in hand-written registers and create statistics manually. Hence, verified, accurate statistical data are still not available.

### Research

The State has so far failed to provide comprehensive research or studies on violence against women and family violence. However, such research has been conducted by international organisations and NGOs. The most recent study on "Family Violence in Montenegro - Multisectoral Support" <sup>93</sup> was conducted in 2017, with the aim of identifying the prevalence of violence against women in

Montenegro, attitudes of the general population and institutions on violence against women, as well as the direct costs of partner violence. The results of the research, carried out on a sample of 2,000 women, show that 42% of women, i.e. almost every other woman in Montenegro, during their lifetimes were exposed to some form of violence (psychological, physical, economic or sexual) by their husbands or partners, while 18% of women (almost every fifth woman in Montenegro) has experienced one of these forms of violence in the last 12 months. The study demonstrated that in Montenegro, patriarchal attitudes and traditional patterns of behaviour, which are discriminatory and derive from gender stereotypes, are still widespread. Such attitudes prevail in the responses of the representatives of the institutions involved in the system of protection against violence.

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90 The state does not keep statistics on femicide and there are no official data available. Information was collected by the NGO Women's Rights Centre through the media reports analysis.

91 Articles 772 and 77b Criminal Code of Montenegro Official Gazette of RCG " , No. 70 / 2003,13 / 2004, 47/2006 and" Official Gazette CG " , No.

92 The report was prepared by the Ministry of Justice with the support of UNICEF Office in Podgorica. It is available at the following link: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

93 The research was conducted by IPSOS for UNDP Office in Montenegro. It included quantitative research on general population (18+) in Montenegro, quantitative research on the population of women aged 15 to 65, qualitative research with women victims of domestic violence as well as representatives of official institutions involved in the implementation of the Protocol on the Treatment of Institutions in Cases of domestic violence.

Namely, although there is a declarative consensus that all forms of domestic violence should be reported - a large number of civil servants believe there to be a dilemma concerning whether or not violence against women should be treated as a private, family matter. Research has demonstrated that professional decisions are made on the basis of private attitudes and in accordance with the perceived rights of family privacy and family autonomy. In addition, representatives of institutions recognise various forms of violence, but most often speak of physical violence. They also recognise emotional violence, but demonstrate pessimism when it comes to proving instances of such abuse. Fines and sexual violence are rarely mentioned as part of the practice.

#### Key issues:

- The implementation of the provisions of the Law on Protection against Domestic Violence is inadequate. A significant number of domestic violence complaints result in fines, acquittals, release and suspended sentences.
- Only a small number of victims take advantage of Free Legal Aid. The quality of Free Legal Aid is low.
- Domestic violence prosecution is not conducted in an urgent, timely and efficient way that guarantees women's safety and perpetrators' accountability.
- The misdemeanour courts do not issue urgent protection measures.
- Criminal Courts do not issue security measures.
- Police rarely issue police orders to remove violators from common residencies or spaces.
- The protective measure of psychosocial treatment for perpetrators is not implemented.
- The protection of women and child rape victims is insufficient and inadequate.
- The State does not provide services for victims of violence.
- Domestic violence is not seen as gender-based violence in Montenegrin legislation nor in institutions.
- There are no reliable statistical data on the total number of victims of domestic violence, nor research conducted by the State.
- The application of the provisions of the CoE Convention is still at an initial stage.
- The Law on Protection against Domestic Violence does not cover partnerships. The formally legal extramarital partnership is recognised only after at least 3 years of joint habitation.
- Police too often issue "warnings" for the offender and do not register every report.
- Centres for Social Work and Health Institutions do not report to police institutions cases of domestic violence, although they are obliged to do so ex officio.
- The Montenegrin Government's Official Reports on Implementation of the Strategy for Protection from Family Violence are not available.

#### RECOMMENDATIONS:

- Ensure adequate human, financial and administrative resources for the implementation laws and policies.
- Revise and strengthen the criminal policy for domestic violence offences.
- Criminalise rape in a family context, including marital rape as a qualified form of rape.
- Extend the circle of protected persons within the framework of criminal and misdemeanour protection, by including persons who have been emotionally violated, no matter whether they lived in the same household.
- Provide regular supervision over the execution of conditional sentences and protective measures and in cases of non-compliance urgently initiate the procedure for the revocation of a suspended sentence or criminal proceedings for non-compliance with protective measures.
- Establish assistance and support services for victims after they leave the situation of violence: financial assistance, housing, education, training and employment assistance.
- Ensure a sufficient number of safe places for women and children victims of violence.
- Establish crisis centres for rape victims and victims of sexual violence and prescribe protocols

for respective institutions on how to support rape victims.

- Develop unique procedures and forms for collecting data on gender-based violence amongst relevant institutions and develop a unique database on gender-based violence.
- Fully harmonise domestic legislation with the standards of the Council of Europe Convention on preventing and combating violence against women and domestic violence.
- Involve specialised women's NGOs in relevant bodies for monitoring the implementation of the Istanbul Convention.

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