

NGO REPORT ON THE IMPLEMENTATION OF THE
COUNCIL OF EUROPE CONVENTION ON PREVENTING
AND COMBATING VIOLENCE AGAINST WOMEN AND
DOMESTIC VIOLENCE IN MONTENEGRO

2017



Women's Rights Center - Podgorica

Women's Safe House - Podgorica

SOS Hotline for Women and Children Victims of Violence Nikšić

SOS Hotline for Women and Children Victims of Violence Podgorica

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INTRODUCTION

Montenegro is among the first five states to report on the implementation of the Istanbul Convention that entered into force on August 1, 2014.

This report was produced as a result of the cooperation of 4 leading non-governmental organizations providing specialized support services to victims of domestic violence: Women's Rights Center, Women's Safe House, SOS Phone for Women and Children Victims of Violence - Nikšić and SOS Phone for Women and Children Victims of Violence Podgorica. In drawing up the report, organizations relied on their own experience in providing support to women and children victims of family violence and information on gathered during the regular accompaniment of women and children during the procedures and trials conducted before Montenegrin institutions, after they reported violence.

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 information obtained through the Law on Free Access to Information.

The coordination and drafting of the report was a significant challenge due to uneven data from state institutions on domestic violence, very limited financial resources available to organizations, as well as the fact that reporting was conducted as an addition to organizations' regular activities.

The goal of the report is to provide accurate picture of the situation in Montenegro when it comes to violence against women and domestic violence. We expect GREVIO evaluation to provide clear and concrete guidance through which Montenegro will improve institutional response to victim protection and support and increase the accountability of perpetrators of violence.

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GENERAL INFORMATION ON WOMEN IN MONTENEGRO

Women make 50.6 % out of total population in Montenegro.

Statistics about Violence against Women/girls and children

The Criminal Code incriminated domestic violence in 2002, by article 220 *Violence in the Family or Family Community*

The Montenegrin Law on Protection from Family Violence (misdemeanor law) entered into force on 2010.

Data from the UNDP Survey on violence against women (2017):

- In Montenegro, almost half of women (42%) has indicated experience of some form of violence during lifetime.
- 18% of women (almost every fifth woman in Montenegro) has suffered from one of these forms of violence over the last 12 months.

Data from Judicial Council:

Data of the Judicial Council¹ show that the courts in Montenegro have processed 249 cases of domestic violence referred in Article 220 of the Criminal Code in 2016, which represents a slight increase compared to 2015 when 228 cases of domestic violence had been processed. Out of that number, 181 cases have been closed, 167 convictions and six (6) acquittals were passed, whereas four (4) cases were interrupted or suspended.

Data from High Misdemeanor Court

Misdemeanor courts have processed 2073 cases of violation of the Law on Protection Against Domestic Violence in 2016. Out of that number, 1573 cases or 75.88% have been closed with: 489 fines, 107 imprisonment sentences, 177 suspended sentences, 94 admonitions, 9 correctional measures, 33 cases with rejected appeals, 104 suspended cases, 489 acquittals, and 71 cases resolved otherwise.

Protection measures:

In 2016, 252 protection measures have been imposed, including: 117 prohibitions of harassment and stalking, 45 restraining orders, 31 orders of removal from place of residence or other premises, 23 orders for mandatory medical treatment of alcoholism, 13 orders for mandatory medical treatment of drug addiction, 13 orders for mandatory psychiatric treatment and

¹ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

placement in a medical institution, 7 orders for mandatory psychiatric outpatient treatment, and 3 orders for mandatory psycho-social treatment.

Femicides:

There are no official statistical data on femicide. According to Women's Rights Center Media Reports Analysis:

- in the period from 2011 to 2017, at least 21 women were murdered.
- 85% of femicide was committed in the family context, out of which 67% by an intimate partner, and in the rest of the cases the perpetrators were male members of the family – father, grandson and daughter's ex-partner.
- Only in 3 cases of femicide there were no family or partner relations. In one of these 3 cases, rape preceded the murder, and in 2 cases the motive of the murder was robbery of the victims of over 60 years.
- In 4 cases victims were minors, and among them a one-year-old baby.
- In every fourth case of femicide in family context, the murderer committed suicide, and in one case attempted suicide.
- In 4 cases it was about connected murders, i.e. multiple murders whose victims, besides women, were men from their close circle /family – in one case a father of the ex-wife of the perpetrator, in one case a minor son, and in 2 cases friend of the ex-wife.
- In the mentioned period, 2 children died and were murdered by the father after separation from their mother, and 2 children survived homicide attempt after the father tried to kill them together with their mother, grandmother and grandfather.
- In the mentioned period there were 3 attempts of women homicide.
- In 4 cases which ended up killing 3 women and homicide attempt of 2 women, the perpetrator was reported to the police on many occasions and to other competent institutions, but the victims weren't protected.

Police orders of removal from the place of residence

In 2013, only 40 police orders of removal from the place of residence were issued in total and in 2014 this number was twice lower – 22. In 2015, the police issued the orders of removal from the place of residence 24 times (Police Directorate data)

Statistic of the Women's Shelters

- In 2015, 235 women and their children flee to women's shelters (138 women and 97 children) and in 2016, 216 women and children (122 women and 94 children).
(Statistics of Women's Safe House and SOS Telephone Niksic)
- In 2015 the women's Helpline received 8.252 calls in total, from these 7.199 calls are from women and girls.

National SOS Hotline

Number of women users of National SOS Hotline in 2015 – 119 women, in 2016- 436 women.
(Data provided by SOS Phone Niksic)

Employment

Women are majority of working age population of 15 years + (51.2%), but they continue to be less represented than men in the labor market. In 2016, women made 45% (100 900 out of 224 200) of the employed labor force in Montenegro.² The overall employment rate of the working age population was 39.4% for women and 50.5% for men.³ In 2016, activity rate for working age women (47.6%) was considerably lower than for men (61.8%).⁴ Generally speaking, activity rates are lowest in the northern region (38.8% for women and 58.6% for men).⁵

The majority of employed workforce with university education are women (53.5%).⁶

Gender Pay Gap

According to official state statistics, average earnings of women to average earnings of men were 86.1% in 2013 and 86.8% in 2011.⁷ 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.⁸

The EU average was 16, 1 %. According to Eurostat.

Professional segregation

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,

²Labour Force Surveys 2011-2016, Monstat, p.3. Available at: <http://www.monstat.org/cg/page.php?id=660&pageid=22>

³ Labour Force Survey, Monstat, 2016 p.6.

⁴Labour Force Survey, Monstat, 2016 p.9.

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

⁶Labour Force Survey, Monstat, 2016 p.16.

⁷Women and Men in Montenegro from 2013 and Women and men in Montenegro from 2011. p. 99.

⁸ See: Women and Men in Montenegro from 2015.

scientific and technical activities (54.6%).⁹ Women also constitute 60% of the total number of family workers.¹⁰

Business and property ownership

In Montenegro, only 9.6% of women have their own businesses.¹¹ 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.¹²

Only 4% of women are owners of immovable property in Montenegro.¹³

Women in decision making positions

Women in Montenegro hold only 19 out of 81 (23.5%) seats in the national Parliament¹⁴, 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.¹⁵ 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.¹⁶ There are only four female Ministers in the Government of Montenegro¹⁷, while the highest ranking positions in the Cabinet are covered by men, notably the position of Prime Minister and all three Deputy Prime Ministers.¹⁸ Women comprise 207 out of 786 councilors in the local assemblies (26.3%).¹⁹ Currently, only 2 out of 23 municipalities are headed by women.²⁰

⁹Labour Force Survey, Monstat, 2016 p.11.

¹⁰Labour Force Survey, Monstat, 2016 p.4.

¹¹ See: 2016 Human Rights Builten, Ministry of human and minority rights. Available at:<http://www.minmanj.gov.me/pretraga/166940/Bilten-o-ljudskim-pravima-2016.html>

¹² See: Montenegro Gender Diagnostic: Gaps in endowments, access to economic opportunities and agency, World Bank, 2013, p. 5.

¹³ See: The 2016 Human Rights Builten, Ministry of Human and Minority Rights.

¹⁴ 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>

¹⁵ 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>

¹⁶ 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/>

¹⁷ Minister of Economy, Minister of Public Administration, Minister of Science, and Minister without portfolio.

¹⁸ 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>

¹⁹ 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 councilors 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).

²⁰ Coastal Municipality of Tivat and Northern Municipality of Gusinje.

I PURPOSES, DEFINITIONS, PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION, GENERAL OBLIGATIONS

Article 3 – Definitions

At the national level, Montenegro has several regulations concerning gender-neutral concept of protection of human rights in the context of violence.

Law on Gender Equality²¹ defines, among other things, gender-based violence as any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as threat of such act that seriously impede a person's ability to enjoy his or her rights and freedoms in both public or private life, including domestic violence, incest, rape and trafficking in human.

Shortcomings:

Law on Gender Equality is the law of general character which only contains the meanings of terms "gender-based violence" referring to special laws which more specifically prescribes the mentioned acts of gender-based violence and accompanying penal provisions. The law has not been adequately implemented in practice. According to the NGO information and available reports of the Protector of Human Rights and Freedoms, no court proceedings have been initiated against violation of the Law on Gender Equality provisions, for which sanctions were prescribed (See more about this law in Chapter II).

Montenegro regulates domestic violation through several regulations.

According to the **Law on Domestic Violence Protection**, the violence is the act or omission of act by a family member that endangers the physical, psychological, sexual or economic integrity, sanity and serenity of another member of the family regardless of the place where it was performed.²² Therefore, the Law encompasses a wide range of actions that can be, in addition to the physical, of sexual, economic, and psychological nature, which is in accordance with Article 3 of the Convention.

The circle of protected persons is very wide, including, inter alia, persons who share the same household, regardless of kinship. The law does not include persons who were or still are in an

²¹ Official Gazette of the Republic of Montenegro No. 46/2007; Official Gazette of Montenegro No. 073/10, 040/11, 035/15

²² Article 8 of the Law on Domestic Violence Protection

emotional or sexual relationship regardless of whether they lived in the same household, or they were relatives on the side of wife.

Shortcomings: The Law on Protection against Domestic Violence²³ (LPDV) as a law in the area of legal protection from violence does not refer to the violence against women, but provides a general definition of the term of domestic violence.

Practice shows that it is necessary to provide protection against violence to those persons who are not extra-marital partners who do not live in the same household so the law in this part needs to be amended. The extension of the circle of protected persons in the proposed manner is also recommended by the United Nations²⁴.

Criminal Code²⁵ (CC) defines, as basic form of violence in family or family community, any violation of physical and mental integrity of a member of the family or family with the use of gross violence. Consequently, the definition of violence includes only physical violence, but not psychological, economic or sexual violence. Consequently, the definition of violence covers only physical, economic, and sexual violence. According to the meaning of term from this law, family members are also considered to be former spouses, blood relatives, and relatives by full adoption in the direct line of kinship without limitation, but in the lateral line of kinship up to the fourth degree, relatives by incomplete adoption, relatives on the side of wife up to the second degree, persons sharing the same household, and persons who have a child in common or who have conceived a child even though they have never shared the same household²⁶.

Shortcomings:

Criminal Code as a law in the area of legal protection from violence does not refer to the violence against women, but provides a general definition of the term of domestic violence.

In the Criminal Code, the circle of family members is narrower than the standard stipulated in the Convention, so it is also necessary to widen the circle of protected persons in accordance with the Convention.

²³Official Gazette of Montenegro No. 46/2010

²⁴ See: United Nations, Good practices in legislation on violence against women, Report of the expert group meeting, Vienna, 26-28 May 2008, pg. 27: "Legislation should apply at a minimum to individuals who are or have been in an intimate relationship."

²⁵ Official Gazette of Republic of Montenegro, No. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 40/2013 i 56/2013, 014/15, 042/15, 058/15

²⁶ Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro" No. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013, 014/15, 042/15, 058/15

Moreover, in addition to violence involving the use of force, this act should include a precise description of other forms of violence stipulated by the Convention, as it is the case with misdemeanor – domestic violence.

Further, in practice, partial overlapping of the Law on Protection against Domestic Violence provisions with the provisions of the Criminal Code has been recorded. In this sense, there is a problem of appropriate qualification of the act of domestic violence, i.e. the adoption of correct decision on whether acts of domestic violence should be prosecuted as misdemeanors, in accordance with the Law on Protection against Domestic Violence or as criminal offenses in accordance with Criminal Code. In this way, legal security is also violated, because it is impossible to predict with certainty the consequences of the offense based on the provisions of the law. Therefore, it is very important that the Montenegrin legal framework clearly distinguishes between misdemeanor and criminal liability in case of domestic violence.

The reason for concern is the current amendments to the Criminal Code of Montenegro, by which Working Group of the Ministry of Justice of Montenegro should harmonize this legal act with the Convention²⁷. Center for Women's Rights and the Women's Safe House have submitted a Proposal for amendments to the Criminal Code of Montenegro, which proposes the harmonization of a number of law articles with the Istanbul Convention and the UN CEDAW (Annex I of the Report).

However, the Report on Public Debate²⁸ states that the Working Group of the Ministry of Justice has accepted only one of the eight proposals of the aforementioned organizations, the one related to the more severe penalties for the criminal offence of Mediation in Prostitution. It was not accepted the proposal of non-governmental organizations to change the definition of rape so that it was based on the lack of the victim's consent instead of using coercion. **The Ministry of Justice has retained an outdated definition of rape, rather than to incorporate the lack of consent to sexual intercourse into the basic form of this criminal offence.**

²⁷ Draft Law on Amendments to the Criminal Code of Montenegro, published on the website of the Ministry of Justice on 11 January 2017:

<http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rId=262193&rType=2>

²⁸ Report published on 2 March 2017 on website of the Ministry of Justice
www.pravda.gov.me/rubrike/Javna_rasprava

Aforementioned definition is not in accordance with the attitudes of the European Court of Human Rights, which are listed in the court decisions in cases in which the states were responsible for non-protection of victims of rape. (M.C. v. Bulgaria and D.J. v. Croatia²⁹).

Recommendations

- *It is necessary to bring into accord terminology of the legal framework with the Convention and introduce forms and terms of violence against women, domestic violence and gender-based violence in the manner defined by the Convention.*
- *Make distinction between misdemeanor and criminal liabilities in cases of domestic violence, so that any physical, psychological and sexual violence among family members falls under the domestic violence crime, provided that such violence is not already covered by other criminal offences involving a family relationship between the victim and the offender as an aggravating circumstance, while the misdemeanour liability would be entailed by the remaining milder forms of domestic violence;*
- *Widen the circle of protected persons within criminal and misdemeanour protection of the partners and former partners, former relatives on the side of wife, as well as persons who were or are in emotional or sexual relationship regardless of whether they were living in the same household;*
- *Change the definitions of rape in the law so that central place of the definition would be a lack of consent;*
- *Remove from the definition that the condition for sexual assault must be done by using coercion or by threat, as well as any condition that there was penetration;*
- *Adopt other recommendations of non-governmental organizations for amendments to the Criminal Code of Montenegro (Annex I).*

Article 4 – Fundamental rights, equality, and non-discrimination

Basic constitutional provision that guarantees the equality of women and men and development of equal opportunities policy was elaborated by the laws which govern: labour relations,

²⁹ Judgment available on website <http://www.coe.int/en/web/istanbul-convention/echr-case-law>

employment, pension and disability insurance, education, health care, safety at work, family relations, and other areas of social life and work.

The Constitution of Montenegro³⁰ in the Chapter »Human Rights and Freedoms« (Article 17 – 80) regulates in detail the wide range of citizens' rights and freedoms. Among other things, the obligations of the state are guaranteed as well as basic human rights and freedoms, prohibition of discrimination on any ground, gender equality, human dignity and security, inviolability of the physical and integrity of a man, his/her privacy and personal rights, prohibition of torture or inhuman and degrading treatment, freedom of movement and residence. Article 8, paragraph 2 states that introduction of special measures aimed at creating the conditions for the exercise of gender equality shall not be considered discrimination, while Articles 19 and 21 "guarantee the right to equal protection of rights and freedoms, and legal aid".

Article 9 of the Constitution of Montenegro prescribes the supremacy of international law over national legislation and stipulates its direct application directly when they regulate relations differently than the national legislation.

Anyone who considers that he/she has been violated by discriminatory treatment of an organ, company, other legal entity, entrepreneur and natural person shall have the right to protection before court, in accordance with the provisions of the **Law on Civil Procedure**, unless otherwise provided by the **Law on Prohibition of Discrimination**. A complaint on behalf of a discriminated person or group of persons may also be filed by organizations or individuals involved in the protection of human rights, with the consent of mentioned persons or group of persons. The procedure is, as a rule, urgent.

In addition to judicial protection, discriminated persons have the right to submit complaints to the Protector of Human Rights, so that the Protector can take measures and actions to eliminate discrimination and protect the rights of the discriminated person, in the event that no court proceedings have been initiated. The submission of a complaint is free of charge. The complaint may also be filed by the organization and individuals involved in the protection of human rights, with the consent of the discriminated person or group of persons. When the Protector determines that there has been a violation of human rights and freedoms, the Protector gives an opinion containing a recommendation on what should be done to eliminate the violation, as well as the deadline for its removal.

³⁰ Official Gazette of Montenegro No. 1/2017

Amendment to the **Law on Gender Equality** from 2015, defined the competences of the Protector in dealing with complaints for possible breach of the principle of gender equality and the right to equal treatment, which it does through the protection mechanism established by the Law on Prohibition of Discrimination. The **Law on Gender Equality** categorizes domestic violence as a form of gender-based violence, so that domestic violence can be a form of discrimination against women.

Shortcomings: Montenegro does not have any verdict for gender discrimination. Number of complaints concerning gender discrimination submitted to the Protector of Human Rights remains extremely low. It implies that there is a lack of awareness of gender equality, lack of public information about protection mechanisms as well as low level of citizens' confidence in work of the institution responsible for protection.

Thus, the Protector's Report in 2015³¹ specified that there were 8 complaints concerning gender-based discrimination, while in 2016, there were 3 complaints. In the annual reports of the Protector in 2015 and 2016, it was specified that there were four complaints respectively concerning gender-based violence. In the Report, the Protector stated that data from previous reports indicated that violence against women and domestic violence has been worryingly present, and the state's response is inadequate.

These data do not correspond with the data from NGO Center for Women's Rights. Namely, in 2016, the Center for Women's Rights submitted to the Protector 8 complaints concerning the procedure undertaken by Centers for Social Work in cases of domestic violence, one of which related to the procedure of the Basic Court in Podgorica. In three cases, the Protector found violations of the procedure, in 2 cases there was no response, in 2 cases there were no violations of procedure, and in one case he recommended addressing to the social inspection. The Center for Women's Rights also submitted 12 complaints concerning maternity related to the amendments to the Law on Social and Child Protection. Violations were identified in 8 cases and recommendations were submitted to the Ministry of Labor and Social Welfare to eliminate the fundamental inequality between different categories of women that are encompassed by the controversial provisions of the Law on Social and Child Protection. The Protector also sent a recommendation to the Parliament of Montenegro and the Ministry of Labor and Social Welfare that when adopting by-laws for the purpose of implementing the law, they should use the anti-

³¹ Report on work of Protector of Human Rights and Freedoms in 2015, available on http://www.ombudsman.co.me/docs/Final_Izvjestaj_za_2015.pdf

discrimination approach and the non-discrimination test. In 4 cases where complaints were filed on the same basis, the beneficiaries did not submit their consent to conduct proceedings before the Protector.

In the Report, the Protector states that even though the strategic framework was improved, women in Montenegrin society have been still facing a significant number of problems within the various domains of private and public life.

The Protector's readiness to respond to complaints submitted by NGOs, therefore, it is necessary to strengthen and promote this kind of cooperation with a view to more efficient conducting of institutions towards prevention and combating discrimination against women.

Recommendations

- *Ensure consistent implementation of the existing regulations and strategic documents;*
- *Ensure direct implementation of international law in cases where it differently regulates the relationships from the national legislation,*
- *Ensure continuous, specialized and gender sensitive training for representatives of all competent institutions, which will provide, in addition to introducing to legal procedure, understanding of discrimination issue and women's rights to life without violence*
- *Get informed the public about the forms of discriminations based on sex and protection mechanism;*
- *Strengthen capacities of the Protector for dealing with cases of gender equality,*
- *Strengthen cooperation between the Protector and women's NGOs dealing with discrimination issues and gender-based violence;*
- *Conduct campaigns on raising public awareness of the discrimination against women and encourage women to report violations of legally guaranteed rights both in public and private domain.*

Article 5 – State obligations and due diligence

STATE OBLIGATIONS

By standardization of the violence protection area, Montenegro takes on both positive and negative obligations. First of all, human rights warranty within the highest legal act – **Constitution**³². Withal, the Constitution does not explicitly mention violence against women, but it does mention the obligation of each individual to respect the rights and freedoms of others. Any indirect and direct discrimination is prohibited, the equality of men and women is guaranteed, the dignity and safety of man, the inviolability of the mental and psychological integrity of man, his/her privacy and personal rights, and the equal protection of rights and fair trial.

The guarantees given by the highest legal act of Montenegro have been elaborated by series of laws in the form of positive obligations of the institutions in the Montenegrin system. The **Law on Gender Equality** foresees series of special measures which must be taken and implemented by the institutions in the Montenegrin system in order to provide and improve gender equality, but it does not contain any part which can be exclusively applied to women suffering violence.

Positive obligations are further elaborated in the Law on protection against domestic violence, **Law on domestic violence protection**, principally in the form of obligations of competent authorities to provide full and coordinated victim protection depending on the degree of vulnerability. Additionally, Protocol on Actions, Prevention, and Protection against Family Violence in more details elaborates individual roles of all subjects of the domestic violence protection, emphasizing inter-agency cooperation. The problem and aggravating circumstance is that the Protocol is not legally binding but serves as a tool in actions (i.e. Instruction).

Negative obligations are implemented through guarantee of constitutional rights and imposing obligations of each individual to respect rights and freedoms of others. Therefore, the state is obliged to ensure the enjoyment of these rights in relation to the actions of state institutions and employees.

The issue of reparation for victims was separately treated within the **Law on Compensations of Victims of Violent Crimes**¹⁹ which will be applied from the day of Montenegro's accession to European Union. The said law will regulate the victim's right to compensation for lost earnings, health care costs, and compensation for funeral costs.

Physical and legal persons, who believe that a police officer has violated some of his/her rights or caused damage while performing police duties, have right to complain about the work of the police. Control of police work is provided by parliamentary, civic and internal control.

³² Official Gazette of Montenegro, No. 1/2007 and 38/2013-1

Furthermore, a person who believes that his/her rights and freedoms have been violated or suffered damage by performing police duties has the right to judicial protection and compensation of damages. The **Law on Internal Affairs**³³ elaborates the disciplinary liability of police officers for breaches of duty.

Law on Prohibition of Discrimination³⁴, **Law on the Protector of Human Rights and Freedoms**³⁵, **Law on Social and Child Protection**³⁶ stipulate the possibility of filling the complaints concerning the exercise of citizens' rights.

In addition to disciplinary liability, the employees of the institutions dealing with cases of violence can have criminal liability. Namely, **Criminal Code** standardizes criminal acts against official duties, where in the case of committing such acts, the liability within the criminal procedure is determined. Criminal act against official duty, which may be related to domestic violence, are abuse of official position³⁷ and unconscientiously performance of duty³⁸.

In the **Protocol on Actions, Prevention, and Protection against Family Violence**, there are set of measures of the competent organs and authorities in cases of domestic violence. The Protocol is special kind of agreement between more institutions and organizations by which the signatories are committed to multidisciplinary cooperation with clearly elaborate procedures for each system. The problem and aggravating circumstance is that the Protocol is not legally binding but serves as a tool (i.e. Instructions).

Law on Domestic Violence Protection sanctions non-reporting of domestic violence by state employees with a fine from EUR 100 to EUR 500. However, there is lack of misdemeanor liability of the state employees for breaching other provisions of Law on Domestic Violence Protection providing certain obligations for them, therefore, **the amendment to the Law in this regard should be considered.**

With regard promotion of the Convention and its implementation, the state has not shown, so far, noticeable initiative, nor has it allocated special funds for this purpose. First national conference³⁹ with a view to introducing institutions and professionals to the Convention was

³³ Official Gazette of Montenegro No. 44/2012, 36/2013, and 1/2015

³⁴ Official Gazette of Montenegro No. 46/2010 and 18/2014

³⁵ Official Gazette of Montenegro No. 42/2011 and 32/2014

³⁶ Official Gazette of Montenegro No. 27/2013 and 1/2015

³⁷ Article 416 of the Criminal Code

³⁸ Article 417 of the Criminal Code

³⁹ The Conference was organized in December 2013 by Center for Women's Rights with financial support of UNDP and Fondation Petrović Njegoš

carried out by women non-governmental organization which printed brochure with the text of the Convention and distributed it to the institutions responsible for its implementation. The analysis of the compliance of the legislative and strategic framework of Montenegro with the Convention and the Convention public awareness campaign was also carried out by non-governmental organizations⁴⁰.

DUE DILIGENCE

Regarding the cases of violation of human rights in the procedures and application of due diligence principles, despite the existing regulations, the number of reported cases is still insignificant. The only report which is the source of this type of information is the **Regular Report of the Protector of Human Rights and Freedoms for 2013, 2014, 2015, and 2016**⁴¹.

Shortcomings:

In the period of 2015 – 2017, male partner violence resulted in the killing of 5 women, attempt murder of two women and two children, as well as the killing of the father of one of the victims⁴². In 4 cases, the perpetrators were reported to the police and other competent institutions which did not act in accordance with the standard of due diligence, therefore, the protection of victims was completely absent⁴³.

Non-governmental organizations, Women's Safe House, SOS Telephone Nikšić, and Women's Rights Center filed 12 criminal charges against civil servants who did not use their legal powers to protect the fundamental right to life of domestic violence victims⁴⁴. Criminal charges were filed on 15 November 2016 and by the time of this report submission, the Basic State Prosecutor's Offices rejected 6 criminal charges. Appellate proceedings are ongoing for two criminal charges before the Constitutional Court of Montenegro, and for the remaining four

⁴⁰NGO Women's Safe House in partnership with SOS hotline Nikšić, and Women's Rights Center

⁴¹ Available at http://www.ombudsman.co.me/docs/izvjestaji/Final_Izvjestaj_za_2013_05042014.pdf;

http://www.ombudsman.co.me/docs/izvjestaji/Izvjestaj_za_2014.pdf;

http://www.ombudsman.co.me/docs/Final_Izvjestaj_za_2015.pdf

http://www.ombudsman.co.me/docs/1491305524_final-izvjestaj-za-2016-04.pdf

⁴² Source: Report of NGO Women's Right Center Femicide in Montenegro 2000-2017 presented on 6 March 2017 in Belgrade at the Conference on femicide in organization of network Women against violence

⁴³ Information from media conference of Women's Right Center, Women's Safe House and SOS Telephone Nikšić, on 10 December 2016 : <http://www.vijesti.me/vijesti/danas-bi-bile-medu-nama-institucije-da-pomognu-zrtvama-porodicnog-nasilja-915656>

⁴⁴ Available at http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

before the Basic and High Courts. Out of remaining 4 applications, one was forwarded to the Special State Prosecutor's Office, and for the remaining three we do not have information whether they were processed⁴⁵.

In April 2015, NGO Women's Rights Center submitted to the Protector for Human Rights and Freedoms, Police Department, Council for Civilian Control of Police Operations, and State Prosecutor's Office, requests for free access to information about the procedures initiated against individuals - state officials for violation of the standards of due diligence in the cases of violence against women and domestic violence. In the response of the Supreme State Prosecutor's Office, it is stated that, according to the reports submitted to the Supreme State Prosecutor's Office by the Basic and High State Prosecutor's Offices, in 2014 and 2015, there were no cases where the proceedings had been instituted against individuals - state employees for violation of the standards of due diligence in the cases of violence against women and domestic violence. During 2014 and 2015, the Ministry of Interior conducted disciplinary proceedings against 2 police officers, due to the severe breach of official duty - breach of the Code of Police Ethics (Article 106, paragraph 1, item 4 of the Law on Internal Affairs). In first case, the breach of the Code was improper conduct – violence against wife, for which the abuser was fined at the amount of 30% of monthly salary for two months. In the second case, the breach of the Code was improper conduct and physical abuse – violence against his wife and son, for which he was fined at the amount of 30% of monthly salary for 6 months. The response does not indicate whether the Ministry, in accordance with its obligation to report violence, prescribed by the Law on Domestic Violence Protection, submitted information on domestic violence to other relevant institutions, as well as whether, on their basis, proceedings were instituted against the perpetrators. In the period 2014/15, the Council for Civilian Control of the Police Operations had 5 cases of verification of police authorization in the field of domestic violence.

Data published by the Ministry of Justice⁴⁶ in September 2016, relating to the period since the adoption of the Law on Domestic Violence Protection, i.e. from 2010 to the end of 2015, indicate a very mild penal policy, which means that, at the institutional level, there was a deep misunderstanding of the nature of this problem, and situations in which violence can occur, as

⁴⁵ Available at the archives of SOS hotline for women and children victims of violence Nikšić.

⁴⁶ Report from September 2016 made by the Ministry of Justice, with support of UNICEF Office in Podgorica, available on: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

well as its consequences for the victim, family members and society as a whole. Namely, in the period from 2010 to 2015, misdemeanor courts had a total of 5,015 cases. They rendered acquittals for 982 cases (20%), dismissed 41 cases, or 19.6%. In 223 cases, the proceedings were discontinued (5.17%), while in 35 cases the requests to initiate the procedure were rejected (0.81%). 1,428 fines were imposed (33.10%), 414 warnings (9.59%), 28 educational and disciplinary measures (0.64%), 480 probations (11.12%), while there were only 378 or 8.76% sentences of imprisonment. In addition, the percentage of orders of protection imposed in the misdemeanor procedure providing physical protection for victims (prohibition of harassment and stalking, restraining order, order of removal from place of residence or other premises) is worryingly low in relation to the total number of domestic violence cases processed from 2010 to 2015 and it only makes 17%.

The Supreme Court Records on final decisions in criminal proceedings for criminal offence – family and family community violence, in 2015 and 2016, show that, out of total number of cases (457), condemnatory judgments make only 65%, of which yet 70% are suspended sentences, warnings, fines and work in public interest, and only a third are sentences of imprisonment. This information is particularly worrying when we know that criminal proceedings are initiated only for gross violence offences, which most often involves grievous bodily harm done to victims, while other cases are disposed through misdemeanor procedures.

According to the available statistics, orders of protection, restraining orders⁴⁷ and order of removal from place of residence⁴⁸ prescribed by Criminal Code of Montenegro⁴⁹, were not issued by Montenegrin courts in any case of violence against women in domestic context. These measures will enter into force only after the final decision of the court; therefore, there is no possibility for victims to have their protection orders imposed during the course of the criminal proceedings.

Non-governmental organizations which have been working on this Report, continuously monitor the work of institutions in the field of protection against domestic violence. Key findings of

⁴⁷ Article 77a of the Criminal Code of Montenegro

⁴⁸ Article 77b of the Criminal Code of Montenegro

⁴⁹ " Official Gazette of Republic of Montenegro ", No. 70/2003,13/2004, 47/**2006** and " Official Gazette of Montenegro ", No. **40/2008, 25/2010, 32/2011, 40/2013 and 56/2013**

monitoring are worrying, because they imply the complete lack of physical protection of victims of the police and other competent institutions, even after repeated complaints.

Failure to comply with the principle of urgency and duration of misdemeanor and criminal procedures, lack of physical protection of victims, often discriminatory attitude of institution towards women experiencing violence and the fact that a large number of victims is not familiar with the procedures, are some of the key reasons for the loss of confidence in state institutions and withdrawal of victims from further participation in the proceedings. Monitoring of institutions' work shows that not even one institution performs any appropriate risk assessment nor registers the complaints of all victims, which significantly prevent effective protection of victims and prevention of violence.

The findings of non-governmental organizations are, to a large extent, confirmed by the latest research on domestic violence, which will be discussed in detail in the part of the report referring to Article 11 of the Convention.

Police and Prosecutor's Office

In practice, Women's NGOs often record that police does not perform efficient protection of victims of violence. The officers do not have enough knowledge about the legal norms and their responsibilities. They have widespread practice not to go to the scene at the call of the victims, but insist on their arrival to the police station. Illustrative is an example of a minor⁵⁰ (14 years) who addressed police for help stating that the father/abuser had a knife threatening that he would harm him and his mother. Police officers, instead of urgent arriving on the scene, insisted on minor and mother's arrival to the police station and to make a complaint. Non-governmental organizations registered that the police records mostly do not contain those complaints made by those who had called Police Emergency Service 122, but often not even those made by a victim personally, orally, arriving to the Main Police Station, resulted by police warning issued to the abuser. By issuing warning to the abuser, police usually do not inform the prosecutor about it. The warning, in most cases, is made orally and without being entered the official note which will be available if victim reports the violence. Such treatment leads to the lack of protection of victims, but, also, directly leads to the mild qualification of the offense in the event of repeated reporting, and therefore to a milder criminal policy.

⁵⁰ Available at the archives of SOS hotline for women and children victims of violence Nikšić

Police officers' acting is often influenced by negative personal attitude towards women and domestic violence resulting in secondary victimization of victims and discouragement to persist in their complaints and/or to call for help again. The testimonies of domestic violence victims were reported, who alleged that they had the impression that police officers justified the perpetrators, underestimated the violence they had survived, made inappropriate comments, showed distrust in their testimony. They stated that the officers were arrogant toward them, kept interrupting them during the statement, incorrectly interpreted the statement, and did not allow them to say everything they had. The Women's NGOs have information that police officers conduct the procedure in a way to cause the victim's hesitation to report and to give up the making of the complaint, thus, preventing them from receiving adequate legal protection. In some noted cases, police officers led the case in a way to encourage the victim to reconcile with the perpetrator.

The police have been using available protection mechanisms to a small extent. The police still rarely issue a 3-day order of abuser's removal from common residence, although, it has been seven years since the adoption of the law. In most police stations in Montenegro, it have never been used, although it represents an extremely effective and powerful way to protect victims from violence, and sends a strong message to perpetrators that they will be sanctioned for the violence they committed. Thus, in 2013, the police issued 40 such orders, in 2014, only 22, while, in 2015, the police issued 24 such orders. The aforementioned order was mostly issued by the Main Police Station in Nikšić (74.4% of cases), while the largest Main Police Station Podgorica, in the capital, with 1/3 of the total population and the largest number of violence cases - has not issued any such order.

Institution, often, do not inform the victims about their rights and course of the proceedings, after reporting violence. The victims of domestic violence, after exiting the police station, often, do not know who to contact in the next stage of proceedings in order to obtain information about the status of their complaints. Additionally, they often do not know which types of help and supports are available.

Particularly worrying is the fact that Women's NGOs, in their practice, have increasing number of cases in which the primary aggressor is not identified. Thus, in addition to the complaint submitted by the victim of domestic violence, police officers process counter complaint of the abuser. The result of such treatment is the punishment of both victim and abuser, what makes the domestic violence victims extremely traumatized and discouraged to seek protection during

repeated violence. If the primary aggressor is not, or is wrongly identified, that can lead to important legal consequences for victims, such as punishing the victim, denying custody of children, residence rights, and other forms of assistance prescribed by law. In this way, the abusers successfully manipulate the system, and the victim is not protected. As a result, the victims have blushed to report to the police the repeated violence.

Police officers and prosecutors do not have proactive stance in advocating the rights of domestic violence victims. They based the case, almost exclusively, on the victim's statement and possible medical reports which is usually very meager and does not show the actual extent of the committed violence. There is a lack of written communication between police and prosecutor's office, and Women's NGOs do not have knowledge that the prosecutors, after the victim had asked the police for help, actually arrived on the scene and took the statement directly from the victim. One of the consequences of the aforementioned bad practice is that the cases of gross domestic violence are not processed as criminal cases, or when they are processed, the domestic violence victim must again give testimony before the prosecutor. That is why we have the exceptionally large difference in number of misdemeanor (2,073⁵¹) and criminal procedures concerning domestic violence (228) in 2016. Sometimes, from first to second giving of testimony, it takes several weeks or even months, and the victim, who is exposed to numerous pressures, and does not have any protection of the institutions - gives up the proceedings. This makes completely meaningless the positive legislative changes which prescribe that it is sufficient for the domestic violence procedure to victim give his/her testimony only once.

Police very rarely process the procedure urgently, and they do not have practice of initiating request for protection orders before initiating the procedure, or during it.

Requests for initiating misdemeanor procedure which police officers submit to competent courts do not include enough details necessary which will help in successful resolving of the case. On the contrary, in the request, testimony of the victim is often misinterpreted; quotations are not complete, what consequently makes the description of the event full illogical and inconsistent details. Inconsistency in the monitoring of the cases is reported, and police officers, although the applicants, are often absent from the trials in misdemeanor courts. They do not have reliable information on issued protection orders, and consequently there is a lack of adequate police acting in the efficient implementation of these orders. Moreover, small number of criminal

⁵¹ Data of High Misdemeanour Court, taken over from the Report of the Protector of Human Rights and Freedoms for 2016. Available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

proceedings initiated for protection orders breaching implies that police, even though the competent institution, do not monitor execution of protection orders and fail to voluntarily inform the prosecutor's office about their breaching. Seriousness of the problem is illustrated by the fact⁵² that when a victim reports breaching of protection orders, police officers ask him/her to provide them with a decision on issuing protection orders in order to continue with the procedure.

It was noted that outcome of most complaints against violence depends on the victim's willingness to take part in the proceedings and very often the police and the prosecutor's office abandon the prosecution if the victim withdraws from the proceedings.

Centers for Social Work

Centers for Social Work have key role in protection of domestic violence victims; however, victims often testify that social workers do not present them their authority and roles. Personal attitudes and prejudices about domestic violence often affect their actions. Women's NGOs were often informed by victims that social workers showed distrust in their testimony, questioned the truthfulness of it, minimized the degree of violence, mediated. They allege that they give them incomplete information, indirectly threaten them especially in the part of seeing children by violent parents, and they have feeling that they blame them for abandoning their abusive husbands.

CSW do not involve domestic violence victims in preparation process of mandatory plans for providing help and support, nor did they inform them about the content of the mentioned plans. CSW have key role in various civil and criminal proceedings concerning the domestic violence victims (child custody, meeting the children...) and often there is the lack of information about domestic abuse in their opinions or it is interpreted as irrelevant to the opinion. Women's NGOs do not have knowledge that the CSW, in organized and planned way, monitor families where domestic violence occurred, not even in situations when the monitoring is one of recommendations for resolving such case

CSW employees show complete lack of understanding of the dynamics of domestic violence and insist on respecting the parental rights of a violent parent, insisting on his contacts with children who witnessed the violence and, sometimes, were victims of violence. CSW seldom supervises the exercise of parental rights in cases where there is a danger of neglecting and abusing

⁵² Available at the archives of SOS hotline for women and children victims of violence Nikšić.

children. CSW negligence has been identified to control the contact of violent parents and children, even when controlled meeting was ordered by a court decision. Although such treatment (failure) to act leads to serious consequences⁵³ (for example, a violent parent kidnapped children from the CSW premises, the abuser abuses parental rights and destroys the relationship between children and the victim), the responsibility of the competent individuals is lacking. Also, there is no initiative to restrict or deprive parental rights, although the CSWs are obliged to initiate it when they register that the rights and health of children have been violated. In all CSW, Multidisciplinary Teams were established for preventing domestic violence. Mentioned protective mechanisms, designed as prompt and efficient response to each individual case needs was completely pointless in practice. Work of the teams is reduced to regular meetings several times a year; propose ad hoc initiatives for at the moment current case, which is often not realized. Women's NGOS have registered a negative practice in order to reduce and/or neutralize any omissions in the treatment of individuals through explanation that these were decisions of Multidisciplinary Teams.

Courts

Judges of misdemeanor courts do not have sufficient knowledge of the adequate implementation of the Law on Domestic Violence Protection. The procedures are usually conducted through a regular procedure that can sometimes last for several months. Due to inadequate interpretation of this legal norm, they, most often, refuse to issue emergency protection orders, which according to the Law on Domestic Violence Protection can be preventively imposed even before the initiation of the misdemeanor procedure. Namely, the majority of judges consider that protection orders can be issued only after appropriate evidence is obtained and after the guiltiness of the perpetrator is determined through the court procedure. This eliminates the purpose of the law to ensure urgency, which is why the Law on Domestic Violence Protection was set in the field of violation.

We do not have knowledge whether the judges ask for or receive information necessary for assessment of risk to the victims' security. Victims often wait for the beginning of the process in the same room with the abuser, without any protection, which is justified by the lack of spatial capacity of the courts. The judges often interrupt the victim when giving the testimony, they do

⁵³ Available at the archives of SOS hotline for women and children victims of violence Nikšić

not allow her to present the whole context of the violence, insist on the description of the last incident, and make a decision on penalties, and guided only by this particular situation which was usually followed by number of significantly more serious and brutal incidents. Women's NGOs⁵⁴ has information that individual judges conduct the proceedings toward the reconciliation of the victim and the perpetrator. One of drastic examples of additional traumatization of domestic violence victims in misdemeanor courts is a very widespread practice of the so-called "confrontation", i.e. forcing the victim and the perpetrators to stand in the courtroom opposite one another at a distance of 1 to 2 meters, face to face, and present their version of the incident. Judges of misdemeanor courts do not practice initiation for protection orders issuing during the course of the procedure, and also do not inform properly the victims about available security measures which they can demand.

Judges of misdemeanor courts often, after the termination of court proceedings, delay the adoption of a misdemeanor decision, sometimes, for a couple of months, and have no practice of urgent delivery of the decision on the issued security measures to the relevant security centers and centers for social work.

Basic court judges also show significant lack of information about existing legislation according to international standards, where the rights and interests of victims have a central place in the proceedings. In criminal proceedings, they justify domestic violence, for example, drug addiction, alcoholism, and often as a mitigating factor asses that the perpetrator is a "family man". The procedures usually last for several months, sometimes for a couple of years. Pronouncement of minimum sentences is common, and the judges do not issue security measures (order of removal from place of residence and removal from the apartment and prohibition of approaching) available to them according to the last amendment to the Criminal Code of Montenegro (2013).

In other proceedings before the basic courts (divorce lawsuit, child custody, division of property), concerning the domestic violence victims, the judges often do not take mentioned circumstance as relevant in the case. Requests for determining temporary custody of children, instead of issuing by urgent procedure, often take several months, and sometimes they reject them on the grounds that they are not relevant to the procedure. In divorce lawsuit they insist on mediation, interpreting rigid legal norms in a way to claim that they are obliged to propose it,

⁵⁴ Available at the archives of SOS hotline for women and children victims of violence Nikšić

even though it is contrary to the Convention and the Family Law of Montenegro. In cases where the victim explicitly refuses mediation, judges often reassure her/him by saying that he/she unnecessarily prolongs the divorce lawsuit and obstructs the proceedings.

Law on Domestic Violence Protection provided, as a service for aid and support to the domestic violence victims, a confidant who can accompany victim in all institution and attend all proceedings concerning the violence protection. Confidant is, in practice, most often, a person from NGO who is faced with numerous problems: most often they are not allowed to speak, they are exposed to the threats of the abuser, they are prevented from being present in certain procedures (divorce lawsuit, custody of children, giving evidence of the victim to the Prosecutor). The direct threats to life and security directed to confidant are not prosecuted by the employees of the institutions, but confidants must personally file the complaint. Not allowing the presence of confidant in a divorce lawsuit, judges explain with rigid interpretation of the Family Law, stating that it is a confident process. Some of them explain that the role of the judge, among other things, is to try to reconcile the parties, and confidants hinder them of doing so.

Some of these circumstances were noted by the Protector for Human Rights and Freedoms in his Report in 2016, stating that “even though, the Protocol on Actions, Prevention, and Protection against Family Violence precisely defined competencies of the acting bodies (police, centers for social work, judiciary, medical, education institutions) and encouraged the establishment of multidisciplinary cooperation between each individual body, the protection system is further characterized by the absence of timely and effective reaction, lack of information sharing and inter-agency cooperation, leading to the case that one victim of partner violence lost her life, in the reporting year”.

Before international bodies, such as European Court of Human Rights or the United Nations Commissions, there were no relevant cases for Montenegro in this area⁵⁵.

Before the Constitutional Court, a procedure upon appeal of the beneficiary of the NGO Center for Women's Rights is conducted, regarding the relationship between parents and children in the

⁵⁵ Source: Report on work of Representative of Montenegro before European Court of Human Rights on 11 May 2017: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=275395&rType=2>

situation of domestic violence.

Recommendations

- *The Law on Domestic Violence Protection should be amended in a way that it prescribes misdemeanor responsibility of officials in case of disrespecting all obligations prescribed by the Law on Domestic Violence Protection, including the obligation to act in accordance with the standard of due diligence.*
- *Amend the Criminal Code so that it prescribes the obligation of respecting the standards of due diligence in cases of domestic violence and violence against women and appropriate sanctions in case of fail to act in accordance with this standard.*
- *It is necessary to improve the efficiency and quality of work of all institutions involved in the system of protection against violence, to strengthen their connection and coordination through a multidisciplinary approach and to establish mechanisms for monitoring the quality of their work.*
- *There should be clear guidelines and training for all representatives of institutions involved in the victim protection system, in order to avoid any form of sexism and discrimination, or any act that leads to secondary victimization, and to introduce a prompt and effective system of sanctions for this type of crime.*
- *Civil servants who commit domestic violence and violence against women need to be urgently reported, prosecuted and sanctioned for their actions, and must be prevented from performing their duties in a position that involves working with women and children who are victims of violence and other vulnerable categories.*

Article 6 – Gender Sensitive Policies

During the past years Montenegro adopted a number of strategic documents which deal with gender equality and protection from domestic violence. Some of more significant ones are:

- Strategy for Protection from Domestic Violence for period 2016-2020;
- Action Plan for Reaching gender equality for period 2017–2021;
- Strategy for Fight again Trafficking in Human Beings for period 2012-2018;
- Strategy for Social Inclusion of Roma and Egyptian Population in Montenegro for period 2016-2020;
- National Strategy of Sustainable Development of Montenegro for period to year 2030.

- Strategy of Upgrading the Life of LGBT persons in Montenegro for period 2013-2018;

Each of mentioned strategic documents has a separate chapter or set of measures which refer to victims of violence, including the victims of violence in general or with focus on certain socially endangered groups like Roma and Egyptian women, or women and girls victims of trafficking in human beings. In addition to the ones mentioned, there are also other strategies which, to a lesser extent, pay attention to gender based discrimination and violence.

Ministry of Labor and Social Welfare has also drafted **Proposal of Strategy for Prevention and Protection of Children from Violence with action plan for 2017-2021**⁵⁶ the aim of which is to enable to all children in Montenegro an advanced protection from all forms of violence, including neglecting, until the year 2021.

Strategy of Protection from Domestic Violence 2016-2020

It is the most important strategic document in this field, the implementation of which is in charge of Ministry of Labor and Social Welfare. First strategy (2011-2015) consisted of 7 strategic fields and 45 measures for upgrading the social and other protection of domestic violence victims. After the expiration of time period covered by first Strategy, the Government of Montenegro, in December 2015, adopted new Strategy of Protection from Domestic Violence for period 2016-2020 with supporting Action Plan for its implementation⁵⁷.

As regards all the objectives and activities, a system of indicators has been established which is in compliance with standards laid down by Istanbul's Convention, CEDAW and UN Convention on Children's Rights.

Shortcomings:

Through the reports⁵⁸ of the Ministry of Labor and Social Welfare one cannot obtain a clear insight into the implemented measures and results of previous Strategy, especially as regards the

⁵⁶ Document is available on the following link :

www.gov.me/ResourceManager/FileDownload.aspx?rId=270762&rType=2

⁵⁷ Document is available at the following link:

www.gov.me/ResourceManager/FileDownload.aspx?rId=223283&rType=2

⁵⁸ Reports of MRSS for 2012 and 2014 are available at the following links:

www.gov.me/ResourceManager/FileDownload.aspx?rId=128213&rType=2 ;

http://www.minradiss.gov.me/ResourceManager/FileDownload.aspx?rid=207975&rType=2&file=14_115_11_06_2015.pdf

field of protection and support of victims. The investigation on implementation of the strategy⁵⁹ has demonstrated that the largest number of measures envisaged by the Strategy has not been implemented, that is only 29.05% of the measures have been implemented, 35% have been partially implemented, whereas 35.5% measures have not been implemented. **Out of the total number of implemented measures women's non-governmental organizations have implemented over 70%.**

The fact that raises concern is that the recommendations which resulted from the analysis of implemented activities of previous Strategy have not been taken into consideration in their entirety in the new Strategy, adopted for period 2016-2020. For example, by the Action Plan of mentioned strategy for the year 2016 only 14 measures/activities were defined, what is insufficient as regards the problematic of violence in Montenegro at all levels. Mentioned measures mainly refer to organising seminars, analysing the already existing analyses as regards the compliance with Istanbul's Convention and implementation of trainings in harmony with licensed programs which do not exist yet. Institute for Social and Children's Protection is in charge of licensing of programmes, but the conditions for licensing have not been created yet. Through the measures mentioned an accent was placed on programmes which, as a matter of course, are implemented by non-governmental organisations, with assistance of foreign donors, not state authorities, so that the impression is made that it was simplest to choose those activities for which the Government does not allocate resources.

Characteristic of this, as well as of other strategies which refer to gender based violence, is the lack of budget items, that is assessments of financial resources, hence there is no way to define „price“ of its implementation. By that fact, in planning of state budget on annual level, allocation of resources for these purposes fails to come. No matter that per cent of resources allocated from public funds and per cent of resources from other funds was given as a key indicator of achievement on the level of all measures of the strategy, none report regarding the implementation of measures from the strategy quotes the sources of financing. By that fact it is impossible to assess how much money does the state allocate from its budget for the programmes of prevention and protection from domestic violence.

Irrespective of the obligation of the Government, respectively the Ministry of Labour and Social Welfare, to coordinate, monitor and report on issue of implementation of Strategy of Protection

⁵⁹ Report "Monitoring of Strategy of Protection from Domestic Violence 2011-2015" is available at the following link:: http://sospodgorica.me/wp-content/uploads/2016/10/Monitoring_strategije_zastite_od_nasilja_u_porodici_final.pdf

from Domestic Violence, competent ministry does not do it. SOS hotline Podgorica with the support of the European Commission, by virtue of Delegation of the European Union to Montenegro, has elaborated monitoring of strategy for protection from domestic violence 2011-2015⁶⁰, but the recommendations which resulted from this analysis have not been taken into consideration in their entirety so that in the new strategy there are no significant measures like trainings for implementation of Rule Book from competence of police services, etc.

By monitoring of implementation of planned 14 measures from this strategy, it has been established that only three measures were completely implemented (21.3%), partially implemented five (35.7%), whereas seven measures have not been implemented at all (50%).

Implemented measures are mainly the activities related to RAE population and they refer to training of women activists from Roma NGOs for providing support in escort of confident persons, visits to Roma's settlements aimed at informing them on possibilities of protection, whereas the elaboration of institutions for acting and processing of cases of forced marriages in Roma's and Egyptian's communities for the needs of police, centres for social work, schools, courts and health centres is ongoing. All the activities have been implemented with the support of international donors.

A comprehensive analysis based on monitoring investigations by women's NGOs, which would define recommendations for regulating the legal framework in compliance with Convention of the Council of Europe has not been elaborated yet. By that fact some more significant change of regulations regulating the field of domestic violence failed to come. Ministry of Justice has elaborated a report on implementation of the Law on Protection from Domestic Violence, but, among the given recommendations there is no mention of the need to change law, irrespective of a series of problems recognized in implementation of this law⁶¹.

When discussing the licensing of specific training programs for civil servants, presently there are two licensed programmes. One of them is intended for judges and prosecutors and it is implemented by „Women's Right Centre“ in cooperation with the Centre for Education in Judiciary and State Prosecution. The other programme has been licensed by SOS hotline for women and children victims of violence Podgorica called „Educating of employees in

⁶⁰ B. Zeković; 2015. Monitoring of Strategy of Protection from Domestic Violence 2011-2015 available at www.sospodgorica.me

⁶¹ Report of Ministry of Justice
2016.www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2

correctional-educational institutions on acting, prevention and protection of children and youth from domestic violence“⁶²

In course of the year, except for the Ministry of Interior, there was no active engagement by other competent ministries as regards the printing of informational material, or compilation of web-page, intended both for the victims and for the officials who, in their work, deal with problematic of domestic violence. There were elaborated and delivered to all centres and security departments: Manual for Acting of Police Officers in Cases of Domestic Violence⁶³, posters on topic stop violence against women which consist of the telephone numbers, to which the cases of gender based violence may be reported. SOS hotline for women and children victims of violence Podgorica, has elaborated and made available to all institutions 5,000 Informers on possibilities of protection of domestic violence victims, as well as printed version of the Protocol on Acting, Prevention and Protection from Domestic Violence.⁶⁴ By the middle of the year 2017 an innovated Informer was elaborated for witnesses/damaged victims of domestic violence and victims of trafficking in human beings, which, from their own resources, was prepared by Women's Rights Centre in cooperation with the Supreme Court⁶⁵.

During the year 2016 the measures referring to education of the representatives of media on reporting about violence against women and domestic violence were not implemented, methodology for collecting data on domestic violence was not elaborated, nor the analysis of needs of competent organs-institutions for implementation of national and international legal framework for protection from violence.

At the same time, neither 6 years since the adoption of Law on Domestic Violence Protection and introduction of measure of „psychosocial treatment of bullies“ national programme of psychosocial treatment for perpetrators of violence against women and domestic violence has not

⁶² Programme has been published in Catalogue of Programmes of Professional Trainings of Teachers, of Institute for Education Services under the ordinal number 91. By the Decision of National Education Council, this programme has been listed in the programme of professional training of teachers and for the school year 2016/2017 under the ordinal number 111.

⁶³ B. Zeković, S. Milić, S. Zekić. 2015. „Practical guide towards good practice for police officials - Acting, Prevention and Domestic Violence Protection “. Publisher SOS hotline Podgorica, Ministry of Interior - Police Directorate, International Police Association – Section Montenegro

⁶⁴ B. Zeković, H. Neljaj, N. Boljević. 2016. „Informer on Possibilities of Domestic Violence Protection " financed by European Union in scope of the programme "European Instrument for Democracy and Human Rights (EIDHR); available at www.sospodgorica.me

⁶⁵ <http://sudovi.me/vrhs/biblioteka/informatori/>

been elaborated, no matter that this activity has been defined as a priority one both in this and in the previous strategy.

None of the measures planned with purpose of reaching „Upgraded access to justice and legal protection from domestic violence“⁶⁶ has been implemented, what means that the implementation of protective measures and safety measures, accessibility, manners and scope of providing pro bono legal assistance to victims of violence as well as implementation of the system of support to and protection of children witnesses and victims of violence, are not monitored in compliance with recommendations and standards⁶⁷.

Action Plan for Achieving Gender Equality (PAPRR)⁶⁸ is another strategic document significant for combating gender based violence. Action Plan for Achieving Gender Equality in Montenegro for period 2017 - 2021, represents the third in range developmental document for implementation of gender equality in Montenegro. Like the two previous plans, this document, too, is based on international and domestic legal framework which treats gender equality problematics. Ministry for Human and Minority Rights, respectively Department for Gender Equality Issues is in charge of implementation and monitoring of PAPRR, which is one of rare governmental bodies which continuously elaborates its annual reports.

PAPRR includes the fields defined in harmony with Beijing's Declaration and Action Plan, for actions in which gender equality is the most pointed. For this report it is significant to define separately the strategic goal *to combat all forms of gender based violence, violence against women and domestic violence, and also to upgrade the position and protection of rights of victims of all forms of gender based violence.*

Shortcomings:

Available reports on PAPRR⁶⁹ implementation represent a list of implemented activities, without information on reached change of the situation. The reports do not consist of the information on expenditure of financial resources for implementation of the plan.

⁶⁶ Objective 5. Strategies of Domestic Violence Protection

⁶⁷ Recommendations from issues which include „UN Manual for Professionals and Decision Makers on Judiciary Issues which Include Children Victims and Witnesses of Criminal Offences ” and standards laid down in Istanbul's Convention

⁶⁸ Ministry for Human and Minority Protection (2013). Action Plan for Reaching Gender Equality 2013-2017.

⁶⁹ Reports on implementation of Action Plan for Reaching Gender Equality for 2014, 2015 and 2016 are available at the following link: <http://www.minmanj.gov.me/organizacija/nap> ; <http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=236328&rType=2&file=Izvjestaj%20PAPRR>

At the request of UNDP and the European Commission, an independent evaluator has elaborated a report on implementation of Action Plan for Achieving Gender Equality for period 2013-2017. Until the completion of this report, Ministry for Human and Minority Rights has not enabled insight into the mentioned report to Women's Rights Centre⁷⁰. In spite of relatively good strategic framework, implementation of this policy is weak, and its impact on upgrading the position of women insignificant. Gender inequality is expressed through low political participation of women, economic inequality, uneven distribution of duties in the family, difference in property which brings women in position of economic dependency and prevents them from starting their own business, etc. Unemployment of women has grown in spite of measures for employment increase envisaged by the plan. Employment of women is characterized by more frequent accepting of jobs that are less paid, temporary works, and the ones with worse work conditions. Discrimination of women is especially present on places of decision making, as well as in dealing with independent entrepreneurial activity⁷¹. Besides this, there is no gender budgeting, therefore, until now specific financial resources have not been planned which will be annually provided from the state budget.

Strategy for Advancement the of LGBT Persons in Montenegro for period 2013-2018;

The purpose and objectives of this strategy are elimination of each direct or indirect discrimination on basis of sexual orientation or gender identity, decrease of homophobia and transphobia in the society, permanent improvement of social acceptance of LGBT persons and upgrading of all conditions and quality of life of LGBT persons in Montenegro. The Government of Montenegro by this Strategy committed itself, through 10 specific chapters, to implement measures which relate to combating violence on basis of sexual orientation and gender identity, through education, educative campaigns, strengthening of capacities of professional services in secondary schools for aid and support to LGBT persons and examination of needs, rights and position of youth, including the LGBT persons.

Shortcomings:

[%202015.pdf](#);

<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=272030&rType=2&file=Izvjestaj%20PAPRR%20%20-%202016.pdf>

⁷⁰ Women's Rights Centre submitted to Department for Gender Equality the request for delivery of the report by electronic means, in April 2017.

⁷¹ Ibidem

According to the report published by NGO LGBT Forum PROGRES⁷², the year 2016 was marked by a serious neglect of duties emerging from the Strategy, as well as comprehensive indifference of the system to deal further with LGBTIQ persons. After the initial adoption of antidiscriminatory legislature and placing of adequate institutional framework for work on implementation of the Strategy, very little has been done on implementation of specific social changes.

The Government of Montenegro has also adopted **Guidelines for Strengthening of Interinstitutional Cooperation, Non-Governmental Organisations and Local Communities, Aimed at Combating and Prevention of Violence against Women and Domestic Violence**.⁷³

In this document a survey of conditions and activities carried out in order to prevent and combat violence against women and domestic violence in Montenegro by relevant institutions and NGOs was given.

Shortcomings: This document has not produced yet the effect as regards strengthening of interinstitutional cooperation, which is still at the low level, as recognized by the state reports⁷⁴.

At the local level the measures of combating domestic violence and upgrading of gender equality are mainly envisaged by **Local action plans for social inclusion and Local action plans for gender equality**.

Shortcomings:

Municipalities have very limited resources for the implementation of mentioned policies, whereas local institutions in their budgets do not have resources especially envisaged for the support to victims of violence against women and domestic violence.

Recommendations

⁷² Analysis of conditions in the field of human rights of LGBTIQ persons in Montenegro in 2016, March 2017. <http://media.lgbtprogres.me/2017/05/ANALIZA-STANJA-U-OBLASTI-LJUDSKIH-PRAVA-LGBTIQ-OSOBA-U-CRNOJ-GORI-U-2016-GODINI.pdf>

⁷³ Ministry for Human and Minority Rights (2015): Guidelines for strengthening interinstitutional cooperation, non-governmental organisations and local communities, aimed at prevention and combating of violence against women and domestic violence.

⁷⁴ Report on implementation of Law on Domestic Violence Protection, Ministry of Justice, 2016: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

The State should provide monitoring and regular reporting on results in combating violence against women and domestic violence which will also include women's NGOs engaged in protection of women from violence.

Reports on implementation of measures against gender based violence should include all the fields - policies, prevention, support to and protection of victims, investigation, court procedure, procedural law and protective measures.

National policies should be specific and oriented to results and success indicators, for all institutions of the system.

Measures should be comprehensive and coordinated, based on holistic approach and needs and rights of victims;

Interests and rights of victims should be in center of all the measures, as required by the Convention.

All measures should be gender sensitive and inclusive (nondiscrimination on any basis, Article 4).

Policies should consist of the long-term and short-term objectives in each field, as well as indicators for assessment of success.

It is necessary to secure proper financial and human resources for implementation of policies.

Strategy of Protection from Domestic Violence should deal with all forms of violence against women and all groups of women, as well as their children who witness the violence.

II – INTEGRATION OF POLICIES AND DATA COLLECTION

Article 7 – Comprehensive and coordinated policies

Montenegro has adopted a set of laws and policies which define multi-agency approach and cooperation of all actors in combating discrimination on basis of gender and protection from domestic violence⁷⁵ In addition to strategies elaborated in details in previous chapter, the following laws belong here:

⁷⁵Mentioned strategic documents, in their title do not have the term violence against women but violence in family

Law on Gender Equality⁷⁶

This law prescribes the obligations of state authorities, local governments, political parties, media, etc. to promote gender equality and prevent gender based discrimination. This law does not regulate specific measures for preventing discrimination and reaching the gender equality in the fields like employment, health, education, etc. but these fields are covered by separate laws, which also consist of the antidiscriminatory provisions.

Shortcomings:

So far the function of this law has been a promotive one, aimed at fostering the improvement of legal system in the field of gender equality and policies for prevention of gender discrimination, whereas the specific implementation of the law has mainly failed to appear, even in those fields for which this law envisages sanctions and prescribes pecuniary punishments⁷⁷.

Provisions of Law on Gender Equality⁷⁸ which are binding upon the state authorities to nominate coordinators of activities for gender equality issues and education of employees on gender

⁷⁶Article 7 of the Law on Gender Equality ("Official Gazette of the Republic of Montenegro", no. 46/07 of 31 July 2007 and "Official Gazette of Montenegro ", no. 73/10 of 10 December 2010, 40/11 of 08 August 2011, 35/15 of 07 July 2015)

⁷⁷ Article 33 of the Law on Equality of Genders:

Pecuniary punishment in amount of EUR 1.000 to 10.000 shall be imposed to legal person for violation, if they bring into unfavorable position as compared to other persons women due to their pregnancy or motherhood, or persons due to change of their gender, on occasion of employment, self-employment, implementation of their rights on basis of social protection and other rights (Article 4 paragraph 3).

For violation from paragraph 1 of this Article responsible person in legal person, state authority, authority of state administration and authority of local government shall be punished by pecuniary punishment in amount of EUR 150 to 2.000.

For violation from paragraph 1 of this Article entrepreneur/ shall be punished by pecuniary punishment in amount of EUR 150 to 3.000

Article 33a

Pecuniary punishment in amount of EUR 500 to 5.000 shall be imposed to a legal person if:

- 1) in its work it does not use gender sensitive language, respectively if in documents about establishment of labor relation, respectively labor agreement, documents on election, nomination, respectively appointment, as well as in documents on choice in academic titles, documents on disposition and other documents deciding on rights and obligations of employees and other public documents and records, all titles of job positions, professions, title and function does not express in natural gender the persons these documents relate to (Article 13a);
- 2) does not provide education of employees on accomplishing the equality of genders (Article 13b);
- 3) statistical data and information it collects, records and processes it does not express according to gender affiliation (Article 14 paragraph 1);
- 4) it does not submit to the Ministry, in prescribed term, the report on implementation of gender equality from its competence (Article 22 paragraph 1 point 4);
- 5) it does not designate an officer, who will perform the activities of coordinator/ regarding the issues of equality of genders, respectively who participates in preparation and implementation of Plan of Activities (Article 23).

For violation from paragraph 1 of this Article a pecuniary punishment shall be imposed to a responsible person in legal person, state authority, authority of public administration and local government authority in amount from EUR 150 to 1,000.

For violation from paragraph 1 of this Article a pecuniary punishment shall be imposed to entrepreneur in amount from EUR 150 to 1,500.

⁷⁸ Article 23 of the Law on Gender Equality

equality are mainly enforced, but the analysis of impact of these measures is lacking. One of the key provisions of this law is laid down in Article 3, and it obliges government authorities both on state and on local level, as well as of other holders of public authorizations, of adopting and implementing, in all stages of planning, decisions and undertaking activities within their competence, to appraise their impact on position of women and men. This provision is not enforced and sanction for it has not been prescribed. The most illustrative example of lacking of enforcement of this provision is the adoption of Amendments to the Law on Social and Children Welfare (2015) introducing the right for mothers with three or more children. Mentioned law was adopted without the obligatory impact analysis and fiscal analysis, and it consists of the discriminatory provision, for which reason the Constitutional Court of Montenegro has proclaimed it unconstitutional in April 2017⁷⁹, as recently as 15 months from its entering into force. That, *inter alia*, means that the law was adopted without the basic assessments, like the assessment of costs of its implementation and without data on number of women to benefit the allowance, and not to even talk about a complete absence of assessment of the law impact on inactivity of women and their withdrawing from the labour market, economic consequences and the long term consequences on position of women. Such attitude towards the gender policies has brought the state in situation that it has to set aside EUR 76 million for the costs of mentioned allowances on annual level, for which reason budget revision has been made⁸⁰. Mentioned law had for its consequence also withdrawing of women from the labour market – 4,600 women repudiated their job positions in favour of the allowances.

Implementation of the Law on Gender Equality is in competence of the Ministry for Human and Minority Rights, which for its capacities, is one of the weakest ministries in the country and which, so far, has not exercised a proactive role in its implementation⁸¹.

Law on Protection from Domestic Violence (LPDV)⁸²

LPDV defines the roles and responsibilities of institutions in providing support and protection to victims of domestic violence. By Article 5 of this Law it is prescribed that a complete and

⁷⁹ Mentioned decision is available on web page of the Constitutional Court of Montenegro <http://www.ustavisud.me/upload/vijesti.html>

⁸⁰ Statement by minister of finance Radoje Žugić for Portal Analitika, 16 April 2016. [https://www.cdm.me/ekonomija/zugic-rebalans-u-drugoj-polovini-godine-potrebno-dodatnih-40-miliona-za-naknade-za-majke/\(economics/zugic-budget](https://www.cdm.me/ekonomija/zugic-rebalans-u-drugoj-polovini-godine-potrebno-dodatnih-40-miliona-za-naknade-za-majke/(economics/zugic-budget%20revision-in-second-half-of%20the%20year-additional-40-million-needed-for-allowances-for-mothers)) revision-in-second-half-of the year-additional-40-million-needed-for-allowances-for-mothers)

⁸¹ Source: Report of Experts' mission on strengthening of institutional mechanisms responsible for equality of genders (JHA IND / EXP 57750) in organization of The European Commission held on 27-29 October 2014.

⁸² Article 39 of LPDV

coordinated team protection shall be provided by the police, court for minor infringements, state prosecutor's office, center for social work or other institution of social and children protection, health institution, as well as other authority and institution which deals with protection.

Besides directing to authorities and institutions competent to provide protection to victims of domestic violence, the obligation of their joint and coordinated acting has also been prescribed.

Thus Article 11 of LPDV envisages the obligation of centers for social work to form a professional team consisting of the representatives of that institution, authorities and services of local government, police, non-governmental organizations and experts dealing with family issues, aimed at establishing the plan of assistance to victim – and coordination of activity in the process of assisting to the victim, in harmony with her needs and choice.

Article 18 of LPDV, has prescribed the obligation of adopting Strategy of Protection from Domestic Violence, as a comprehensive policy for upgrading of social and other protection of victims of violence. This document has been discussed in previous chapter.

Shortcomings: The reports demonstrate large differences in data collected by various institutions in charge of victims protection⁸³, what clearly indicates that there is no single system for data collecting, what means that the coordination among the competent institutions does not function, nor the does the envisaged multidisciplinary model of acting and cooperation of all subjects in protection of domestic violence victims.

These shortcomings were recognized by the Ministry of Justice in their Report on Implementing the LPDV for period 2010-2015⁸⁴.

LPDV has also necessitated the obligation of adopting of a series of subordinate documents which additionally elaborate the duties of actors of the system of prevention and protection from domestic violence, what will be discussed in more details in scope of the analysis of Article 50 (question b). Thus the Ministry of Interior, merely three years after the adoption of LPDV adopted **Rule Book on Closer Contents and Appearance of the Form of Order on Removal or Prohibition of Return to the Apartment or Other Housing Space⁴⁸ and Rule Book on Closer Mode of Execution of Protective Measures of Removal from the Apartment, Prohibition of Approaching and Prohibition of Disturbance and Stalking of the Victim⁴⁹ –**

⁸³For instance, according to the Report on implementation of Strategy for the year 2014, the number of registered cases of violence in CSR is significantly lower than in the police, which, for the time being, has the most precise records. For example, in 2014 the police registered 233 criminal offences of violence in family and family community and 1455 infringements, whereas for the same period the centers for social work registered 674 cases.

⁸⁴ Link for the report: www.gov.me/ResourceManager/FileDownload.aspx?rId=168932&rType=2

two binding rule books without which it was not possible to implement the new measures of protection of victims.

The Ministry of Labor and Social Welfare also, but with a delay (in 2013) adopted binding **Rule Book on Closer Implementation of Protective Measure of Obligatory Psychosocial Treatment**⁸⁵, defining the roles of individual subjects as regards the implementation of protective measure of obligatory psychosocial treatment.

Shortcomings:

Mentioned rule books were adopted with gross delay, although the deadline for their adoption was February 2016. Practice of non-governmental organizations dealing with protection from violence demonstrate insufficient implementation of mentioned rule books.⁵⁰ Implementation of psychosocial treatment has not been provided yet and it is necessary to educate shortly professionals who will carry out the treatment and start its implementation “⁸⁶. Defined model, type and duration of treatment still does not exist.

Law on Prohibition of Discrimination

Defines discrimination on basis of gender identity or sexual orientation, and prescribes competences and authorizations of Protector of human rights and freedoms who, *inter alia*, acts on basis of complaints due to discriminatory acting of authority, economic company, other legal person, entrepreneur and physical person, and undertakes measures for elimination of discrimination and protection of rights of discriminated person. As regards the role of court in proceedings of court protection from discrimination, which is envisaged by this law, in addition to special provisions of this Law general principles of civil litigation are applied.

Shortcomings:

Montenegro does not have any court verdict for gender based discrimination. Poor enforcement of this law is manifested through a small number of proceedings for gender based discrimination in competence of Protector as discussed in previous chapter.

Protocol on acting of institutions in cases of domestic violence

Protocol represents a special kind of agreement among more institutions and organizations by which the protocol signatories commit themselves to multidisciplinary cooperation with clearly elaborated acting of each system.

⁸⁵ Official Gazette of Montenegro, no. 50/2013.

⁸⁶ Source „Analysis of implementation of protective measure of obligatory psychosocial treatment for violence perpetrators on the territory of the municipality Nikšić“, NGO NEPSIS and NGO SOS hotline Nikšić, September 2014.

Shortcomings:

Problem and aggravating circumstance is that many institutions do not see the Protocol as binding document, but as an instruction in acting of institutions, therefore it is insufficiently applied in practice.

In the domain of criminal law protection, **Criminal Proceeding Code** especially prescribed the obligations of courts, state prosecutor's office and police in processing of criminal offences, as well as the obligations concerned with cooperation and coordination of these authorities, what will be discussed in further chapters.

Recommendations

- *Envisage by Budget specific financial resources for the implementation of measures and activities from laws and strategic documents.*
- *State should take care of connecting the gender sensitive policies, especially PAPRR and Strategy of protection from domestic violence, in order to provide women victims of violence to have access to measures which relate to their economic empowerment, employment, access to health services, etc.*
- *All the institutions in the system of protection from violence (police, judiciary, municipalities, health, social protection and educational institutions) should have mechanisms for monitoring and reporting on implementation of laws and policies in the field of protection from gender based violence. Perform the assessment of efficiency and effectiveness of implemented measures envisaged by the laws and strategic documents, peruse the real changes in life of women.*
- *All the institutions in the system of protection from violence should have standards based on rights of victims.*
- *All the institutions in the system of protection from violence should have their internal policy on gender equality (parity in number of women in institutions, on managerial positions, etc.), as well as standards based on rights of victims.*

Article 8 – Financial resources

The state has adopted comprehensive policies for accomplishing the equality of genders and combating domestic violence, the implementation of which requires significant resources.

Shortcomings:

The Government of Montenegro does not implement gender budgeting, does not allocate resources in scope of the state budget for implementation of policies which relate to gender equality and protection from violence against women and domestic violence. Also, there are no centralized and publicly available data on total expenditure of resources for the implementation of mentioned policies.

Implementation of strategic measures depends on modest budgets of responsible ministries and, to the highest extent from foreign donations and non-governmental organizations. The Government of Montenegro did not envisage resources also for the implementation of **Law on Domestic Violence Protection** when it was adopted, in 2010, although the Law in itself consists of the provisions which imply new, additional services, coordinated fight against the domestic violence and work on prevention.⁸⁷ By the budget of the Ministry of Labor and Social Welfare for 2017, the amount of EUR 114,295,000.00 was allocated for financing the services of social and children's protection⁸⁸. Although this Ministry is competent for the implementation of Strategy of protection from domestic violence and measures of social and other protection of victims, in the budget it is not quoted what is the amount allocated for it. In the budget there does not exist any special item for the resources which will be allocated in this field to non-governmental organizations.

By the Action Plan for Reaching Gender Equality (PAPRR), for period 2013 – 2017 the responsible ministries were defined and resources necessary for implementation of individual activities envisaged. In chapter 5 – Gender based violence envisaged activity is 5.5.8. to establish a sustainable model of financing of service for support to victims of domestic violence, and resources planned for that activity amount EUR 30,000.⁸⁹ The activity was supposed to be implemented in period 2013 – 2014, but in the annual report of the Government of Montenegro about the PAPRR Report for 2014 it is stated: status of the measure - not implemented. In the reports for the years 2015 and 2016 there is a statement that mentioned measure is being

⁸⁷ Informer on possibility of protection of family violence victims published by SOS telephone Podgorica, 2011

⁸⁸ Budget of MRSS (Ministry of Labor and Social Care) is available on the following link:

<http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rId=272707&rType=2>

⁸⁹ Action Plan for Accomplishing Gender Equality

https://www.google.me/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Fwww.gov.me%2FResourceManager%2FFileDownload.aspx%3FrId%3D121012%26rType%3D2&ei=zohVeLbAcS-PIHagZgJ&usg=AFQjCNEIvlwizYqB12_gpxlr_d7iBAFoww

implemented in continuity – what in practice means that the measure has not been implemented, or that there are no specific measurable results.

Budget of the Ministry for Human and Minority Rights, which covers even the Department for Gender Equality, amounted to EUR 1.17 million for the year 2014. The Department for Gender Equality, which coordinates and implements the Action Plan for Reaching Gender Equality, has a very modest budget which in **2013 amounted EUR 54,682.65, in 2014 EUR 57,994.30, whereas in 2015 it was cut by almost a half and amounts EUR 27,603.25⁹⁰**. However, the segment that refers to combating violence against women and domestic violence is not in priority activities of this Department. The money has mainly been spent for consultant services, projects and studies; education of members of the Parliament of Montenegro in competence of which is the coordination and implementation of gender equality policy; education of civil servants on the topic of gender equality, round table on the topic of anti-trafficking, etc. Additional EUR 0.01million was designated for: marking the occasion of 8 March, marking the occasion of village women (15 October), organization of three fora for cooperation with NGO, promotion of successful women in science, organization of meeting of regional mechanisms for reaching gender equality, printing of Handbook on gender equality for civil servants, organization of third festival of women's creativity.⁹¹

On local level the measures of combating domestic violence are mainly envisaged in **local action plans for social inclusion** and **local action plans for gender equality**. Specific financial resources to be provided on annual level from the budget have not been envisaged, but there is a very general statement that the resources are provided from municipal sources from partnership with private firms/companies (business sector), or these are donors' resources.

Financing of specialized services of support for victims of violence managed by the NGO

UNDP in cooperation with MRSS finances pro bono National SOS line for victims of domestic violence which was established in September 2015 and it is managed by NGO „SOS hotline for women and children victims of violence - Nikšić”. Resources for operation of this service, in total amount of EUR 71, 876.00 were aproved for period 01 September 2015 – 31 December 2017.

NGO SOS hotline Nikšić also manages a shelter for women and children victims of domestic violence, which is mainly financed from foreign donations. This organization, through the Advertisement for distribution of part of the resources from games of chance invited by the Ministry of Finance, obtained the total amount of EUR 20,295 for the years 2015 and 2016.

⁹⁰ View Budget on: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=184526&rType=2>

⁹¹ Taken over from:

http://www.skupstina.me/~skupecg/skupstina/cms/site_data/25%20saziv%20ODBORI/RODNA%20RAVNOPRAV NOST/Zapisnik%2023%20%281%29.pdf

For the necessities of shelter for domestic violence managed by NGO Women's Safe House, which accommodates the largest number of victims on annual level (in average 144 persons per year for the past 3 years), the Capital City has designated an old house envisaged for demolition, whereas the other costs are mainly financed from foreign donations.

The only shelter the Government finances through budget resources of Office for Combatting Trafficking in People is the Shelter intended exclusively for victims and potential victims of trafficking in people managed NGO Montenegrin Women's Lobby. That includes a rent of space for the shelter and other related costs, as well as expenditures for food, clothing, hygiene, medicines and salaries for the staff of non-governmental organization Montenegrin Women's Lobby engaged in the shelter.

NGO Women's Rights Centre obtained for 5 years of its existence the amount of EUR 1,200 for the needs of legal representation of women, victims of violence, on basis of project approved in scope of Public call for distribution of part of the resources from games of chance granted by the Ministry of Finance.

Shortcomings:

It is evident that the cost of specialized services for protection from violence against women and domestic violence, remains, to the highest extent, a burden of NGO sector. Women's NGO face on daily basis the problem of long-term sustainability, since they are mainly financed from foreign donations and are based on volunteers' work. To a lesser extent, insignificant for sustainability, NGO resources are provided from institutional funds on national and local level, through public tenders, private donations.

Recently completed research has demonstrated that 42% of women in Montenegro have experienced some form of violence, and that direct cost of partner's violence amounts EUR 26,000 for one victim, and by half less if the violence is adjudicated (EUR 11,500). Partner's violence costs Montenegro around 6% of GDP, or 233 million per year. Taking into consideration also the assumption of annual growth, cumulated loss in forthcoming ten years will amount around EUR 241 million. (More information on the mentioned research is provided the in part of the report which relates to Article 11 of the Convention.)

Legal framework for financing of non-governmental organizations

In **Law on Non-Governmental Organisations** from 2011⁹² there is a provision on budget financing of NGO dealing with projects and programs in fields of public interest, *inter alia* NGO dealing with promotion of gender equality and problem of domestic violence. Once a year the Government of Montenegro invites entries for competition for distribution of part of the revenues from games of chance.

Shortcomings:

Commission on Distribution, of Part of the Revenues from Games of Chance for the year 2013 has allocated only 2.99% or EUR 53920.45 from the total fund which amounts EUR 1,803,359.64 for organizations which in general deal with women's rights. For organizations directly dealing with violence against women that per cent is yet lower 2.38%. As compared to 2006 and 2007 when 3.88% and 3.07% was allocated, we see that the state, in resolving the problems of violence against women, decreases instead to increase financial support.

On 30 March 2017, the Government of Montenegro, without consultation with non-governmental organizations, adopted draft Law on Amendments to the Law on Non-Governmental Organizations and draft Law on Amendments to the Law on the Games of Chance, which imply drastic decrease of financial support from budget to NGO projects. In draft Law the Government has prescribed that the projects will be financed in amount of at least 0.2 percent of the current annual budget, whereas for co-financing of projects supported from EU funds, additional 0.1 per cent of budget will be provided.

This means that the total resources the Government intends to direct for implementation of projects in all fields of public interest would amount EUR 2.4 million, whereby Montenegro remains the state with the lowest allocations for projects in the fields of public interest in the region. Such decrease particularly affects small organizations which provide services and which do not have the access to larger funds, and these are mainly women's NGOs.

It is interesting that the non-governmental organizations, for taxes and contributions, in period from 2013- 2015, paid to the state the amount of EUR 6,984,673.35, what is by EUR half million more than the total amount of Fund from Games of Chance through which the state finances NGOs, and for the entire EUR 2.5 million more than the amount which was paid from mentioned fund to non-governmental organizations.⁹³

Recommendations:

⁹² Official Gazette of Montenegro, no. 39/2011.

⁹³ Source : Open letter of NGO group of non-governmental organizations to the Ministry of Public Administration, 29 March 2017.

- *The state should implement gender budgeting.*
- *The state should allocate separate and sufficient financial resources for financing measures for combating domestic violence and violence against women.*
- *It is necessary to establish a sustainable model of financing of a sufficient number of specialized services for victims of all kinds of violence against women and domestic violence on national and local level.*
- *The Government of Montenegro to withdraw urgently from the procedure Draft Law on Amendments to Law on NGOs and Draft Law on Games of chance, return the draft for public deliberation and to accept the comments of non-governmental organizations.*
- *Provide professional personnel in all the institutions dealing with protection from domestic violence and violence against women.*

Article 9 – Associations of citizens and civil society

Officially, there are 53 NGOs in Montenegro which deal with issues of gender equality and which are registered with Ministry of Interior.⁹⁴ Essentially, only some 20 ⁹⁵ WNGOs ⁹⁶ are active, and among them some 10 provides services of support to women and children victims of violence. WNGOs were formed in nineties under the influence of regional organizations, primarily SOS hotlines for women and children victims of violence.⁹⁷ WNGOs dealing with protection of women from violence and protection from domestic violence provide pro bono emotional support, legal assistance, representation before the court, psychological assistance, escort by confidential person, mediation in institutions of the system, accommodation in shelters, transportation from the shelter in case of endangered safety of victim. Presently there are three shelters in Montenegro managed by women's non-governmental organizations (WNGOs): SOS hotline Nikšić, Safe Women's House Podgorica and Open Centre Bona fide Pljevlja. Small

⁹⁴Register of NGOs dealing with gender equality issues taken over from: <http://www.dokumenta.me/nvo/>

⁹⁵Situation of women's human rights in Montenegro, Anima-Centre for Women's and Peace Education Kotor, 2009. <https://rtcg.files.wordpress.com/2010/11/stanje-zenskih-prava-u-crnoj-gori.pdf>

⁹⁶WNGOs – women's non-governmental organizations

⁹⁷First SOS telephone for children and women victims of domestic violence was established in 1996.

number of organizations renders pro bono legal assistance, whereas the representation before the court is presently provided only by the Women's Rights Centre from Podgorica which provides services also to clients of other women's non-governmental organizations. Unfortunately, this service, but also other ones are almost inaccessible in smaller municipalities on the north of Montenegro and in rural areas where there is no specialized support services. Women's NGOs also implement the programs in the field of: public representation, reproductive health, empowerment of single mothers, socio-economic empowerment of women belonging to vulnerable groups, education intended for representatives of institutions of the system, they initiate amendment to law, carry out investigations, monitor laws in the field of protection from domestic violence, and they also deal with publishing activity.

Formally established is only women's RAE network, the FIRST ONE dealing with improvement of Roma and Egyptian women, other networks are of informal type and they are concentrated around certain initiatives and related fields of activity.

In 2009 the Government of Montenegro adopted **Strategy of Cooperation of the Government of Montenegro with NGO**. WNGOs mainly act within the local frameworks thus the cooperation is implemented with SR, police, courts, healthcare centers. The most common forms of cooperation between NGOs and institutions are in urgent situations of violence or through participation in trainings and seminars. SOS hotlines have formalized cooperation with local institutions in Nikšić, Podgorica, Berane, Bijelo Polje and Ulcinj through signed Memorandums of understanding and cooperation, and cooperation between WNGOs managing SOS hotlines and Women's Right Centre and the Department for Gender Equality acting within the Ministry for Human and Minority Rights has been formalized by signing of Memorandum on Cooperation. Part of WNGOs engaged in protection of women from violence (Montenegrin Women's Lobby, Safe Women's House, SOS hotline for Women and Children Victims of Violence Nikšić) also have formalized their cooperation with Office for Fight against Trafficking in Human Beings through Memorandum of Understanding and Cooperation. Women's Rights Centre has a signed Memorandum of Cooperation with the Supreme Court.

Mode of establishing, registration and removal from register, status, organs, financing and other issues significant for work and acting of non-governmental organizations have been laid down by the **Law on Non-Governmental Organizations**. Within the meaning of this Law, association is a voluntary non-profit organization with membership, established by domestic and/or foreign physical and/or legal persons, for the reason of implementation of certain joint or general

objectives and interests. Non-governmental organization attains the capacity of legal person as at the day of its entering into the register.

There is no separate law or subordinate regulation which prescribes the operation of non-governmental organizations as regards prevention and combating violence against women and domestic violence. Nevertheless, non-governmental organizations have been recognized by the **Law on Domestic Violence Protection** as a key partner in prevention and protection from violence. Namely, mentioned Law allows providing protection also by the non-governmental associations. NGOs providing protection to victims of violence are members of local multidisciplinary teams at social work centers. The role of women representatives of NGOs in these centers, and by that itself also their influence are limited by the fact that they are in enormous minority that is they are individuals overvoted by the representatives of institutions.

In addition, **Protocol on Actions, Prevention and Protection from Domestic Violence** envisages equal participation of non-governmental organizations in implementing the right for life beyond violence, recognizing NGOs as a significant resource the institutions should develop partnership with. In this regard, the Protocol envisages cooperation of the police and center for social work with non-governmental organizations, but the practice, when this cooperation is at issue, is lopsided and it differs from municipality to municipality.

Besides, it is enabled to NGO sector through **By Law on Mode and Procedure of Implementing Cooperation between State Administration Authorities and Non-Governmental Organizations**⁹⁸ **to participate in drafting of laws and policies.** This By Law prescribes that state administration authorities, on occasion of drafting and adopting acts from annual program of work (strategy and analysis of situation in certain area, draft laws and bills, other regulations and subordinate acts regulating mode of implementing the freedoms and rights of citizens), provide consultations with non-governmental organizations by holding the meetings (seminars, round tables, workshops, etc.) and by written and electronic communication (submitting of proposals, suggestions, comments etc.)

Furthermore, **Law on Gender Equality** envisages establishment of cooperation between the Ministry for Protection of Human and Minority Rights and non-governmental organization. Accordingly, participation of non-governmental sector representatives in the Commission for Monitoring the Implementation of the Action Plan for Achieving Genders Equality 2013-2017.

⁹⁸ Official Gazette of Montenegro, no. 7/2012.

Law on Prohibition of Discrimination gives to organizations the possibility to lodge a complaint to Protector and/or to institute court procedure on behalf of discriminated person or group of persons, with their consent.

By the Strategy of Protection from Domestic Violence non-governmental sector has been designated also as one of the performers of activities directed to upgrading the system of protection from domestic violence, such as drafting amendments to the regulation dealing with the field of protection from domestic violence and monitoring of law implementation through obligatory annual reports according to standardized forms.

Amendments to this law are currently ongoing.

Shortcomings:

No matter that the state committed itself to active relationship and cooperation with non-governmental organizations, this obligation has not been implemented to a sufficient extent. Women's organizations of civil society strive for sustainability, since they are mainly financed through the projects supported by international donors. These NGOs attempt to exert pressure on the public in order to have the standards of democratic societies accepted. There is a real danger of weakening of their impact, owing to negative social and political climate. Everything mentioned has for its consequence a regression in number of active women and women's groups in past 15 years.

Recently adopted Bill on Amendments to the Law on NGOs and Law on Amendments to the Law on Games of Chance, imply a drastic decrease of financial support from the state budget to NGO projects.

There are no positive examples where the state continuously finances SOS hotlines the shelters and services for victims of violence.

Law on Pro Bono Legal Assistance does not recognize non-governmental organizations as provider of pro bono legal assistance, what means that non-governmental organizations that offer pro bono legal assistance, finance that service by themselves. Total number of women looking for pro bono legal assistance in non-governmental organizations, is significantly higher than of those who solicit basic courts. Quality, gender sensitive and specialized legal representation is one of key conditions for access of victims of violence to justice. On the other hand, pro bono legal assistance which is available in framework of basic courts, frequently does not meet these

criteria and it negatively reflects on protection of victims and possibility that they exercise their rights.

Cooperation of NGOs with state institutions also does not always function in harmony with mentioned regulations. So, for example, the role of NGO sector in work of the Commission for Monitoring, Assessments and Implementation of Activities envisaged by the Strategy of Protection from Domestic Violence formed by the Ministry of Labor and Social Welfare is merely declarative, since the Commission has not been actively involved in the activities for which it was established and it met only once a year.

In addition to that, the experience of participation of NGOs⁹⁹ in task forces for elaboration of strategic documents and laws demonstrates a very small level of impact. NGOs carry out that job without any material remuneration, making significant investments.

Recommendations

It is necessary to provide a membership of women's non-governmental organizations in Committee for Coordination, Implementation, Monitoring and Assessment of Policies and Measures for Prevention and Fight against All Types of Violence.

The state should recognize and support the work of women's non-governmental organizations and make them a part of the system of intervention and protection from violence against women and domestic violence.

Suggestions and comments of non-governmental organizations to be taken into consideration when drafting policies and laws.

It is necessary the institutions of the system to respect the autonomy and principles of work of women's non-governmental organizations in providing specialized services of support and to protect them from obstruction of their work.

State to introduce a sustainable system of financing of women's NGOs which provides specialized services of support for victims of violence.

⁹⁹ The organizations involved in the drafting process of this report all share the same experience in respect of participation in numerous working groups established by line ministries.

Article 10 – Coordinating Body

The Strategy on Protection Against Domestic Violence 2016-2020 envisages designation of the National Coordinating Body (NCB), with clearly defined objectives, competences, work methods, reporting methods and bodies that the reports are submitted to. According to the Strategy, NCB should be composed of representatives of the Parliament of Montenegro, state administration bodies (police, social welfare, health care and education), Judicial Council, Prosecution Council, Bar Association, Institution of the Protector of Human Rights and Freedoms, MONSTAT and NGOs dealing with protection against women and domestic violence as well as with human rights of vulnerable groups and children's rights.

On 11 May 2017, the Government of Montenegro adopted the Decision establishing the **Committee for coordination, implementation, monitoring and evaluation of policies and measures for prevention and fight against all forms of violence**¹⁰⁰. **The Committee is composed of:** Director General for Social Welfare and Child Protection, Ministry of Labor and Social Welfare; Director General for International Legal Cooperation and European Integration, Ministry of Justice; Director General for Supervision, Ministry of Interior; Head of the Directorate for Gender Equality, Ministry for Human and Minority Rights; Senior Advisor from the Ministry of Health; Advisor from the Supreme Court of Montenegro; State Prosecutor from the Basic Prosecution Office in Podgorica; President of the Municipal Assembly in Nikšić, Union of Municipalities of Montenegro; and Senior Advisor in the Ministry of Labor and Social Welfare, as the Committee's secretary.

The Committee is chaired by Minister of Labor and Social Welfare.

Shortcomings:

Till the moment of finalization of this report, the non-governmental organizations providing specialized services to the victims of violence have not been formally informed on establishment of this body, nor were they included in its work. There is no information whether the Government will provide resources for the operation of this body. There are no Rules of Procedure of this body available and no work plan either.

¹⁰⁰ Source: website of the Government of Montenegro:
<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=273935&rType=2>

Other institutional mechanisms for the areas of gender equality and protection against discrimination and violence

Institutional framework for gender policies in Montenegro is developed on several levels¹⁰¹.

The first body established by the Government of Montenegro in April 2012, with the task to monitor implementation of the Strategy on Protection Against Domestic Violence, was the **Commission for coordination, implementation, monitoring and evaluation of the Strategy**. Apart from representatives of relevant ministries, the Commission also included 3 representatives of the NGO sector. The Ministry of Labor and Social Welfare prepares the annual report on implementation of activities defined in the Strategy and submits it to the Government of Montenegro. Based on the results of the performed monitoring, the Commission may propose development of an annual action plan.

Shortcomings:

The Commission has not been using its competences, implying that its role is rather a declarative one, with no concrete results. Till the moment of finalization of this report, no information was available on implementation of the Strategy in 2015 and 2016. The last report was published for 2014. Information and minutes from the Commission's meetings are not available either.

The **Gender Equality Committee** of the Parliament of Montenegro¹⁰² was established on 11 July 2011. Its competences are the following: to consider draft laws, other regulations and general acts related to gender equality principles; to monitor exercise of the rights through implementation of laws and improvement of gender equality principles, particularly in the area of children's rights, family relations, employment, entrepreneurship, decision-making process, education, health care, social policy and informing; to participate in drafting, preparation and harmonization of laws and other regulations with the European legislation standards and EU programs in the area of gender equality; to encourage signature of international documents treating these issues and to monitor their implementation; and to cooperate with relevant working bodies of other parliaments and with non-governmental organizations in this area. Furthermore, the Committee monitors and assesses alignment of Montenegrin legislation with the EU acquis

¹⁰¹ V.Rakočević, A.Gligorović 2016: "Study on alignment of Montenegrin legislation and strategic framework with international documents and policies" prepared under the projects "Protection against gender based violence – precondition for development of democracy and rule of law", financed by the European Union within the European Instrument for Democracy and Human Rights (EIDHR) 2014; available at www.sospodgorica.me

¹⁰² More information at: <http://www.skupstina.me/index.php/me/odbor-za-rodnu-ravnopravnost>

and, based on the Government's reports, monitors and assesses implementation of laws, particularly of those stemming from harmonization with the EU acquis.

Shortcomings:

Competences of this Committee are limited in comparison with the Committee on Human Rights and Freedoms. It has no mandate to propose ratification of international documents. Narrowness of its competences is perhaps illustrated the best by the fact that this Committee was not recognized as the principal committee for consideration of and discussion on the Law on Gender Equality. There has been even an initiative launched in the Parliament to abolish this Committee, which leads to the conclusion that gender policies in Montenegro are put aside, to social margins, whereas the gender based violence is not recognized as a priority in the work of the Montenegrin Parliament.

The Committee does not have a very important competence – to monitor the practice of competent bodies and institution in implementation of laws and policies in the area of gender equality and women's rights. Control hearings of representatives of the institutions dealing with protection against violence is one of the crucial mechanisms that can contribute to more efficient work of institutions as well as to identifying responsibility for inobservance of prescribed procedures. However, during the last 2 years, there was no control hearings of representatives of those institutions that failed to exercise the due diligence principle in cases of violence against women and domestic violence.

The control and oversight role of the Parliament of Montenegro is very important in monitoring the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Therefore, the parliamentary bodies should be more involved in it.

The **Committee on Human Rights and Freedoms of the Parliament of Montenegro** has the competence: to consider draft laws, other regulations and general acts as well as other matters referring to human and civil rights and freedoms, with special emphasis on minority rights and implementation of international acts governing exercise, protection and improvement of these rights; to consider and provide opinion on complaints of citizens and legal entities related to exercise of civil rights; to monitor implementation of documents, measures and activities aimed at improving national, ethnic and other equality, particularly in the areas of education, health care, informing, social protection, employment, entrepreneurship, decision-making process, etc.; to participate in preparation and drafting of documents and harmonization of legislation in this area with the European legislation standards; and to cooperate with relevant working bodies of

other parliaments and with non-governmental organizations in this area. Within its competences, the Committee monitors and assesses alignment of Montenegrin legislation with the EU acquis and, based on the Government's reports, monitors and assesses implementation of laws, particularly of those stemming from harmonization with the EU acquis.

Shortcomings:

In spite of widely defined competences, this Committee has been completely indifferent thus far and had no particular role in the protection of women's rights, including protection against violence.

Department for Gender Equality

On its session held on 27 March 2003, the Government of Montenegro established the Office for Gender Equality within the Government's General Secretariat¹⁰³. The Law on Gender Equality, adopted in 2007, identified the Ministry for Human and Minority Rights (MHMR) as the competent for gender equality matters. In April 2009, the Office for Gender Equality was transformed into the **Department for Gender Equality**¹⁰⁴, when it ceased to be an independent body within the Government's General Secretariat and became an integral part of MHMR. The Department has the following competences: to coordinate activities aimed at establishment of gender equality and to participate in drafting and adopting action plans for establishment of gender equality at all levels; to monitor implementation of international documents and conventions as well as of adopted international standards in the gender equality area and to take measures for their transposition into the legal system of Montenegro with quality monitoring of observance of those documents; to prepare an action plan, propose its adoption and monitor its implementation; to prepare programs for implementation of the action plan based on the reports for areas under its competence; to carry out researches and analyses on the gender equality state of play and analyses needed for implementation of the action plan, as well as to gather required data through cooperation at the national and international level; to prepare reports on fulfillment of international obligations by Montenegro in the area of gender equality; to cooperate with local self-government units and provide support to introduction of mechanisms ensuring gender equality at the local level; to cooperate with non-governmental organizations; to take and encourage activities focused on education about gender equality and to publish adequate

¹⁰³ The Government's Decision is available at: http://www.podaci.net/_gCGO/propis/Odluka_o_osnivanju/O-okrpol04v0320.html

¹⁰⁴ More information about the Department at: <http://www.mmp.gov.me/organizacija/odjeljenje-za-poslove-rodne-ravnopravnosti>

publications aimed at promoting gender equality; to submit an annual report to the Government on implementation of the action plan.

Shortcomings:

This Department does not have sufficient human and financial resources to perform its competences, whereas its political influence is at a very low level. As a body with such numerous competences, it should be strengthened in terms of capacities as well as assigned with a more influencing role in the decision-making and political system. One of the recommendations of the UN CEDAW to Montenegro¹⁰⁵, issued in 2011, referred to strengthening the capacities of this Department and its raising to the highest level within MHMR. This recommendation was partially fulfilled, having in mind that the number of employees was raised from 1 to 3 employees. Peer assessment reports on operation of this Department, that the Women's Rights Centre obtained through the request for free access to information, also identify poor capacities of the Department, low level of understanding for the human rights concept, lack and inadequacy of human resources substituted by engagement of volunteers and one-way cooperation with the civil society¹⁰⁶.

On 24 October 2016, the Ministry for Human and Minority Rights established the **National Council for Gender Equality**.¹⁰⁷ The Council represents a new institutional mechanism for achieving gender equality and it is conceived as a professional advisory body that will monitor implementation of the gender equality policy at the national and local level. The Council is also competent for considering and implementing the regulations governing the gender equality as well as for assessing the importance and value of these regulations for the position of women and men. The Council is chaired by Minister for Human and Minority Rights. The Council includes

¹⁰⁵ CEDAW/C/MNE/CO/1, 4 November 2011

¹⁰⁶ Request for free access to information was submitted to the Ministry of European Affairs on 10 April 2017, asking for access to peer assessment reports for the Ministry for Human and Minority Rights and for the Protector of Human Rights and Freedoms. The Ministry of European Affairs provided the following reports to the Women's Rights Centre:

Peer review mission report on strengthening institutional mechanisms for gender equality (JHA IND/EXP 57750) organized by the European Commission (27-29 October 2014);

Peer review mission on the capacity of the Ministry of Human Rights (22-26 March 2015) – Peer Assessment Report by Ivana Roagna;

Peer Review on the Rule of Law Fundamental Rights – The Ombudsman Institution (April 2014);

Second Peer-Review on the Rule of Law Fundamental Rights – The Ombudsman Institution (24-27 March 2015) – Peer Assessment Report by Klavs Kinnerup Hede;

Second Peer review mission on the capacity of the Ministry of Human Rights – Peer Assessment Report by Ivana Roagna (March 2016).

¹⁰⁷ More information available at: <http://www.gov.me/naslovna/vijesti-iz-ministarstava/166259/Odrzana-konstitutivna-sjednica-Savjeta-za-rodnu-ravnopravnost.html>

representatives of relevant institutions and 4 representatives of NGOs. Eight committees¹⁰⁸ were founded under the Council as advisory bodies in charge of issues in various areas important for gender equality, including the **Committee for Protection Against Domestic Violence and Violence Against Women**. The Committees thoroughly monitor implementation and improvement of the equal opportunities policy within its competences. Chairs of the committees have been appointed.

Shortcomings:

None of the mentioned bodies has had a significant role thus far in exercising their competences, but they remained merely at the declarative level. As a result, in March 2017 the Government adopted the Action Plan for Achieving Gender Equality for 2017 without prior consent of the Council, which is contrary to its defined role.

The **Office for the Fight Against Human Trafficking**¹⁰⁹ is an umbrella institution for the activities taken in Montenegro with regard to the fight against human trafficking, implying that it coordinates the activities of relevant national authorities, international and non-governmental organizations. The Office is managed by the Head of Office.¹¹⁰ The Head of Office is at the same time Chair of the National Working Group for monitoring implementation of the National Strategy for the Fight Against Human Trafficking and individual action plans.

Shortcomings:

According to GRETA¹¹¹, Montenegrin authorities should examine the possibility to designate a separate organizational entity or an existing independent mechanism as the national rapporteur, in order to monitor activities of state institutions in preventing the human trafficking and to give recommendations thereon.

The **Protector of Human Rights and Freedoms (Ombudsman)**¹¹² is an independent and autonomous institution in Montenegro, established by a special Law that the Parliament of

¹⁰⁸ Committee for Increased Share of Women in Political Participation, Committee for Economic Empowerment and Position of Women in the Labor Market, Committee for Protection against Domestic Violence and Violence against Women, Committee for Health Care and Social Welfare of Women, Committee for Science, Culture, Education and Sport, Committee for Sustainable and Rural Development, Committee for International Cooperation and Committee for Cooperation with Local Self-governments

¹⁰⁹ More information at: <http://www.antitrafficking.gov.me/kancelarija>

¹¹⁰ In February 2001, the Government of Montenegro appointed the first National Coordinator for Fight Against Human Trafficking. At the moment, Head of the Office for the Fight Against Human Trafficking and National Coordinator is Zoran Ulama.

¹¹¹ GRETA report, published in September 2016, is available at: www.gov.me/ResourceManager/FileDownload.aspx?rId=260565&rType=2

¹¹² More information at: www.ombudsman.co.me

Montenegro adopted on 10 July 2003. Respecting the principles of justice and equity, the Protector independently and autonomously takes measures for protection of human rights and freedoms when breached by an act, action or omission of a public authority, measures for prevention of torture and other forms of inhuman or degrading treatment or punishment as well as measures for protection against discrimination. Anyone who believes that an act, action or omission has breached his/her rights or freedoms can address the Protector.¹¹³ In addition, the Protector can launch the procedure on its own initiative when aware that a right or freedom is breached, with the consent of the person whose right or freedom is breached.

The Protector's Procedures are free of charge, and its work is public, unless otherwise stipulated by the Law. The Protector is entitled to act upon complaints submitted against courts and their work with regard to obstruction of proceedings, abuse of procedural powers or failure to execute courts' decision. The Protector is obliged to submit the annual report on its work by 31 March for the previous calendar year, with general overview of the launched cases, statistical analysis of the human rights and freedoms in Montenegro, Protector's recommendations and measures for enhancing human rights and eliminating detected failures, as well as general assessment of situation in antidiscrimination.

Deputy Protector of Human Rights and Freedoms for Children's Rights is appointed in July 2009. Apart from Deputy Protector of Human Rights and Freedoms for Children's Rights, there is also one permanently employed advisor as well as one temporary employed advisor.

According to the Rulebook on Internal Organization and Job Description of the Ombudsman's Office, there is an core group of affairs – institutional mechanism for protection against discrimination, minority rights and gender equality, including activities on protection of human rights and freedoms in the areas: protection against discrimination, rights of minorities and other ethnic communities, rights of elderly, religious rights, rights of persons with disabilities, gender equality (including protection against domestic violence as of April 2015), gender identity and sexual orientation, and other related areas.

Shortcomings:

¹¹³ If the rights of a child are breached, the complaint can be filed by a parent, a guardian or a legal representative. If the child's rights are breached by those persons, the complaint can be filed by a body or an organization dealing with children's rights protection

The expert reports¹¹⁴ state that the Protector has been utilizing its competences in a very limited scope, sometimes only with regard to particular rights, and that there is a threat that the Protector's mandate is not fully exercised in the practice. This especially refers to complaints against violence and discrimination, which are still at a very low level.

In Montenegro, there are five Gender Equality Offices at the local level, whereas in 11 municipalities there are Gender Equality Councils and local action plans.

Shortcomings:

These mechanisms are practically invisible and have no significant work results.

The Ministry of Labor and Social Welfare established the **Council for Children's Rights in 2013**, with the main task to monitor implementation of the Strategy for Prevention and Protection of Children against Violence, with the Action Plan 2017-2020, as well as all other tasks in the area of children's rights protection.

Shortcomings: There are no reports available on the Council's work results.

Recommendations:

It is necessary to clearly define the competences of all institutional mechanisms for achieving gender equality, fight against violence and discrimination, as well as to ensure financial and skilled human capacities in all mentioned bodies at all levels.

It is necessary to improve understanding of the human rights concept in all bodies, to inform the public on existence of the mentioned bodies, to strengthen citizens' trust in these institutions through proactive approach and cooperation with civil society and citizens.

It is important to strengthen coordination and mutual cooperation of the mentioned bodies, including the obligation of publishing regular reports on the work and achieved results.

Article 11 – Data collection

¹¹⁴ Second Peer Review on the Rule of Law Fundamental Rights – The Ombudsman Institution (24-27 March 2015) – Peer Assessment Report by Klavs Kinnerup Hede

According to the **Law on Protection Against Domestic Violence**, records on reported cases of violence, victims, violence perpetrators, protection measures, as well as other measures and support should be kept by the police, minor offence courts, state prosecution offices, centers for social work or other institutions for social welfare, children protection and health care. Data are submitted to the Department for Gender Equality, which has been publishing annual reports for the last 2 years.¹¹⁵ The report contains information on victims and perpetrators – sex, age, form of violence, geographical location, type and number of courts’ decisions and number of protection measures. Strategic documents define development of single procedures and templates for collection of data from competent institutions on gender based violence, but this measure has not been implemented in the defined deadline. The Ministry has published data on the forms of violence in the reports on implementation of the Action Plan for Achieving Gender Equality.

The **Action Plan for the Chapter 23 – Judiciary and fundamental rights** and the **Action Plan for Achieving Gender Equality in Montenegro (2013-2017)** envisage development of a single database on domestic violence, which should include data classified by sex, age, form of violence, number of filed charges, number of brought indictments, number of court decisions and imposed protection measures, as recommended by UN CEDAW.¹¹⁶

Shortcomings:

All institutions collect data in accordance with their own methodologies since there is no unique methodology for collecting data on domestic violence. The data presented further in this report show that data coming from different administrative sources do not correspond mutually.

In the Ministry of Justice’s report on implementation of the Law on Protection against Domestic Violence for 2010-2015 it is stated that “the majority of institutions do not have electronic systems for data collection, with the exception of police and the Ministry of Labor and Social Welfare. However, the police’s electronic database system has not been updated to meet the requirements for data collection prescribed by the Law on Protection Against Domestic Violence. The Ministry of Labor and Social Welfare has started recently (2014/2015) to collect

¹¹⁵ Annual reports on violence for 2015 and 2016 are available at the following links:

<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=271135&rType=2&file=Godišnji%20podaci%20o%20nasilju%202017.pdf>

<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=235073&rType=2&file=FINAL%20godisnji%20podaci%20o%20nasilju.pdf>

¹¹⁶ UN CEDAW final conclusions adopted on the basis of the presented Initial Report of the Government of Montenegro, November 2011

data on social protection of victims of domestic violence, while there is no data for the period before 2014. Health care institutions also do not have updated, organised, electronic system for data collection and reporting on domestic violence, but the data are still recorded by the type of injury, not by the circumstances in which the injury was inflicted. The same applies to education institutions and minor defense bodies, which still collect and entry data into written records and produce statistics manually. Therefore, collection of verified, accurate statistical data is a difficult, if not impossible, endeavor.”¹¹⁷

Another problem is the fact that available statistics does not contain information on the relation between the victim and the perpetrator.

Recommendations:

In order to ensure harmonized records keeping and carry out a detailed analysis of researches based on collected statistical data, as well as to use the analysis results for defining policies and measures for the fight against violence against women, it is necessary as soon as possible to develop single procedures and templates for data collection from relevant institutions on gender based violence and to create a single database on gender based violence.

All data should be classified by minimum standards: sex and age of victims; sex and age of perpetrators; relation between the victim and the perpetrator; form of violence; place of violence; data on children as witnesses of violence.

With a view to improving data collection and creating policies based on state of play, it is necessary to ensure adequate financial and other resources for research, data collection and monitoring.

Special attention should be paid to collection of data on femicide.

Data on police interventions should include the following features: type of police intervention, response to emergency calls, types of police actions and measures (police order, minor offence proceedings, type and number of protection measures, including urgent ones, retention of perpetrators, etc.).

¹¹⁷ Report from September 2016, prepared by the Ministry of Justice with the support of the UNICEF Office in Podgorica, available at: <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

It is necessary to provide data on the number of repeated cases of violence against women as well as data on perpetrators returnees.

All interventions have to be properly documented in the report and available to victims as evidence. In the practice, documentation is limited to entry of data into “police books”, which is considered as problematic, having in mind that such information are not transparent and available to victims.

Data on the number of high risk cases should be recorded.

All judicial bodies which impose protection measures should collect and publish annually the following data: number of request for launch of proceedings, number and result of launched proceedings, number and type of requested and imposed protection measures, including urgent protection measures and those imposed during or after the completion of the proceedings, number and result of proceedings for breached protection measures, number of requested and imposed security measures.

Administrative sources

STATISTICAL OFFICE OF MONTENEGRO – MONSTAT

In the period from 2006 to 2016, MONSTAT has published six publications “Women and Men in Montenegro”¹¹⁸ in which short overview of statistical data is given by the sex. Publication is consisted of tables and charts, with no additional statistical and sociological analyses. Data presented in these publications refer to the following areas: population, health, education, social protection, judiciary, employment and salaries, politics, domestic violence. Apart from absolute data presented by sex, there is also sex ratio in percentages used for monitoring the position of women and men.

The majority of data presented in this publication are result of researches conducted by the Statistical Office and the source is not specifically stated. A minor part of data is taken from other public institutions, which is stated below the tables or charts.

¹¹⁸ All the publications are available at MONSTAT website:
www.monstat.org/cg/publikacije_page.php?id=212&pageid=142

Furthermore, development of a new statistical mechanism – Gender Equality Index is under way. It will measure gender parity by the index ranging from 1 (complete inequality) to 100 (complete equality) in six areas: knowledge, work, money, health, time and power.

Introduction of the Gender Equality Index in Montenegro is a result of cooperation among the Ministry for Human and Minority Rights, the Statistical Office and the European Institute for Gender Equality. The Index should have been presented at the beginning of 2017, but this activity has not been implemented yet.

DATA OF THE MINISTRY FOR HUMAN AND MINORITY RIGHTS¹¹⁹

Police Directorate

Data on the Police Directorate acting in cases of criminal offences of domestic violence

Year	Number of registered criminal offences	Processed to state prosecutors as criminal charges	Number of processed individuals	Victims of violence	Female victims of violence	Minors registered in violence cases
2010	176	175	183 (68 reoffenders)	197	/	10
2011 (July-December)	95	94	98 (36 reoffenders)	105	72	12

¹¹⁹ Sources:

1. Report of the Ministry for Human and Minority Rights on implementation of the Action Plan for Achieving Gender Equality in Montenegro 2008-2012 for the period July 2011 – July 2012, published on 30 October 2012
<http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rid=115648&rType=2&file=izvjestaj.pdf>
2. Report of the Ministry for Human and Minority Rights on implementation of the Action Plan for Achieving Gender Equality 2013-2017 for 2013, published on 22 April 2014
[http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=164969&rType=2&file=Izvje%C5%A1taj%20o%20sprovo%C4%91enju%20PAPRR-a%20\(%202013-2017\)%20za%202013.%20godinu.pdf](http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=164969&rType=2&file=Izvje%C5%A1taj%20o%20sprovo%C4%91enju%20PAPRR-a%20(%202013-2017)%20za%202013.%20godinu.pdf)
3. Report of the Ministry for Human and Minority Rights on implementation of the Action Plan for Achieving Gender Equality in Montenegro 2013-2017 for 2014, with draft Action Plan for Achieving Gender Equality in Montenegro 2013-2017 for the period 2015-2016, published on 24 March 2015
<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=197524&rType=2&file=Izvje%C5%A1taj%20o%20sprovo%C4%91enju%20PAPRRa%20za%202014.%20sa%20Programom%20za%202015-16..pdf>
4. Data on cases of violence against women and domestic violence from various sources for 2015, published at the website of the Ministry for Human and Minority Rights on 15 April 2016
<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=235073&rType=2&file=FINAL%20godisnji%20podaci%20o%20nasilju.pdf>
5. Data on cases of violence against women and domestic violence from various sources for 2016, published at the website of the Ministry for Human and Minority Rights on 11 April 2017
<http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=271135&rType=2&file=Godi%C5%A1nji%20podaci%20o%20nasilju%202017.pdf>

2012	232	228	230 (87 reoffenders)	257	193	22
2013	183	179	184 (54 reoffenders)	208	155	9
2014	205	204	210 (74 reoffenders)	231	158	16
2015	180	167	185 (19 reoffenders)	203	141	14
2016	198	197	203 (25 reoffenders)	293	200	14

Data on the Police Directorate acting in minor offences of domestic violence (Law on Protection Against Domestic Violence)

Year	Number of filed minor charges	Perpetrators	Men	Women	Number of victims	Men	Women	Removal from the place of residence and prohibition of return	Neglect
2013	1052	1137	1052	/	1155	370		/	/
2014	1249	1336	1103	233	1372	472	900	22	39
2015	1238	1306	1069	237	/	/	/	24	/
2016	1335	1479	1218	261	1560	600	960	28	52

Basic Courts

Basic Courts acting in criminal offences of domestic violence (Article 220 of the Criminal Code of Montenegro)

Year	Total number of cases	Number of resolved cases	Number of abandonments	Number of acquittals	Number of convictions	Imprisonments	Suspended sentences	Fines	Security measures	Admonitions	Suspension	Rejection
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2013	/	132	50	19	63	24	69	7	6	1	/	/
2014	233	144	/	/	120	/	/	/	/	/	/	/
2015	228	142	10	6	128	45	69	3	3	/	1	1
2016	236	182	2	7	175	/	/	/	/	/	4	0

High Courts

Proceedings upon complaints to the Basic Courts' decisions for criminal offences of domestic violence

Year	Cases	Confirmed decisions	Annulled decisions	Modified decisions	Returned to the first instance body	Rejected complaints
2015	113	73	18	19	3	/
2016	115	84	21	6	/	4

Misdemeanor Courts

Acting in cases for minor offences of domestic violence (Law on Protection Against Domestic Violence)

Period	Number of filed criminal charges	Perpetrators		Released	Imprisonment	Suspended sentence	Fine	Protection measures	Admonition	Suspension	Correctional measures.	Number of victims	
		F	M									Ž	M
2010-2012	1054			37	28	35	91	184	/	/	/	/	/
2013	1129	133	875	225	109	114	336	115 / 267	/	/	/	658	312

2014	1455 (291 cases from the previous year)	/	/	254	94	133	252	247	85	82	7	/	/
2015	1717 (520 cases from the previous year)	202	1027	279	75	148	334	227	74	74+6 rejected	8	871	456
2016	2073	313	1475	489	107	177	489	252	94	104	9	1208	655

Protection measures

Number and type of protection measures imposed by misdemeanor courts in the period 2010-2016

Year	Total number	Prohibition of harassment and stalking	Restraining order	Removal from the place of residence	Mandatory medical treatment of addiction	Mandatory psycho-social treatment
2010-2012	184	65	42	22	51	4
2013	115	33	40	22	11	9
2014	247	/	/	/	/	/
2014	76	35	8	33	/	/
2015	227	94	65	39	21	2
2016	252	117	45	31	36	3
TOTAL	1101	344	200	147	83	18

DATA OF THE MINISTRY OF JUSTICE¹²⁰

¹²⁰ Source: Report of the Ministry of Justice on implementation of the Law on Protection Against Domestic Violence in the period 2010-2015, published at the Government of Montenegro's website on 29 September 2016

Centers for Social Work

Data on the cases of domestic violence reported to Centers for Social Work

Year	Children	Women	Men	Elderly
2011	321	248	/	/
2012	311	292	61	41
2013	287	270	52	28
2014	310	281	50	33
2015	192	275	39	36

Measures taken by Centers for Social Work in cases of domestic violence

Year	Counseling	Psychological support	Guardian	Risk assessment	Individual plans	Appointment of a manager for the case	Confidant %	Legal aid
2013	542	394	5	394	189	58	1.4	263
2014	567	322	24	337	155	71	4.3	230
2015	222	185	28	138	84	117	2.2	245

Police Directorate

The Police Directorate acting in cases of domestic violence

Year	Number of reported cases of violence	Women	Men	Minors	Minor charges	Criminal changes	Protection measure of expulsion from apartment
2012	1015	628	318	40	945	154	/
2013	1198	/	/	/	1034	159	40
2014	1347	/	/	/	1249	202	22
2015	1583	/	/	/	1238	167	24

<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

Misdemeanor Courts

Acting in cases of minor offences of domestic violence

Year	Number of cases	Released	Suspended	Fines	Imprisonment	Suspended sentences	Admonitions	Correctional and disciplinary measures
2010	115	982(41 rejected)	223 (5.17%)	1428 (33.10%)	378 (8.76%)	480 (11.12%)	414 (9.59%)	28 (0.64%)
2011	474							
2012	918							
2013	1114							
2014	1273							
2015	1121							

Protection measures

Number and types of protection measures imposed by misdemeanor courts in the period 2010-2015

Year	Total number of protection measures	Executed by the police	Prohibition of harassment and stalking (2010-2015)	Executed by the police	Restraining order (2010-2015)	Executed by the police	Removal from place of residence or other premises (2010-2015)	Executed by the police	Mandatory medical treatment of addiction (2010-2015)	Mandatory psycho-social treatment (2010-2015)
2010	15	/	433	/	262	/	161	/	Not specified	18
2011	110	/		/		/		/		

2012	189	/		/		/		/		
2013	273	90		36		14		21		
2014	235	89		36		14		33		
2015	206	166		88		46		32		

DATA OF THE MINISTRY OF LABOUR AND SOCIAL WELFARE¹²¹

Centers for Social Work

Data on the number of reported cases of violence

Year	Number of victims	Children	Women	Men	Elderly
2012	705	311	292	61	41
2013	637	270	287	52	28
2014	674	310	281	50	33

Forms of violence

Year	Total number	Physical	Emotional	Economic	Sexual
2012	/	/	/	/	/
2013	655	268	294	48	45
2014	708	290	371	34	13

Measures taken by Centers for Social Work

¹²¹ Sources:

1. Information on implementation of the Strategy on Protection Against Domestic Violence in 2012, published at the website of the Ministry of Labor and Social Welfare on 17 March 2014
<http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rid=160617&rType=2&file=Informacija%20o%20sprovodjenju%20Strategije%20zastite%20od%20nasulja%20u%20porodici%202012.doc>

2. Information on implementation of the Strategy on Protection Against Domestic Violence in 2013, prepared by the Ministry of Labor and Social Welfare and published at the website of the Government of Montenegro on 29 May 2014

http://www.gov.me/ResourceManager/FileDownload.aspx?rid=168932&rType=2&file=23_68_29_5_2014.pdf

3. Information on implementation of the Strategy on Protection Against Domestic Violence in 2014, prepared by the Ministry of Labor and Social Welfare and published at the website of the Government of Montenegro on 11 June 2015

http://www.gov.me/ResourceManager/FileDownload.aspx?rid=205385&rType=2&file=14_115_11_06_2015.pdf

Year	Counseling	Legal aid	Psychiatric support	Guardian	Risk assessment	Individual plan for the victim	Appointment of manager of the case	Confidant	Others
2012	/	/	/	/	/	/	/	/	/
2013	542	261	394	5	258	189	58	9	54
2014	567	230	322	24	337	155	71	15	29

State Prosecution

Acting of state prosecution offices in cases of domestic violence

Year	Filed criminal charges	Transferred criminal charges	Rejected criminal charges	Resolved by deferred prosecution	Resolved by immediate indictments	Resolved by criminal proceedings	Under preliminary investigation
2012	180	82	81	22	2	99	58
2013	211	41	63	15	3	133	
2014	215	37	66	4	12	158	

Basic Courts

Acting of Basic Courts in cases of domestic violence (Article 220 of the Criminal Code of Montenegro)

Year	Convictions	Imprisonments	Suspended sentences	Fines	Security measures (Removal from the place of residence and restraining order)	Admonitions	Correctional measures	Abandonments	Acquittals	Community work
2011	127	40	69	12	8	1	2	/	/	/
July 2012	46	16	29	2	2	/	1	/	/	/
2013	63	24	69	7	6	1	/	50	63	/
2014	120	30	71	9				10	12	5

Misdemeanor Courts

Acting in cases of minor offence of domestic violence (Law on Protection Against Domestic Violence)

Year	Number of cases	Number of closed cases	Imprisonment	Fine	Suspends sentence	Admonition	Suspension	Correctional measure	Refusal	Acquittal
2012	907	686	67	282	74	72	13	6	8	154
2013	1129	942	109	336	114	89	15	4	7	225
2014	1455	235	94	252	133	85	82	7	8	254

Number of victims and perpetrators according to the misdemeanor courts' data

Year	Number of victims	Women	Men	Minors	Number of perpetrators	Men	Women
2013	970	658	312	67	1008	875	133

Protection measures

Number and type of protection measures imposed by misdemeanor courts in the period 2012-2014

Year	Number of imposed measures	Restraining order	Mandatory medical treatment of addiction	Removal from the place of residence and other premises	Mandatory psychiatric treatment	Prohibition of harassment and stalking	Mandatory psycho-social treatment	Expulsion from the territory of Montenegro
2012	203	45	41	27	13	73	3	1
2013	111	32	11	21	/	37	10	/

2014	247	60	24	41	11	108	2	1
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Police Directorate

Acting in cases of the criminal offence of domestic violence (Article 220 of the Criminal Code of Montenegro)

Year	Number of registered criminal offences	Number of processed charges	Number of reported persons	Number of returnees	Number of victims	Women victims	Minor victims	Men	Order of removal from the place of residence and prohibition of return
2012	154	154	160	32	162	121	6	/	/
2013	164	159	/	/	190	149	5	36	40
2014	206	202	216	/	231	158	/	73	22

Data on the Police Directorate acting in cases of minor offence of domestic violence (Law on Protection Against Domestic Violence)

Year	Number of filed charges	Number of perpetrators	Number of male perpetrators	Women	Number of victims	Women	Men	Minors
2012	945	972	786	/	1015	628	318	40
2013	1034	/	/	/	1160	745	335	80
2014	1249	1336	1103	233	1327	900	472	/

DATA OF THE MINISTRY OF INTERIOR¹²²

¹²² Source:

Report on the work of the Ministry of Interior and administrative bodies under the Ministry's competence (Police Directorate and Human Resources Management Authority) for 2010, published at the website of the Ministry of Interior on 16 June 2011 <http://www.mup.gov.me/biblioteka/izvjestaji?pagerIndex=5>

Police Directorate

Data on acting in cases of criminal offences of domestic violence

Year	Number of registered criminal offences	Number of criminal offences processed to competent state prosecutors' offices	Number of processed persons	% of male perpetrators	Number of processed minors	Number of returnees	Number of victim of criminal offences	Number of women victims	Number of children victims	Number of criminal offences of domestic violence with fatal consequences
2010	385	366	393	94%		122	416	327	20	
2011	232	228	230	94%		87	257	193	22	1
2012	154	154	160	94%		32	162	121	6	
2013	183	179	184	94.5%		54	208	155	9	
2014	205	204	210	88%		74	231	158	16	1
2015	180	167	185	91.3%	4	19	203	141	14	
2016	198	197	203		5	25	293	200	14	2

Data on the Police Directorate acting in cases of minor offences of domestic violence

Report on the work of the Ministry of Interior and administrative bodies under the Ministry's competence (Police Directorate and Human Resources Management Authority) for 2011, published at the website of the Ministry of Interior on 20 March 2012 <http://www.mup.gov.me/biblioteka/izvjestaji?pagerIndex=4>

Report on the work of the Ministry of Interior and administrative bodies under the Ministry's competence (Police Directorate and Human Resources Management Authority) for 2012, published at the website of the Ministry of Interior on 3 April 2013 <http://www.mup.gov.me/biblioteka/izvjestaji?pagerIndex=4>

Report on the work of the Ministry of Interior and administrative bodies under the Ministry's competence (Police Directorate and Human Resources Management Authority) for 2013, published at the website of the Ministry of Interior on 14 May 2014 <http://www.mup.gov.me/biblioteka/izvjestaji?pagerIndex=4>

Report of the Ministry of Interior on operation and situation in the administrative areas for 2014, published at the website of the Ministry of Interior on 29 July 2015 <http://www.mup.gov.me/biblioteka/izvjestaji?pagerIndex=3>

Report of the Ministry of Interior on operation and situation in the administrative areas for 2015, published at the website of the Ministry of Interior on 21 April 2016 http://www.gov.me/sjednice_vlade/154

Report of the Ministry of Interior on operation and situation in the administrative areas for 2016, published at the website of the Ministry of Interior on 16 March 2017 http://www.gov.me/sjednice_vlade_2016/17

Year	Number of registered minor offences	Number of filed charges	Number of perpetrators	% of male perpetrators	Number of returnees	Number of victims	Number of women victims	Number of children victims
2013		1134						
2014		1028						
2015	1326	1238	1306	81.8%	137	1386	842	27
2016	1458	1335	1479		175	1560	960	149

DATA OF JUDICIAL AUTHORITIES FOR 2015 AND 2016

According to the data available from the Judicial Council¹²³, in 2015 Montenegrin courts have processed 228 cases of criminal offence of domestic violence regulated by Article 220 of the Criminal Code of Montenegro. Out of this number, 142 cases have been closed and 128 convictions were passed. Cessation or suspension has been registered in two (2) cases, whereas six (6) cases were closed by acquittals. Courts have passed 45 imprisonment sentences, 69 suspended sentences, three (3) fines and eight (8) sentences on community work. In addition, three (3) measures of mandatory medical treatment of alcoholism/drug addiction and one (1) measure of mandatory psychiatric treatment were imposed. Average duration of court proceedings is 179 days, whereas the structure of victims was: 114 women, 17 men, 12 minors, and four (4) persons older than 65 years.

According to the data of the High Misdemeanor Court¹²⁴, 1717 cases of domestic violence processed have been processed by misdemeanor courts in 2015, out of which 520 cases were backlogs from 2014 while 1197 cases were opened in 2015.

Data of the Judicial Council¹²⁵ show that the courts in Montenegro have processed 249 cases of domestic violence referred in Article 220 of the Criminal Code in 2016, which represents a slight increase compared to 2015 when 228 cases of domestic violence had been processed. Out of that

¹²³ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

¹²⁴ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

¹²⁵ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

number, 181 cases have been closed, 167 convictions and six (6) acquittals were passed, whereas four (4) cases were interrupted or suspended.

According to the data available from the High Misdemeanor Court¹²⁶, misdemeanor courts have processed 2073 cases of violation of the Law on Protection Against Domestic Violence in 2016. Out of that number, 1573 cases or 75.88% have been closed with: 489 fines, 107 imprisonment sentences, 177 suspended sentences, 94 admonitions, 9 correctional measures, 33 cases with rejected appeals, 104 suspended cases, 489 acquittals, and 71 cases resolved otherwise. In addition, 252 protection measures have been imposed, including: 117 prohibitions of harassment and stalking, 45 restraining orders, 31 orders of removal from place of residence or other premises, 23 orders for mandatory medical treatment of alcoholism, 13 orders for mandatory medical treatment of drug addiction, 13 orders for mandatory psychiatric treatment and placement in a medical institution, 7 orders for mandatory psychiatric outpatient treatment, and 3 orders for mandatory psycho-social treatment.

In 2016, the Protector of Human Rights and Freedoms has processed four (4) complaints for gender based violence. Infringement of the Law was concluded in three (3) cases and recommendations were given, whereas one (1) case has been completed by instructions.¹²⁷

According to the data available from the **Supreme State Prosecutor's Office**¹²⁸, **197 persons** have been charged in 2015 for the **criminal offence of domestic violence referred to in Article 220 of the Criminal Code of Montenegro**. Together with unresolved charges against **36 persons** from the previous period, it amounts to total processed charges against **233 persons**. State prosecutors have rejected criminal charges against **64 persons**. Bill of indictment has been brought against **143 persons**. Charges against **3 persons** have been transferred, implying that there were unresolved charges against **23 persons** at the end of the reporting period. Together with unresolved indictments from the previous period, courts have processed indictments against **240 persons**. Convictions have been passed for **135 persons**, out of which imprisonments for 46 persons, fines for 2 persons, suspended sentences for 75 persons, admonition for 1 person, community work for 11 persons, order for mandatory psychiatric treatment and placement in a medical institution for **3 persons**, acquittals for **6 persons** and abandonments for **12 persons**. At

¹²⁶ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

¹²⁷ More information available at: http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

¹²⁸ More information available at: http://www.tuzilastvog.me/index.p_hp/izvjestaji-o-radu

the end of 2015, there were unresolved cases against **84 persons**. State prosecutors have lodged appeals against courts' decisions for **10 persons** – appeals against the sentence for 6 persons and appeals on other grounds for 4 persons. Together with unresolved appeals from the previous period against **3 persons**, courts have processed appeals against **13 persons**. Acting upon appeals, courts have upheld appeals against **4 persons** – appeals against sentence for 2 persons and appeals on other grounds for 2 persons, whereas courts have rejected appeals against **6 persons** – appeals against sentence for 3 persons and appeals on other grounds for 3 persons. At the end of the reporting period, appeals against **3 persons** remained unresolved.

Data available from the **Supreme State Prosecutor's Office**¹²⁹ show that **218 persons** have been charged in 2016 for the **criminal offence of domestic violence referred to in Article 220 of the Criminal Code of Montenegro**. Together with unresolved charges against **23 persons** from the previous period, it amounts to total processed charges against **241 persons**. State prosecutors have rejected criminal charges against **76 persons**. Bill of indictment has been brought against **141 persons**, whereas direct indictment was brought against **1 person**. Charges against **3 persons** have been transferred, implying that there were unresolved charges against **20 persons** at the end of the reporting period. Together with unresolved indictments from the previous period, courts have processed indictments against **299 persons**. Convictions have been passed for **158 persons**, out of which imprisonments for 51 persons, fines for 8 persons, suspended sentences for 82 persons, admonition for 2 persons, community work for 15 persons, order for mandatory psychiatric treatment and placement in a medical institution for **2 persons**, acquittals for **9 persons** and abandonments for **2 persons**. Indictments against **3 persons** have been transferred, whereas procedure against **1 person** has been suspended. At the end of 2016, there were unresolved cases against **54 persons**. State prosecutors have lodged appeals against courts' decisions for **21 persons** – appeals against the sentence for 10 persons and appeals on other grounds for 11 persons. Together with unresolved appeals from the previous period against **3 persons**, courts have processed appeals against **24 persons**. Acting upon appeals, courts have upheld appeals against **6 persons** – appeals against sentence for 4 persons and appeals on other grounds for 2 persons, whereas courts have rejected appeals against **13 persons** – appeals against sentence for 7 persons and appeals on other grounds for 6 persons. At the end of the reporting period, appeals against **5 persons** remained unresolved.

¹²⁹ More information available at: <http://www.tuzilastvocg.me/index.php/izvjestaji-o-radu>

DATA OF NGOs PROVIDING SPECIALISED SUPPORT SERVICES

Non-governmental organizations dealing with provision of specialized support services to women and children as victims of violence publish the following data: total number of calls, number of calls by sex, number of consultations held in the organizations' premises and age of victims. Internal data of those organizations also include: relation between the victim and the offender, length and time of call, type of requested support (legal, psychological, attendance of a confidant, etc.), call frequency, form of violence, type of intervention, reference to other organizations/institutions, number and sex of children, employment status, marital status, citizenship. Questionnaires include questions whether the victims have addressed other organizations or institutions and what kind of support they were provided. In addition, shelters collect data on the number of women and children residing in shelters and length of their stay.

SOS line for women and children victims of violence – Nikšić	
National SOS line	
Service	September 2015 – April 2017
Number of persons asking for help	749
Information	2907
Confidential talk	1969
Mediation to institution	227
Urgent intervention	121
Psychological consultation	632
Reference to other institution	33
Other	449
TOTAL PROVIDED SERVICES:	6338

Number of female users of the line	
Year	Number of women
2014	99

2015	119
2016	436

Women's Safe House			
Service	2014	2015	2016
Number of persons asking for help	385	536	430
Initial counseling in the premises	237	348	222
Initial counseling via telephone	385	381	750
Reports to the police	135	143	173
Legal aid (total):	292	379	484
- Representation in courts	34	38	78
- Legal advice	175	230	300
- Petitions	83	111	106
Mediation to institution	151	121	233
Confidant	34	39	52
Psychological consultation	67	27	54
Number of persons placed in the shelter (total):	144	151	127

NGO Women's Rights Centre			
Service	2014	2015	2016
Number of persons asking for help	98	131	133
Initial counselling in the premises	123	254	266
Initial counselling via telephone	375	1320	1331

Legal aid (total):	159	269	400
- Representation in courts	56	123	154
- Legal advice	80	105	192
- Petitions	23	41	54
Mediation to institution	64	82	119
Confidant	35	24	61
Psychological consultation	24	23	32

Researches (2012-2017)

2017

The latest study “Domestic violence in Montenegro – multiagency support” has been done in 2017, with the objective to determine the prevalence of violence against women in Montenegro, attitude of the general population and institutions towards violence against women, as well as direct costs of intimate partner violence. Research implied quantitative research on general population (18+) in Montenegro, quantitative research on women aged from 15 to 65, quantitative research on women victims of domestic violence and on representatives of the relevant institutions involved in implementation of the Protocol on Action of Institutions in Cases of Domestic Violence.

Results of the research, conducted on the specimen of 2000 women, show that 42% of women or every second woman in Montenegro have, during their lives, been exposed to some form of violence (psychological, physical, economic or sexual) by their spouses or partners, whereas 18% of women (almost every fifth woman in Montenegro) has suffered from one of these forms of violence over the last 12 months. The study shows that patriarchal attitude and traditional behavior, which are discriminatory by nature and originating from gender stereotypes, are still widely spread in Montenegro.

These attitudes also prevail in responses of representatives of relevant institutions involved in the system of protection against violence. Namely, although there is a declarative consensus that all forms of domestic violence should be reported to competent authorities and that it is the obligation of the state and of the entire society to help the victims, a large number of state

employees has a dilemma to which extent this issue represents a privacy of a family and to which extent it is appropriate to intervene and apply the positive legislation that governs family relations. The research has shown that professional decisions are made on the basis of personal standpoints and personal perception of privacy and autonomy of a family. Besides, representatives of institutions recognize various forms of violence, but mostly refer to the physical violence, and admit the importance of emotional violence, but there is an obvious pessimism that some forms of violence could be proven. Financial and sexual violence are rarely mentioned as a part of the practice.

In addition, the research has demonstrated that representatives of relevant institutions act in a manner resulting in less effective measures, with obvious condemnation of victims to some extent, avoiding psycho-social aspects of their work, without adequate training for treatment of victims, and shifting the responsibility for victims sheltering to NGO sector. As regards the multiagency cooperation, it has been noted that responsibility for resolving the domestic violence issues is always, directly or indirectly, transferred to some other institution in the system for protection of victims. Particularly disturbing is the fact that the majority of institutions, with the exception of Centers for Social Work, believes that there are more important and more dangerous problems in the society that should be given the priority status.

The research has shown that the family has a priority even for the general population in comparison with personal needs and rights of family members. In line with such beliefs, out 70% of respondents who were aware of domestic violence cases, 32% of them offered no help to the victims of violence. Out of 68% of respondents who offered their support in resolving the violence case, almost half of them (47%) helped by having a conversation either only with the abuser or with both the abuser and the victim for the purpose of peaceful resolution of the problem. Only 11% of respondents directly protected the victim or prevented the violence, 15% of respondents provided assistance in establishing contacts with relevant institutions, whereas only 9% of respondents offered accommodation and financial assistance.

The research has also tried to calculate the direct costs¹³⁰ of intimate partner violence in Montenegro, its consequence to the Gross Domestic Product (GDP), as well as its demographic effects. The results are as follows:

¹³⁰ Direct costs of intimate partner violence represent measurable costs payable in money (or in kind, but expressed in money): salaries of employees working in relevant institutions responsible for processing maltreated persons

- Average annual costs per victim whose case has been processed amount to EUR 11,500 – in total EUR 9.2 million.
- Taking into account data on Gross Domestic Product per employee and assumptions on the number of women victims of intimate partner violence and their participation in the labor market and productivity, the following results are obtained: GDP of Montenegro in 2015 was EUR 17.9 million lower due to the negative consequences of intimate partner violence to employed women's productivity, leading to around 0.5% loss of GDP. **Taking into consideration the assumption of annual growth, a cumulative loss in the next ten years will total around EUR 241 million.**
- Demographic effects are the following: taking into consideration some assumptions (20% of women in fertile period exposed to violence and 30% lower fertility), 471 fewer children were born in Montenegro in 2015 as a consequence of intimate partner violence. **In other words, each year Montenegro loses around 500 new-borns as a result of reduced fertility caused by intimate partner violence.**
- Taking into account the assumption on unchanged annual population loss caused by intimate partner violence (500 new-borns less), cumulative reduction of working age population in 2015 for 25,000 inhabitants (50 years x 500 population loss) and 51.4% unemployment rate, it leads to cumulative loss of around 12,850 potentially employed persons in 2015. **In other words, as a consequence of intimate partner violence, potential employment i.e. number of workers contributing to Gross Domestic Product is lower for around 13,000 workers in 2015.**
- If the loss caused by reduced fertility (EUR 215 million) is summed up with the loss caused by reduced productivity (EUR 17.9 million), it appears that **total loss amounts to EUR 233 million per year or 6% of GDP.**
- If this amount is divided with the figure of around 9,000 women in fertile period who have not given birth due to intimate partner violence (20% of the total number of women aged 15-49, according to the data collected through the research, including women with reduced productivity), **annual direct cost or cost per victim totals EUR 26,000, which is as twice as higher compared to the cost per victim whose case has been processed.**

(social and health workers, judges, police), costs incurred during work in the field, costs of duty, costs of medical material, forensic costs, etc. Although all these costs are directly measurable, often they cannot be calculated due to the lack of necessary data.

This research was presented to the professional community (including NGOs which participate in preparing the report) in an event organized by UNDP on 24 May 2017, for the purpose of obtaining comments and recommendations. However, the research has not been published till the moment of finalization of this report, due to the process of compiling recommendations given at the mentioned meeting.

2016

The Women's Rights Centre has conducted, during September 2016, the **research on satisfaction of women who experienced domestic violence with services and treatment of the police and Centers for Social Work.**¹³¹

The research covered 42 women who have experienced domestic violence (beneficiaries of services of NGO Women's Rights Centre) and who have addressed for help, in the period from 1 January 2015 to 30 June 2016, the police and the Centre for Social Work in Podgorica, where the highest number of violence is recorded (having in mind that 1/3 of Montenegrin population lives in Podgorica). Results of the research have shown that more than a half of female respondents were unsatisfied with the treatment of the police (58.97%), 23.07% were satisfied, whereas 17.94% were partially satisfied. It is interesting that almost the same figures apply to their satisfaction and dissatisfaction with the treatment of the Centre for Social Work.

Public opinion poll on discrimination¹³² was carried out from 15 to 21 February 2016 on the specimen of 1,000 adults. The research was conducted by IPSOS Agency, for the needs of the NGO Centre for Civic Education, with the financial support of the Government of Canada. The research has shown that both female and male respondents believe that the groups most exposed to violence are: poor people, persons with disabilities, elderly, women and Roma.

2015

Research on the perception of representatives of the judiciary of domestic violence and violence against women has been carried out within the project "Access to justice for the victims of domestic violence", implemented by the United Nations Development Program

¹³¹ www.womensrightscenter.org

¹³² Results of the research are available at: <http://media.cgo-cce.org/2016/02/istraživanje-javnog-mnjenja.pdf>

(UNDP) Office in Montenegro in cooperation with the NGO Women's Rights Centre and the Ministry for Human and Minority Rights – Department for Gender Equality, with the financial support of the Royal Norwegian Embassy in Belgrade. The research has been conducted by the IPSOS Strategic Marketing from Belgrade. Main goal of this research was to gather and analyze personal views of representatives of the judiciary on gender based domestic violence as well as their perception on institutions and most frequent stereotypes, which further affect treatment of domestic violence victims during court proceedings.

Key conclusions of the research are as follows:

- As result of the tradition and patriarchal values that are still strongly present in Montenegro, a woman is perceived as the most important character for preservation of a family, whereas the family is the fundamental cell of each society. However, representatives of the judiciary believe that women in Montenegro are still unequal to men and that family relations themselves are one of the areas where this gender inequality is expressed the most.
- Although neither citizens of Montenegro nor representatives of the judiciary recognize women as a vulnerable category of population, both groups see domestic violence as one of the important problems that Montenegro is facing nowadays. **However, they do not believe that this problem should be given priority.**
- Representatives of the judiciary think that domestic violence is a problem that occurs often in Montenegro, but at the same time almost half of the respondents believe that this topic is given enough attention in the public.
- In the opinion of representatives of the judiciary, the main reasons why women opt for not reporting the violence or for withdrawing the complaint are: insufficient support and information for the victims on their rights and methods for their protection against violence, mistrust in the competent institutions due to bad experiences in contact with those institutions, as well as lack of continuous and systemic protection of victims during and after the court proceedings.

2014

NGO Women's Rights Centre, in cooperation with NGO Women's Safe House and SOS line for women and children victims of violence – Nikšić, has performed **monitoring of respect for human rights of women victims of domestic violence in Podgorica and Nikšić** in the period

from August 2013 to July 2014 and prepared the report¹³³ that offered a range of recommendations related to operation of all institutions involved in the system for protection against violence, as well as recommendations for amendments to legal framework with a view to achieving urgent and efficient protection of victims and effective penal policy. One of the key findings has shown the lack of physical protection of victims and prevention of violence repetition. As a consequence, one of the recommendations was to amend the **Criminal Procedure Code** in order to include the precaution measures aimed at protecting the victims during the criminal procedure until the court's decision when security measures can be imposed. More information on the monitoring findings can be found in this report chapter "Support and protection". Precaution measures should include restraining orders, prohibition of stalking, prohibition of harassment and contact, and removal from the place of residence. It is necessary for the police and state prosecutor to take into account the circumstances indicating the continuity and repetition of violence as well as its consequences for the victim and other members of the family. Furthermore, allegations on violence against children and similar facts should be investigated, whereas appropriate qualification of the criminal offence should be stated in the indictment, requesting security measures to be imposed for the victim, in particular for children. In accordance with the Protocol on Action of Institutions in Cases of Domestic Violence, the procedure for protection of a woman victim of domestic violence who has minor children must inevitably include protection of the children as indirect (although often direct) victims of violence. Results of the research have shown that Centers for Social Work should collect detailed information on dynamics, continuity, repetition and consequences of violence for all family members and to submit such information to the police, competent state prosecutor and judicial authorities competent for passing decision in cases of domestic violence as well as in other cases concerning family relations (divorce proceedings, proceedings on guardianship, alimony, parents' rights, etc.). More information on monitoring findings can be found in this report's part referring to Article 18 of the Convention.

Research on "**Maintenance – right of each child and obligation of each parent**"¹³⁴ has been conducted by NGO Women's Safe House. Results have shown that children are entrusted to

¹³³ Report on acting of institutions in protection of human rights of women victims of domestic violence is a result of the project "Protection and access to justice for women victims of domestic violence", managed by NGO Women's Rights Centre, which was implemented with financial support of the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL), through the U.S. Embassy in Montenegro, under the Program for support to civil society in the criminal justice area

¹³⁴ <http://szk.org.me/publikacije/studija-izdrzavanje-pravo-svakog-djeteta-i-obaveza-svakog-roditelj/>

mother for care and raising in 92.86% of cases and that average amount of maintenance is EUR 94.14, which is not enough for the needs of a minor child. Also, the impression is that courts determine the amount of maintenance routinely, given that maintenance in the majority of cases is determined at around EUR 65.00 without taking into account real possibilities and economic circumstances of parents as well as child's need. In fact, the amount of maintenance imposed by the court or agreed by the parents is in a large number of cases under the legal minimum defined by the Family Law and by the Law on Social and Child Protection.

The research has clearly demonstrated that Centers for Social Work do not use possibilities provided by the law and do not file complaints in the cases when one of the parents does not participate in maintenance i.e. do not submit request on behalf of the minor for enforcement of courts' decision.

Also, the research has shown that proceedings in which court decides on mandatory enforcement of decisions on maintenance are ineffective and inefficient. Almost 1/3 of parents, mostly fathers, has not paid contribution for maintenance of minors for more than 24 months. Data from the specimen of cases have shown that the percentage of enforced courts' decision on maintenance remains low (13.46%), whereas the other parents from the analyzed cases have not managed to receive the defined settlement or the settlement is under procedure.

Since the enforcement procedures are generally completed with no success, legal representatives of minors usually decide to launch criminal procedure for the criminal offence of omission to provide maintenance. The research has shown that 94.59% of sentenced persons are men i.e. fathers of minors. More than 60% of perpetrators who omitted to provide maintenance have not fulfilled their legal obligation for more than a year. The most commonly stated reasons for omission to provide maintenance are unemployment, difficult economic situation, inability to work and inability to see the children.

Acquittals have been passed in only 5.41% of cases, whereas 94.59% of cases have been concluded by conviction. The most frequently imposed sentence is suspended sentence (in 48.57%), followed by imprisonment (37.14%) and fine (14.29%).

In general, criminal procedure can be a more efficient and more rapid way of compensating the maintenance claims. This particularly due to the fact that state prosecutors has the legal

possibility to use “delay of prosecution”, implying that criminal procedure will not be launched given that the suspected person fulfills those obligations towards the damaged person that the state prosecutor imposed and the suspected accepted. Such obligation can be payment of maintenance claims within the period defined by the state prosecutor, but not longer than 6 months. The practice shows that nonpayers fulfill their obligations, once faced with a possibility of launching criminal procedure against them.

All the aforementioned leads to the conclusion that it is necessary to improve the existing system of alimony payment for the sake of protection of interests of children whose parents fail to pay alimony.

The **research on the citizens’ perception of domestic violence**¹³⁵ was conducted in June, September and November 2014 under the EU funded IPA 2010 project on gender equality, implemented by UNDP in cooperation with the Ministry for Human and Minority Rights. Results of all three phases of research have shown that around 2/3 of citizens consider personal and economic problems, especially unemployment, as the most important problems, followed by domestic violence. In this research, women are recognized as the most frequent victims of violence (up to 86%), then children (57-63%), elderly (around 5%) and men (4%). Physical violence has been recognized by citizens as the most dominant form of violence. This research is not available to public, but the information on it has been collected from the Government’s website.

In October 2014, NGO Centre for Roma Initiatives presented the publication **“Domestic violence in Roma and Egyptian Community in Montenegro”**¹³⁶. Purpose of this publication was to present the status of Roma and Egyptian women with regard to domestic violence. The publication also included results of the research carried out by the same NGO in 2014 on “Arranged marriage stronger than the law”. The research has shown that Roma and Egyptian women have been constantly facing the violence in their ethnic communities (by fathers, brothers, husbands, fathers-in-law, even by mothers-in-law). According to female respondents, the most frequent reasons for domestic behavior are tradition (32.4%), alcohol (18.4%), narcotic drugs (2.2%), poverty (6.5%), low level of education (1.6%), etc. These responses prove that

¹³⁵ The research has been conducted by IPSOS Strategic Marketing Agency from Belgrade

¹³⁶ Delija F., Milić S., Domestic violence in Roma and Egyptian Community in Montenegro, Publisher: NGO Centre for Roma Initiatives, Nikšić 2014. Available at: <http://care-balkan.org/dok/1417014823.pdf>

women in Roma and Egyptian community have always had subordinate position and have been exposed to different forms of violence. Roma and Egyptian women have, through the primary socialization, accepted the matrixes of violent behavior towards them as practically normal, which can be understood from their attitude towards the violence. On the other hand, apparent isolation of Roma and Egyptian women from the majority population prevents them from looking for the rescue from the violence in the relevant system institutions. Namely, 12.4% of married female respondents believe that the violence is acceptable under any circumstances, 25.6% believe that the violence is acceptable in some circumstances, 9.5% think that the violence is unacceptable but should not be sanctioned, whereas 51.6% think that the violence is unacceptable and should be sanctioned. Relatively high percentage of those who believe that the violence is unacceptable and should be sanctioned shows the importance of education of Roma and Egyptian women in the area of fight against violence. Progress in this area is particularly visible with Roma and Egyptian girls who only in 4.5% cases believe that the violence is acceptable, 14.9% of them consider the violence acceptable in some circumstances, 17.9% think that the violence is unacceptable but should not be sanctioned, while 62.7% consider the violence unacceptable and should be always sanctioned. On the other hand, 8.4% of male respondents think that the violence is acceptable under any circumstances, 20.6% believe that it is acceptable in some circumstances, 17.5% consider the violence unacceptable but should not be sanctioned, whereas 31.5% believe that the violence is unacceptable and should be sanctioned. Women do not know where they can exercise and protect their rights. Usually, they do not even know that they have the right to a life without violence and discrimination.

Research on **“Domestic violence, gender based violence”** has been carried out in 2014. The research has been conducted by SOS line for women and children victims of violence from Podgorica, through the Women’s Economic Initiative program for research scholarships. Aim of the research was to examine experiences, perception and strategies for acting among female activists of women’s organizations, and to put them into a wider context of theoretical discussions about issues that are under their competence, thus providing added value to theoretical deliberations. Purpose of this research was to make the wider professional community and general public recognize the problem of violence against women and the need to provide support and help to women experiencing violence, as well as understand activities of women’s organizations in this area and the importance of creating opportunities for replicating good practice at different levels. This research has ensured understanding of domestic violence against women from several aspects. The first aspect was observation of the domestic violence against

women as a sociological phenomenon, through social context analysis, through analysis of development of laws and policies and their enforcement in the practice, and also through analysis of the attitude of not only professionals but of the entire society towards this problem. Bearing in mind the importance of female activism in the process of prevention and elimination of violence against women, the second aspect was analysis of development of SOS lines and impact they had to creation of zero tolerance in the community towards all forms of violence against women, with an emphasis on the strategy for acting of female activists of these organizations and methods of their work with female clients, which have been, thanks to their engagement, set as a basis of efficient treatment of all institutions relevant for the domestic violence area.

2012

The first comprehensive research on domestic violence and violence against women has been conducted during 2011 and 2012, under the EU funded IPA 2010 project on gender equality, which was implemented by the Ministry for Human and Minority Rights in partnership with UNDP. This research has been carried out with the consultancy support from women's non-governmental organizations that provide direct support to women and children victims of domestic violence.¹³⁷ The research resulted in the first **Study on violence against women and domestic violence in Montenegro (2012)**.¹³⁸ The study aimed at demonstrating the perception, intensity and forms of domestic violence and violence against women in Montenegro, with a view to creating picture on the current situation and taking adequate measures for combatting and preventing this phenomenon. The Study on violence against women and domestic violence in Montenegro has been implemented applying several different methods (desk work, qualitative and quantitative research, case studies) in order to get as detailed insight as possible in this problem and obtain more objective data. Some of the results of the study were the following: every third person in Montenegro is not eager to report domestic violence. Every fourth person in Montenegro believes that the victim is liable for violence because "he/she has provoked it by his/her behavior". The most often victims of domestic violence are women and children, whereas men are recognized as abusers. The research has been carried out on the specimen of 1103 respondents in 17 Montenegrin municipalities and it has shown that Montenegrins do not have enough knowledge on competences of institutions dealing with the protection of victims of the

¹³⁷ Consultants were Nataša Međedović, SOS line from Nikšić, and Maja Raičević, NGO Women's Right Centre
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<http://www.me.undp.org/content/dam/montenegro/docs/publications/si/Gender/Studija%20o%20nasilju%20u%20porodici%20i%20nasilju%20nad%20zenama%20u%20Crnoj%20Gori.pdf?download>

violence. Low percentage of personal experience with the violence (13.1%) is contrary to the respondents' perception of the violence dispersion. Female respondents usually know someone who has been victim of domestic violence. Perpetrator of domestic violence is most frequently husband, ex-husband or partner (64% in total). Almost every third respondent would not be ready to report the domestic violence due to: low level of trust in the efficiency of competent institutions, fear, patriarchal understanding of family relations as something that non-family should not interfere into, or skepticism that the problem of domestic violence could be eliminated or overcome. "Face-to-face" research has been carried out on the specimen of 100 women victims of violence and clients of SOS line from Nikšić and Women's Safe House, and it has shown that a very high percentage of female respondents (67%+22%) have experienced violence by husband or ex-husband. Every second victim of domestic violence has said that they do not have personal incomes, whereas 58% of them have said that their abusers have control over their incomes and/or property. The given figures demonstrate the level of economic dependence that is characteristic for almost all victims of violence, which additionally proves the complexity of situation that the victims of domestic violence are put in. Every fifth woman who has experienced domestic violence has said that the abuser possess fire gun(s), which has been used as a threat to them in 37% of cases. Every third female respondent has said that the abuser has tried to kill her. Respondents also said that members of their families have been aware of domestic violence in 81% of cases, but they offered protection in only 29% of cases, whereas they accepted the victim of the violence and her children in 25% of cases. Only 12% have reported the case to the police.

Quality research on diffusion and forms of economic violence entitled **"What do we know about economic violence against women?"** has been carried out by NGO Women's Safe House.¹³⁹ Purpose of this research was to define the prevalence of economic violence, i.e. diffusion of violence and its particular forms among women victims of domestic violence and among general female population. From March to June 2012, five focus groups (three with women experiencing domestic violence and two with general female population) have been

¹³⁹ "Naming, blaming and framing the economic violence against women in intimate relationship" is the regional project that includes five non-governmental organizations. Holder of the project is B.a.B.e (Be Active Be Emancipated) from Zagreb, Croatia, whereas partners, apart from Women's Safe House from Montenegro, are: Bulgarian Gender Research Foundation from Bulgaria, Rights for all from Bosnia and Herzegovina and European Movement from Serbia. The project was financed by the European Commission and it had been implemented from December 2011 to March 2013. The methodological manual used for this research was prepared by Ksenija Klasnić (Department for Sociology in the Faculty of Philosophy in Zagreb) and Korana Radman (B.a.B.e), whereas the methods were focus groups and semi-structured interviews

organized in the Women's Safe House premises, and 30 in-depth interviews (15 with women experiencing domestic violence and 15 with women from general population who are un/married to their partners) have been conducted. The research has shown that female victims of domestic violence do not recognize or they minimize the economic violence. Women who have participated in this research and who have been exposed to economic violence are less economic independent than women who do not have such experiences. Economic violence against women who are (or were) victims of domestic violence included: preventing them from getting a job and/or limiting their access to money and other means vital for satisfying elementary existential needs of both victims and their children, whereas the other partner has unilaterally and independently spent family incomes. Forms of violence that are most frequently present among female respondents from general population are: control over the family budget and check of the money spent by the partner.

Above mentioned statistical data and researches are most often available to public via websites of those organizations that carried out the researches and their partners. The public is made aware of the conducted researches usually through press conferences or round tables organized for the purpose of their presentation. Results of the researches are mostly published and publicly presented in the presence of representatives of relevant institutions.

Shortcomings:

Montenegrin institutions have not, thus far, independently or on their own initiative conducted any research on violence against women and domestic violence. All relevant researches on these topics have been carried out by non-governmental or international organizations, with the financial support of international donors.

No research has been carried out on the effects of police interventions, in particular on orders of removal from place of residence or other premises, urgent protection measures, psycho-social and legal support to victims or convictions for violence against women and domestic violence. There is also no research on violence exposure of female migrants, old women and women with disabilities. No research has been done on the security of children who have experienced or have been witnesses of domestic violence. It is also necessary to examine all forms of sexual violence (sexual harassment, rape and sexual abuse) and specific forms of violence such as arranged marriages.

Access to information held by state authorities

Access to information that are not publicly available and are held by state authorities can be exercised on the basis of the **Law on Free Access to Information**¹⁴⁰, which was adopted in 2012. Each national or foreign natural or legal person has the right to access the information, without stating the reasons or interest for looking for the information. In addition, Article 51 of the Constitution of Montenegro stipulates that everyone has the right to access information held by the state authorities and organizations exercising public authority, as well as that the right to access to information may be limited if this is in the interest of: the protection of life, public health, morality and privacy, carrying of criminal proceedings, security and defense of Montenegro; foreign, monetary and economic policy.

Shortcomings: According to the NGO Network for Affirmation of the Non-governmental Sector (MANS)¹⁴¹, the recently adopted **Draft Law on Amendments to the Law on Free Access to Information**¹⁴² limits the right to access to public information more than it is stipulated by the Constitution of Montenegro. These amendments enable any state authority to subjectively limit the constitutional right to access to information for any reason, not just those listed in the Constitution. For that reason, on the initiative of MANS, leaders of five parliamentary parties have submitted the request for assessing the constitutionality of provisions of the Law on Free Access to Information. The procedure is under way.

Recommendations:

It is necessary to conduct regular studies on effectiveness of police orders, protection measures, psycho-social and legal support to victims, and penal policy.

Studies should be grounded in the violence victims' perspective.

A research fund for researches on violence against women should be established, whereas researches should be carried out by independent researchers.

It is essential to provide financial support for gender sensitive, criminological, social, legal and qualitative researches.

Research on sexual violence should be carried out as well.

¹⁴⁰ Official Gazette of Montenegro 44/2012

¹⁴¹ NGO MANS press release of 26 May 2017: www.antenam.net/drustvo/38117-inicijativa-za-ocjenju-istavnosti-zakona-o-slobodnom-pristupu-informacijama

¹⁴² Draft Law adopted by the Government of Montenegro in March 2017 is available at: <http://www.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/102/1379-8830-23-3-17-2.pdf>

III. PREVENTION

Article 13 – Awareness raising

Even though the awareness on gender equality has been slowly raising in the society, patriarchal patterns and tolerance towards the violence against women are still present, the issue discussed in the previous chapter within the recent study ‘Domestic violence in Montenegro – multi-agency support’, implemented during 2017.

Raising public awareness campaigns are mainly implemented through project activities by women’s NGOs, specializing in the work with victims of violence. International campaign ‘16 Days of Activism Against Gender-Based Violence’ is organized in Montenegro every year. These campaigns are mainly focused on unfavorable position of the victims of violence and on inadequate responses by relevant institutions.

In the last five years, Women’s Safe House has been organizing global protest dance ‘A billion is standing up’, requesting for every single violence act to be punishable. Women’s NGOs have joined the European campaign STEP UP implemented within WAVE network.

Since 2016, NGO Center for Women’s Rights and ANIMA have organized a march at the occasion of 8 March International Women’s Day. At the occasion of International Day of Human Rights – on 10 December 2016, women’s NGOs organized a protest walk ‘They would have been among us today’, to address the unconscientious responses of institutions in the cases of domestic – partner violence that ended tragically.

Shortcomings:

Prevention of gender - based violence requires the change of social and cultural patterns arising from stereotyped roles of women and men, and overcoming of deeply rooted patriarchal attitudes. Unfortunately, the state does not implement the activities of raising public awareness on a regular basis, but rather occasionally, mainly through the projects of NGOs and international organizations.

Campaigns organized so far do not focus on primary prevention, which should be organized in the forthcoming period. Montenegro have never seen the campaigns on sexual violence, hence

the subject is still taboo, reflected in very few cases being reported annually. Besides the campaign of the Center for Roma Initiatives against forced marriages in Roma Community, there were no preventive and informative activities focusing on women from marginalized groups (disabled women, older women, etc.)

Raising awareness should not exclusively be limited to implementation of the campaigns, especially because no analysis shows the impact thereof. In order to achieve better results from the activities on combating violence, it is necessary to have all the sectors involved in promotion of human rights, gender equality and nonviolence, and to exert efforts to contribute to expansion of knowledge on women's rights and options for them to get protection.

Recommendations

- *Provide funds for implementation of long-term and properly designed campaigns for raising public awareness on gender equality and gender - based violence, and regularly monitor their impact.*
- *Implement campaigns directed to educating the public on all kinds of violence envisaged by the Convention*
- *Implement campaigns directed to women from marginalized groups*
- *Implement the campaigns of primary prevention, such as: initiatives within community, education on human rights, educational programs for children and adolescents, promotion of general provision against discrimination and to the benefit of the actual equality of women*

Article 14 – Education

Educational system has an extremely important role in combating and preventing gender - based violence, from the preschool level to the institutions of higher education.

In 2013, the Rulebook for Teachers for subject called '*Healthy Lifestyle*' has been drafted, which includes the topic of gender equality. During the same year, two trainings for 40 teachers of civic education have been organized addressing the topic of gender equality, and during 2014 and 2015 around 130 teachers attended the training. Grammar School has *Civic Education* as an elective course, within which gender equality is recognized as a subject, whereas in 2012/2013 the number of students who undertook that subject is 2778. The curriculum of Healthy Lifestyle in 1st and 2nd grade of the Grammar School includes the following topics: development in adolescence, mental health, sexual and reproductive health, HIV/AIDS, prevention of violence (including sexual).

Through a joint project of several NGOs called 'Educating Youth for Life Beyond Violence' 20 educational workshops have been organized for high – school students on domestic violence and violence in emotional relationships. 580 high – school students from different towns took part in the workshops. The initial assessment of the knowledge showed that high – school students have limited information on gender equality and gender - based violence. NGO Women's Safe House, as a project leader, implemented a pilot survey on recognizing the forms of violence prior to conducting workshops, the results of which show that high – school students mainly recognize forms of physical violence, however it is not the case with remaining forms thereof. Namely, 68% of the total number of respondents stated that a slap, punch or pushing represent violence. 56% of high-school student recognized a limitation of communication with other people as violence, whereas every third high school student believed that use of isolation does not represent domestic violence or violence in a relationship. Every second high – school student believes that forcing somebody to engage in sexual intercourse does not represent violence.

In 2016, the UN Agencies supported a project of a drama studio 'Empty space', which had a show on gender - based violence for students in 4 Montenegrin high – schools, in cooperation with the NGO Center for Women's Rights and Ministry of Education.

SOS telephones for women and children victims of violence Podgorica in 2015 licensed a professional training program called 'Educating the employees of educational institutions on acting, prevention and protection of children and the youth against domestic violence', published in the Catalogue of Teacher's Professional Training Program, Bureau for Education Services under the number 91. The said program included 100 employees in educational institutions (pedagogues, teachers, psychologists...). Based on the decision taken by the National Council

for Education, this program is included in the program of professional training for teachers even for year 2016/2017, under the number 111¹⁴³

Shortcomings:

Violence against women and domestic violence is not tackled in adequate manner within the curriculum in Montenegro. Gender sensitive contents are present in the form of individual chapters in course books, however not a single one systematically treats the issue of gender equality, non – stereotyped gender roles and gender based violence against women. There are no study programs at the University of Montenegro which deal with violence against women and domestic violence, nor Gender Studies as a special program.

Recommendations

- *All the curricula at all education levels need to have topics of gender equality, non - stereotyped gender roles and gender based violence and domestic violence included*
- *Ensure that teaching material follows the standards of gender equality and reduces gender stereotypes.*
- *Ensure that educational workshops for high-school students, as well as teachers, be implemented continuously, not only through project activities.*

Article 15 – Training of professionals

A first national conference, being at the same time a first event organized with a view to familiarize public institutions with the Convention and obligations arising thereof, was organized by an NGO¹⁴⁴, not a state agency, in December 2013. Also, a first and so far, the only leaflet containing the text of the Convention was printed by the same NGO in 500 copies, distributed to the representatives of relevant institutions during the conference at which more than 120 representatives of institutions and civil sector took part. The same NGO printed additional 500

143 Decision of the National Council for Education no. 04.5-1088 ,

144 The first national conference on promoting the Council of Europe Convention on preventing and combating violence against women and domestic violence was held on 16 December 2013 in Podgorica. It was organized by NGO ‘Center for Women’s Rights’ and the Fondation Petrović Njegoš, with the financial support of the French Institute and UNDP. www.womensrightscenter.org

copies of the Convention at its own cost, at the request of judiciary. Further promotion of the Convention and rights arising thereof was continued by NGOs, through project activities, press releases and education of the professionals. In this way, through the regional project ‘Joint Efforts – Towards European Standards in Protection of Women from Gender Based Violence’,¹⁴⁵ whose main project leader is Autonomous Women Center from Belgrade, leader for Montenegro is Women’s Safe House and local partners NGO Center for Women Rights and SOS Nikšić, numerous activities have been implemented including the Analysis of the alignment of national and strategic framework of Montenegro with the Convention, information for victims, monitoring of the local support services, public campaign and 2 regional conferences which gathered professionals and representatives of institutions and civil section of 6 Balkan countries and Austria.

In recent years, the Ministry for human and minority rights, through the projects implemented with the UNDP and OEBS and in cooperation with NGOs, organized numerous trainings for public institutions on gender equality, which will be elaborated in detail within a state report. From 2015, Center for Women’s Rights implements the training program for judiciary on violence against women and domestic violence, in cooperation with the Center for Training of Judges and Prosecutors 146. Around 100 holders of judiciary function went through the training during 2015/16. A 16 hour – long training has following goals: Introducing the forms, dynamics and consequences of domestic violence; getting informed on state and state bodies’ obligations under ratified international documents – Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and national legislation and their more efficient implementation; enhanced protection of victims and more efficient processing of cases of violence against women and domestic violence; more efficient application of the Law on domestic violence protection and urgent orders of protection for protection of victims of violence; presenting the consequences of violence for the victim’s children and witnesses of violence and adequate means of protection; considering the issues of legal practice in procedures for protection against domestic violence and the position of victims in exercising the rights to protection.

¹⁴⁵ More information about the project at :www.potpisujem.org

¹⁴⁶ In Montenegro, trainings in judiciary bodies are implemented through the Center for Trainings in Judiciary and State Prosecution, which as an independent organization holding the title of a legal person exists since the Law on Center for Trainings in Judiciary and State Prosecution entered into force on 17 October 2015.

Shortcomings:

As well as most activities in the area of combatting violence against women and domestic violence, the curricula are also mainly implemented by NGOs through the projects financed by foreign donators. There is a lack of a strategically designed training plan for professionals, and the trainings happen sporadically, being implemented within the projects. The Ministry for Human and Minority Rights lacks necessary capacities for educating professionals on the subject of gender equality, discrimination and gender based violence, and it financially relies on international and non-government organizations.

Recommendations

Integrating the topics of gender equality and gender-based violence into the formal education for all relevant vocations must be a priority in the next four years, whereas this goal needs to be integrated into national policies and must be implemented systemically.

In order to enable gender-sensitive understanding of the violence against women, as well as basic causes of this kind of violence, a comprehensive education and training on this subject shall be a part of a regular training for judges and prosecutors. This seminar needs to include educating the professionals about forms and consequences of trauma onto the victims as well as about the behavior of traumatized witnesses. These trainings need to be developed and implemented together with experts in the organizations which are active in victim's support.

Topics related to violence against women, domestic violence and violence against children need to be part of curriculum of all educational institutions which educate people for the professions involved in prevention and protection against violence – social services, police, judiciary, educational and health institutions, psychologists, psychiatrists, lawyers, expert witnesses.

It is necessary to provide adequate financing for implementation of these trainings in cooperation with female experts from women's NGOs who manage the support services.

Education materials and further training need to include information on the risks incurred on children of the victims and witnesses of the violence, especially with cases of women and children at high risk, and on support to the non-violent parent.

Education materials need to include information on female migrants, female asylum seekers, women with disabilities and older women, Roma women and LGBT persons.

Article 16 – Preventive intervention and treatment programs

The Law on Domestic Violence Protection provides for five orders of protection out of which two relate to the mandatory psycho – social therapy of abusers and mandatory addiction treatment.

Mandatory addiction treatment implies alcohol addiction, drug addiction and treatment in the psychiatric institution. Imposition of these orders from 2013 onwards drastically decreases since ‘the mandatory addiction treatment is difficult to implement due to the excess capacity in Specialized hospital for psychiatry in Kotor’¹⁴⁷. In 2016, a total of 36 treatments from alcohol and drug addiction were imposed, however, they mainly prescribe ambulatory care, which deprives of sense the purpose of this measure, particularly taking into account that, on the level of health institutions, there is no record on the number of persons who applied for this kind of treatment. Also, there are no data that any health institution actually implemented this kind of measure or reported a failure to implement¹⁴⁸.

Mandatory psycho-social treatment, as a fifth order of protection pursuant to the Law on Domestic Violence Protection, is rarely imposed, since the health system does not provide for adequate conditions for implementation of this order of protection. According to the data from the Ministry of Health, based on the reports by health institutions, since 2014 a total of 10 orders of protection were imposed and therapy was implemented only in 3 institutions, including only 8 perpetrators of violence¹⁴⁹, whereas 2 perpetrators did not report in, which the court was informed about. The therapy was implemented in health institutions on a primary level of health care, within which the Center for mental health is organized. Most primary health care institutions do not have expert teams for implementation of mandatory psycho – social therapy¹⁵⁰.

The Ministry of Labor and Social Welfare adopted a **Rulebook on detailed implementation of mandatory psycho – social therapy**, but there is no information on the effects thereof. It is important to emphasize that even though Ministry of Labor and Social Welfare adopted the

147 Ministry of Justice report 2016. www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2

148 SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro, 2017 year- Dom Zdravlja Podgorica, odgovor na zahtjev za slobodan pristup informacijama broj 05/01-3009/2

149 Primary health care Nikšić – three perpetrators, Primary health care Kotor- two perpetrators and Primary health care Podgorica – three perpetrators

150 Ministry of Justice Report 2016. www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2

Rulebook, its implementation mostly depends on the health institutions which are under the competence of the Ministry of Health.

Shortcomings:

Data found by SOS Phone Podgorica, through the monitoring survey which comprised the period from 2014 to 2016 indicate that the Primary Health Care Podgorica recorded no cases of this measure in 2014, 2015 and 2016, nor it had recorded cases of domestic violence and violence against women¹⁵¹.

Besides, not even four years following the adoption of the Rulebook on detailed implementation of mandatory psycho – social therapy, the measure is not being implemented.

The Rulebook provides for the place of implementation of order of protection and the composition of the expert team, however, the programs of psycho-social therapy for perpetrators of violence are not feasible since the Rulebook does not have a methodology, types, duration and models of treatment. The survey '**Learn, decide, let go of violence**' (originally: **Nauči, odluči, nasilje isključi**)¹⁵² identified limited understanding and insufficient communication between state bodies, as well as the lack of differentiation between addiction and violence treatment¹⁵³ which results in this measure being non – implemented, even though 7 years have passed since the Law on Domestic Violence Protection has been passed, and 4 years since the Rulebook has been adopted.

It also identified the lack of capacity and misconnections between state institutions to adequately begin with the implementation of this measure. The Rulebook provides for the educated expert team to be formed for implementation of the psycho – social treatment by competent health institution, and that the team is comprised of the experts in the field of psychiatry, a psychologist, social worker and a nurse. The survey showed that not a single primary health care in Montenegro formed such a team, whereas the institutions and organizations dealing with the issues of domestic violence did not have information about the Court or misdemeanor authority ever imposed this order of protection.¹⁵⁴

151 SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro, 2017 year-

152 Analysis of implementation of mandatory psycho – social treatment for violence perpetrators in Nikšić municipality, NGO NEPSIS and NGO SOS telephone Nikšić, September 2014., see <http://www.sosnk.org/category/publikacije/izvjestaji/>

153 Analysis of implementation of mandatory psycho – social treatment for violence perpetrators in Nikšić municipality, NGO NEPSIS and NGO SOS telephone Nikšić, September 2014., see: <http://www.sosnk.org/category/publikacije/izvjestaji/>

¹⁵⁴ In the study implemented by NGO Nepsis from Nikšić in cooperation with SOS telephone Nikšić Center for

One of the measures for urgent protection of the victim and prevention of further violence is a police *order of removal from place of residence or other premises*. In 2016, police officers have, in line with the Article 28 of the Law on Domestic Violence Protection, in 28 cases ordered the abuser to leave residence or other premises or prohibit his return to residence or other premises. In 2015, this has been ordered in 24 cases, and in 2014 in 22 cases, out of which 18 were ordered in Security Center Nikšić, and 2 times in Security Center Pljevlja and 2 times in Security Center Kotor. Based on the available data, it can be said that the number of these orders is insignificant in relation to the registered number of cases of violence (on average 1400 for 2015 and 2016). Also, it is obvious that this order of protection was applied only in three towns/ security centers, which means that the application of orders of protection envisaged by the Law under the competence of the police did not see the light of the day in practice¹⁵⁵.

Recommendations

- *Educate professionals for the work with perpetrators, to be directed to the safety of the victims and to cooperate with specialized women support services and judiciary, in order to avoid further risks for victims. The training needs to imply information on gender based violence, its causes, risks and consequences, rights of the victims, risks incurred on children.*
- *Appoint and educate responsible persons in all local health institutions, social work centers, courts and police.*
- *Establish a precise and comprehensive manner of reporting between health institutions that implement the therapy and CSW with judiciary.*
- *Collect further data on national level: number of positions in the therapy for perpetrators which is directed to the safety of victims, number of perpetrators which have been registered, number of victims who are supported by women support service with which the program cooperates, age and gender of a perpetrator, age and gender of the victim, their relationship, manner of violence against women, town.*

Article 17 – Participation of the private sector and the media

Recently, upon the adoption of the laws which enable the protection against domestic violence, the state adopted key bylaws (protocols) to regulate the activities of relevant services. The Law

Mental Health Nikšić within a project Advocating implementation of mandatory psycho – social treatment for violence perpetrators, institutions from Nikšić dealing with domestic violence issues have been surveyed. The Institutions have shown that there is a great need to implement this kind of treatment.

¹⁵⁵ SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro, 2017 year- available at: www.sospodgorica.me

on Amendments to the Law on Gender Equality from 2015¹⁵⁶ provides for two provisions that imply sanctions, and which relate to the use of gender sensitive language and mandatory training on gender equality for all employees, including media.

Shortcomings:

Even though the laws and strategical documents have been adopted obliging the media to respect women human rights and promotion of gender equality, in practice it has never seen the light of the day. The media do not promote gender equality sufficiently, because they are subject to corporate goals and sexist marketing programs. Use, i.e. the abuse of women body is noticeable in advertising, which means that the media support stereotyped image of the women, and they often promote sexism.

While reporting, the media pay most attention to physical violence and the description of the very event, whereas they often omit to condemn violence, they omit to introduce public with legal solutions and their weaknesses in practice. Therefore, domestic violence and partner relations violence are spoken about in public, however there is little serious debate on the role of the media and their potential contribution to raising public awareness on gender - based violence as a social issue.

Education of the journalists on the approach to reporting about gender - based violence happens sporadically and through project activities. One of the examples is a project 'Gender sensibilization of Montenegrin media – 'A step ahead' implemented under OSCE Mission in Montenegro and the Department for gender equality in July – December 2013, which aimed at enhancing media policies and practices with regards to enabling gender equality policy and to the respect of women human rights. In order to enhance the quality of reporting on gender based violence, it is necessary to continuously organize trainings on complex phenomenon of violence and prejudice related thereto.

Private sector in Montenegro, sector for information and communication technologies is insufficiently involved in implementing policies for combating violence against women.

Recommendation

- *Continuously organize training for the media to report on violence against women and domestic violence, with special emphasis on respect of the rights of victims.*
- *Actively involve private sector and sector for information and communication technologies into prevention and combating gender based violence, including the Agency*

156 Official Gazette Montenegro no. 46/2007. Official Gazette Montenegro no. 073/10, 040/11, 035/15

for electronic communication competent for considering the appeals related to media reporting.

- *Empower the position of media ‘ombudsman’ to act against inadequate media reporting. Educate them on the issue of gender equality, discrimination based on gender and gender based violence.*

IV – PROTECTION AND SUPPORT

Article 18 – General obligations

The state has internalized the obligation to provide protection and support to the victims through several laws, policies and Protocols on Actions.

Law providing court protection to the victims of violence against women and domestic violence are stated in detail within the Chapter referring to the Article 5 of the Convention, whereas the information on the means of civil and court relief may be found in the following chapters.

Law on Social and Child Protection¹⁵⁷ 2013 provides for the support to a victim of abuse, neglect, domestic violence or exploitation, or who is at risk of becoming a victim; as well as being a victim of human trafficking (Article 4). The Law provides for the obligation of the Government to provide services in the area of social and child protection: assessment and planning; support for the life in family, counselling therapy and social – educational service; accommodation; urgent intervention and other services (Article 60). Article 63 provides for counselling therapy and social – educational services implying: counselling, therapy, mediation, SOS telephone and other services with a view to overcoming crisis and enhancing family relations. Article 71 defines the services of urgent intervention: provided for the purpose of ensuring safety in situations that endanger life, health and development of beneficiaries and they shall be provided 24 hours a day.

Law on Domestic Violence Protection pays special attention to the process of protecting victims of domestic violence. In this regard, special importance is given to the provisions related

¹⁵⁷ The Law on Social and Child Protection, Official Gazette of Montenegro, no. 1/15.

to: the urgency of administrative acting of all institutions with regards to the protection of the victims of domestic violence (Article 7), duty of all public legal entities to report violence (Article 9), emergency intervention of the police and other public legal bodies dealing with the protection of victims (Article 10), designing victim assistance plan (Article 11) social protection of the victim (Article 12) legal aid provided for the victim (Article 13), victim's security (Article 14), confidentiality of procedure (Article 15) and procedures of issuing orders of protection (Article 26 – 34).

With regards to the institutional protection, law makers define rather wide circle of public legal bodies and institutions dealing with protection. In this sense, the most important and most responsible role is incurred upon police, misdemeanor courts, State Prosecution, social work center and other institutions of social and child protection, health institution, as well as other bodies and institutions dealing with the protection are obliged to provide, within their authorities, a complete and coordinated protection required to protect the victim depending on the degree of its vulnerability. These bodies and institutions shall, in line with the law, give **priority** to resolving the cases of violence and provide mutual informing and aid with a view to combat and disclosing violence, removing the causes and assisting the victim in establishing conditions for safe living. Important role in this process is given to the non-governmental organization, whereas other legal and natural persons may provide protection in accordance with the Law (Article 5). Article 10 of the Law on Domestic Violence Protection requires the police to intervene urgently without postponement and to take action and measures in order to protect the victim in line with this Law and the laws regulating the work and authority of police, misdemeanor procedure, criminal procedure and witness' protection. The obligation of urgent intervention is incurred upon social work centers, or other institutions of social and child protection, health institution and other bodies and institutions specializing in protection. Other provisions of this Law provide for the central position of the needs and rights of the victims in the activities of all relevant institution. Hence, the social work center is obliged to establish an expert team from the representatives of that institution, body or local government service unit, police, non-governmental organizations and experts dealing with family issues and the issues of domestic violence, in order to define a victim's assistance plan and coordinating activities in the process of assisting the victim, in line with its needs and choices. Victim's assistance plan implies measures needed to be undertaken in line with the laws defining social and child protection, and if the victim is a child, victim's assistance plan implies the measures for protecting children in line with the law defining family relations and regulations defining the protection of children.

More detailed overview of the obligations of employees in the stated institutions is defined within the **Protocol on actions, prevention of and protection against family violence**, which provides for the procedures and institutional cooperation in relation to domestic violence and violence against women. The Protocol is signed on 25 November 2011 on International Day for the Elimination of Violence against Women. The signatories to the Protocol are the Ministry of Justice, Supreme Court, Supreme State Prosecution, Ministry of Education and Sport, Ministry of Health, Ministry of Labor and Social Welfare, Police Directorate and Misdemeanor Panel of Montenegro.

At the end of 2016, the Ministry of Labor and Social Welfare initiated establishment of multi-disciplinary teams in 15 social work centers in Montenegro. The composition of the team, besides the members from the social work centers, includes representatives of police and health services, judiciary bodies, educational institutions, non-governmental organizations and local government¹⁵⁸. The police also have an obligation to escort the victim to the apartment or other residential premises to take personal belongings, necessary for everyday life and in order to secure a temporary accommodation of the victim. The escort is not implemented only if the victim expressly objects thereto. Additionally, the victim has the option to choose a *confidential person* – a person to escort the victim in all actions related to the protection from violence.

Shortcomings:

According to the Convention, support and protection of the victims of violence need to be based on understanding the violence against women and domestic violence from the gender perspective, to be directed to human rights and victim's safety; to be based on an integrated approach taking into account the relation among the victims, perpetrators, children and their wider social surrounding; to aim at avoiding secondary victimization; to aim at empowering economic independence of women victims of violence; to have, where appropriate, different services for victims' protection and support in the same premises; to be responsive to specific needs of vulnerable persons, including children – victims, and to be available to them. However, these criteria are not implemented in practice.

Regardless of adopted documents, their implementation so far has not given any considerable results¹⁵⁹. Besides the members of multi-disciplinary teams, other officers, especially in health and education, are not familiar with the content of the Protocol and the obligations arising thereof. The Protocol is not placed on a visible place in any institution, nor it is available to the

¹⁵⁸ Information on options of protection for domestic violence victims; available at www.sospodgorica.me

¹⁵⁹ B.Zeković; A. Gligorović; A study “ Institutional mechanisms of protection and their implementation in Montenegro” available at www.sospodgorica.me

employees, nor users. Also, not a single institution has a person in charge of its implementation. NGO monitoring has shown that regardless of the fact that the Protocol provides for clear guidelines, inadequate conduct is often present, transferring responsibility from one institution to another and additional victimization of the victims, confirmed by the recent study on domestic violence, talked about within Article 11.

The work of multi-disciplinary teams is limited by many shortcomings, some of which are indicated in the Report by the Ministry of Justice on implementing the Law on Domestic Violence Protection for the period 2010 – 2015¹⁶⁰ : there is a lack of specialized services for women victims of violence, children victims of violence; inadequate professional profile of the members, inefficiency, indifference, failure to comply with adopted standards in work, lack of monitoring, lack of work methodology and financial resources;

Even though the Protocol on actions, prevention of and protection against family violence⁴⁷ provides in detail the content of the *individual victim's assistance plan*, the experience of the women's NGO clients show that social work centers do not comply with the obligation of drafting this plan, as well as with the obligation to assess the risks. Namely, not a single victim of violence who addressed NGOs¹⁶¹ was familiar with the existence of such a plan, nor did a competent social work center involve them in its drafting, in line with the obligation envisaged by the Protocol.

'Confidential person' escort is mainly provided by NGOs dealing with protection of the victims of violence, and data available in relation to the application of this institute are shown in the analysis related to the Article 9 – non-governmental organizations and civil society.

Special service – such as Women's Safe House and SOS phones – are described in detail in the analysis related to Article 22 Specialist support services.

Protocol on acting, prevention and protection from domestic violence provides for the obligation of all the bodies encompassed by the Protocol to form the briefs according to the rules of service and to make them available at request to other bodies, having the confidentiality obligation.

¹⁶⁰Report is available at Ministry of Justice's website:

<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=253391&rType=2>

¹⁶¹ Information received from women victims of violence who addressed non – governmental organizations in the last 6 years: Women's Safe House, Center for Women Rights, and SOS telephone for women and children victims of violence Nikšić.

However, the experience of women's NGO clients show that the institutions do not exchange information sufficiently, which complicates additionally their role in procedures that follow after the violence has been reported. Also, all bodies need to designate a person in charge of implementation of the Protocol in all the institutions, and to inform all other institutions on the data of such a person.

An obvious shortcoming is reflected into the fact that manner of control and monitoring of the implementation of interagency cooperation has not been defined, particularly its efficiency with regards to the prevention and protection of women and all other victims of domestic violence.

Measures envisaged in the **Protocol on actions, prevention of and protection against family violence** are in line with the standards provided in Article 18 paragraph 3 of the Convention with regards to gender sensitive approach to the work, focus on human rights and security of the victim, as well as an integrated approach. Still, the practice lacks consistent implementation of the Protocol. When it comes to issues such as avoidance of secondary victimization, empowerment and economic independence of the women victims of violence, it is noticeable that there is no adequate alignment. In that sense, a special issue is still the issue of compensation for the victims of violence, since the property claim is never decided within criminal procedure. A source of secondary victimization may also be the delay of trial, since victims rarely engage lawyers, whereas appearing in front of the court again creates additional stress since they need to face the accused, their lawyers, cousins and friends, being subject to pressures, threats and insults. Especially troublesome fact is that key evidence method in judge's actions is the confrontation of the victim and the perpetrator. Besides, victims are mainly heard in the presence of the accused, they lack physical protection when approaching or leaving the court, which may result in victimization again and giving up the procedure.

Measures are not aligned with regards to meeting specific needs of all the categories of vulnerable persons. **It is necessary to undertake special orders of protections which suit the need of particularly vulnerable persons.**

The number of available services of support and protection, especially specialized ones are also limited.

A victim of violence has services provided by NGOs at their disposal, even if they cooperate with authorities, witness against perpetrator or lodge an appeal. Right to free legal aid as well as

to other available assistance is not conditioned by the cooperation of the victim of violence. However, right to special protection within a criminal procedure as well as outside the court arising from the approved status of protected witness or protection program is vested into the witnesses, i.e. the injured ones while giving a statement, hence the cooperation by the victim is implied (for more information on the manners of witness' protection, i.e. injured persons please see the analysis of Article 56).

Alignment of other measures has been analyzed within other articles of the Convention.

Recommendations:

All state institutions involved in the system of protection against violence should have precise protocols on actions, which will provide for the support and protection of the victims, based on the following criteria: understanding of the violence against women and domestic violence from gender perspective; be directed to human rights and victim's safety; be based on integrated approach taking into consideration relationship between victims, perpetrators, children and their wider social surrounding; aim at avoiding secondary victimization; aim at empowering and economic independence of women victims of violence; to have, where appropriate, different services for victims' protection and support in the same premises; to be responsive to specific needs of vulnerable persons, including children – victims, and to be available to them.

Provide for specialized multi-agency teams at a local level to deal exclusively with the domestic violence and violence against women and children

Ensure gender sensitive education of the staff on dynamics of domestic violence, partner violence, forced control, in cooperation with women NGOs

Enhance coordinated response of the community to domestic violence, i.e. the system of regular communication and cooperation which would include all sections – judiciary, police, services for social and health care, educational institutions and women NGO sector

It is necessary that all the bodies involved in the protection against domestic violence use tools for risk assessment for every case in which there is a doubt about violence

Develop protocols for identifying a primary abuser and identifying the injuries incurred during the defense from violence.

Make records on all the charges against violence and inform a competent institution (prosecution, police)

Article 19 – Information

In the area of civil protection, **Law on Civil Procedure** prescribes that a party which does not have a qualified attorney and which, due to ignorance, does not use their rights specified by this Law, has to be warned by a court about which litigation actions may be taken. Except for this duty, the Law does not lay down any specific obligation of the court to inform victims in the procedure on their rights and position. Parties are entitled to use their own language or the language they understand. If the proceeding is not conducted in the language understood by a party or other participants in the proceeding, they have to be ensured, upon their request, translation and interpretation of all motions and evidence, as well as what is presented at the hearing into a language they understand. Parties and other participants in the procedure have to be duly informed about this right.

Pursuant to the provisions of the **Criminal Procedure Code**, the court, state prosecutor and other state authorities participating in the proceeding have to inform the accused and other participants on their rights and on the consequences of nonfeasance. The same provision is contained within the **Law on Misdemeanors**. Injured party is entitled to be informed on rejected criminal charge and giving up from criminal prosecution by the state prosecution, informed about the possibility to uphold the charge and undertake criminal prosecution, to be informed on the outcome of the proceeding and to be delivered final and enforceable criminal judgment. The injured party, during the hearing, is entitled to be warned that they do not have to testify in situations prescribed by law.

In compliance with the **Protocol on the Action, Prevention and Protection from Violence**, police, center for social work and judiciary system have to inform the victim on their rights (the choice of confidential person, free legal aid, asylum ...).

Parties, witnesses and other persons participating in the proceeding, including injured parties, are entitled to use their own language or a language they understand in the proceeding. If the

proceeding is conducted in a language other than language of those persons, translation of statements, documents and other written material will be ensured. Translation costs have to be covered by the budget.

The Protector of Human Rights and Freedoms of Montenegro has to provide needed explanations to the applicant who thinks that they have been discriminated by an authority, company, other legal entity, entrepreneur and natural person, regarding their rights and duties, as well as the possibilities of judicial and other protection.

Shortcomings:

Women's non-governmental organizations usually inform victims, via diverse informative materials (flyers, brochures, posters, postcards, etc.), which they themselves finance. The practice of these non-governmental organizations has shown that institutions insufficiently inform victims on their rights and available orders of protection. It is noticeable that the police fail to distribute informative brochures for victims provided by non-governmental organizations and fail to inform the victims on specialist forms of support. Particular challenge is informing of victims belonging to vulnerable groups (women with disabilities, Roma women), as well as those living in rural areas and places in which no active women's NGOs exist. This is clearly shown by the number of registered cases of violence, which is very low in these areas.

The research of the Women's Right Center, conducted during 2016, has shown that a high percentage of respondents (91.89%) did not receive information from police officers on available services (legal aid, psychological support, medical support, social services, accommodation, services of women's organizations). All respondents (100%) stated that they have received neither written information (flyer) from police officers nor addresses of institutions and organizations which provide support and assistance to women. Responses of high concern are those related to questions on informing victims about the proceeding. Negative response was provided by 89.19% respondents to the question on whether they have received information on orders of protection, procedures and conditions of their imposition in misdemeanor procedure. Only 33.33 % respondents stated that police officers adequately and clearly informed them on the actions that will be taken by the police against offender in further processes (e.g. detention, duration of detention), while 26.31% respondents stated that they were adequately and clearly informed by police officers on their position and rights in further course of the proceeding. A total of 94.73% respondents stated that they have not received information on who they may contact with regards to their case and how.

Recommendations:

The state should ensure continuous informing of victims in coordination with women's NGOs and ensure funds for the provision and dissemination of informative material in various languages.

All institutions should, upon their own initiative, inform victims on all aspects of protection and support, as well as on specialist services provided by women's NGOs.

Court interpreter should be provided, when necessary, so as to inform victims in their own language.

Article 20 – General support services

Certain number of services for domestic violence victims are envisaged by the **Law on Social and Child Protection**¹⁶² which prescribes assessments and planning, advisory and therapeutic and social-educational services (including counselling and support in the cases of violence), accommodation, urgent interventions and other services. Also, the Law lays down the prescription of minimum standards for the provision of services of social and child protection, which will ensure that services on the territory of Montenegro are equally delivered and developed. There is an ongoing development and adoption of local plans for the improvement of social inclusion, which envisage the development and financing of local social protection services for all identified vulnerable groups, involving, among others, the victims of abuse, neglect and domestic violence¹⁶³.

With regards to financial support, the law specifies monetary social aid and one-off aid under the conditions for beneficiaries of material family support, without specifically prescribed fee for victims of violence against women and domestic violence victims. In compliance with the Law, center for social work has to decide upon the exercise of rights of beneficiaries specified by this Law and on the use of other services of social protection. In addition to this, there are specific

¹⁶² "Official Gazette of Montenegro", no. 27/2013

¹⁶³ Source: 2014 Report on the implementation of the Action Plan for the Implementation of the Strategy on Development of Social and Child Protection System in Montenegro 2013-2017

rulebooks which regulate in more detail the conditions and standards of social protection. **Rulebook on detailed conditions for the provision and use, norms and minimum standards for service of accommodation of adult and old persons**¹⁶⁴ and **Rulebook on detailed conditions for the provision and use, norms and minimum standards for service of accommodation in shelter**¹⁶⁵ classify the victims of abuse, neglect and domestic violence into the target group and prescribe minimum structural standards for accommodation services in the shelter in terms of appropriate residential space, material conditions, availability of health care services, safe environment, developmental potentials and empowerment of users, etc. There is an ongoing adoption of the **Rulebook on minimum standards for the provision of advisory and therapeutic and social-educational services in social protection.**

Several national strategies envisage the development of various services for victims of domestic violence and violence against women. For example, the **Strategy on Development of Social and Child Protection System** has envisaged the development of “urgent intervention services”, while the **Strategy on Domestic Violence Protection 2011 - 2015** has envisaged the establishment of national telephone helpline, support to employment and self-employment of victims, establishment of psycho-social treatment, measures for support to children, improvement of psychological and social services, services of health protection of women, etc.

Strategy on Domestic Violence Protection 2016-2020 envisages the development and implementation of a national plan for improvement of services of general support in accordance with Istanbul Convention.

The establishment of **free legal aid** in Montenegro involved the victims of domestic violence and victims of human trafficking. Detailed information of free legal aid may be found in the part of the analysis of article 57 entitled Legal aid.

Domestic violence victim is entitled to psycho-social and legal aid and social and medical protection. This aid and protection are ensured in compliance with laws which regulate social and child protection, health protection and free legal aid. In case of urgent intervention, when life, health and development of domestic violence victim are endangered, center for social work

¹⁶⁴ “Official Gazette of Montenegro”, no. 58/14

¹⁶⁵ “Official Gazette of Montenegro”, no. 26 /14.

has to provide them urgent interventions in order to ensure security in those situations. Such services should be available 24 hours a day¹⁶⁶.

Services of urgent intervention have to be delivered by a center for social work along with mandatory cooperation with other authorities and services, which have to take care of all needs of a victim and ensure them all types of aid and protection.

At the same time, the Law on Social and Child Protection sets out that domestic violence victims, either children, or adults or elderly will be particularly protected with a view to improve general quality of life and aid to these persons towards the initiation of autonomous life, which, among others, entails material allowances specified by the present Law¹⁶⁷.

Intervention certainly entails the obligation of health care institutions to provide necessary medical support to domestic violence victims. The Protocol prescribes the development of a plan of aid provision to victim and coordination of activities in the process of aid provision to the victim. The aid provision plan specifies activities in the process of aid provision to a victim, coordinated by a professional team established by the center for social work and composed of the representatives of that institution, authorities and local governance services, police, non-governmental organizations and professionals engaged in family issues.

Training of professionals was dealt with in the part of the analysis related to Article 15 – Training of professionals.

Shortcomings:

Regarding social protection in practice, there are neither specific measures, nor programs of specific support to women victims of violence, regardless of the fact that the Law on the Domestic Violence Protection involves material and non-material aid, accommodation and social work services, in compliance with law which regulates social and child protection.¹⁶⁸ This type of support has still been provided only by women's non-governmental organizations, as far as they can ensure funds via projects.

There are neither programs for residence nor programs for economic empowerment of women, nor vocational trainings, while victims do not exercise any employment privileges. The result is the fact that women who decide to leave a violent relationship, usually remain without essential

¹⁶⁶ Protocol on the action of institutions in case of domestic violence

¹⁶⁷ B.Zeković, 2016 – Study on effectiveness of the system of social allowances in the provision of material support to persons in need of social assistance; available at www.sospodgorica.me

¹⁶⁸ 2014 Report on the work of the Ministry of Labour and Social Welfare, p. 78

life conditions. The institutions tend to send the victim to women's NGOs, expecting that these organizations will take care of their social reintegration, protection, legal and psycho-social aid. Health care units are mainly ignorant about the Protocol and they rarely contact other institutions when approached by a violence victim.

Court protection and orders of protection are elaborated in detail in the part of the report related to Article 53 of the Convention.

Recommendations:

- *It is necessary to provide the victims with the access to specialist support services, legal and psychological advisory service, financial support, housing, education, training and support with employment.*
- *To provide the victims with the access to health and social protection and qualified employees for the aid to victims and directing them to adequate services.*

Article 21 – Assistance in individual/collective complaints

Besides mentioned ratified inter-state instruments, Montenegro has put reserves only on several Articles of the **Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms**, in terms of Article 5, paragraph 1, item c and Article 6, paragraph 1 and 3 and in terms of Article 30, paragraph 2 of the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence**.

Pursuant to legislation in force, only one law prescribes such type of obligation and that is the **Law on the Prohibition of Discrimination**. In compliance with the Law, the Protector of Human Rights, as the central institution in charge of the protection against discrimination, within the scope of their responsibility, has to provide needed explanations to the applicant who thinks that they have been discriminated by an authority, company, other legal entity, entrepreneur and natural person, regarding their rights and duties, as well as the possibilities of judicial and other protection. Considering the fact that the **Law on Gender Equality** stipulates that gender-based violence may be a part of discrimination of women, the Protector would be obliged to provide the above-mentioned aid and needed information to parties complaining about gender-based violence. The Protector provides information to parties free of charge.

Although, in compliance with the Constitution, the Protector is an independent institution and the supervision of their work is exercised by the Parliament via annual reports, sent by the Protector to the Parliament. The work of the Protector is also supervised by the Committee for Human Rights and Freedom, in a way that the Committee acts upon the applications of citizens, if an applicant is not satisfied with how the institution of the Protector acted.

Representatives of the police, prosecution, court and center for social work, within the scope of their responsibilities, do not have prescribed obligation to provide any aid related to the possibility of a victim to lodge an appeal or other application to certain international organization. In terms of professional legal aid, the provisions of the Constitution guarantee the right to legal aid to everyone, which is provided by law practice and other services, in compliance with the law. The right to free legal aid has been also guaranteed in compliance with a special law.

Therefore, in the area of the provision of legal aid to natural persons in international appellate mechanisms, certainly, the most relevant area of the provision of free legal aid is the one ensured by attorneys. Although the **Law on Free Legal Aid**¹⁶⁹ does not explicitly stipulate counselling in terms of international appellate mechanisms, it has not been excluded and it can be put under the form of free legal aid – the provision of legal advice and information – especially taking into account the fact that legal aid in the creation of documents entails the creation of enactment which initiate the procedure of protection before the European Court of Human Rights.¹⁷⁰

Supervision of the quality of the provision of free legal aid is conducted by an authority before which a proceeding has been conducted, in which free legal aid has been approved, while in this specific case, this is inapplicable to women's NGOs which provide free legal aid to violence victims. The issue of free legal aid is presented in detail within Article 57 of the Convention.

Shortcomings:

Informing on the rights, in terms of law, has been related to the possibilities and rights of victims within national legal system. Information and access to valid regional and international mechanisms for individual/collective appeals are not easily available to violence victims, while sensitive and informed aid is provided to victims only by few non-governmental organizations during the lodging of those appeals. Unfortunately, they cannot cover a large number of cases due to limited budgets and the fact that they are not recognized by the Law on Free Legal Aid as

¹⁶⁹ "Official Gazette of Montenegro", no. 20/2011-21

¹⁷⁰ Article 23 of the Law on Free Legal Aid.

the providers of this type of services. Appellative mechanisms are almost completely unavailable to the victims from small environments, rural areas, and vulnerable groups.

Recommendations:

Aid in informing and writing charges/appeals should be ensured by organizations independent from state structures, but with the state financial support.

Law on Free Legal Aid should be amended, so that non-governmental organizations dealing with the protection of rights of violence victims could be able to provide this type of aid, in a gender-sensitive manner, efficiently and in accordance with interests and needs of victims.

It is necessary to ensure the availability of such services in all parts of the country.

Article 22 – Specialist support services

Strategy on Domestic Violence Protection 2016-2020 has envisaged the creation and implementation of national plan of improvement of specialist services of support to violence victims, in compliance with the Convention and recommendations of the study of the Council of Europe related to minimum standards for specialist services.

Shortcomings:

The state has neither specialist support services for victims of violence against women and their children, nor for children with direct experience of violence. There are only general state support services in the Center for the support to children and family Bijelo Polje and Shelter for Women Victims of Human Trafficking managed by the Office for the Fight against Human Trafficking.

Specialist support services are implemented only by few women's NGOs dealing with the protection of victims of domestic violence. These are the services ensured by telephone helplines for women and child violence victims in five Montenegrin towns (2 on the North, 2 in central part and 1 on the South of the country) and 3 shelters (1 shelter on the North and 2 shelters in the central part, unfortunately there is no shelter on the South). Women's NGOs provide services to all women and child violence victims on the national level, and these services are free of charge. However, these services are not equally available to women and child violence victims due to unequal geographic position of women's NGOs which provide specialist support services.

Detailed information on available services and their financing are provided via the analysis of other Articles of the Convention.

Accreditation of services, monitoring and external evaluation have not been ensured in Montenegro yet. Ministry of Labor and Social Welfare, at the beginning of 2015, established a working group for the development of the Rulebook on detailed conditions for the provision and use, norms and minimum standards of advisory and therapeutic and social-educational services, which is a pre-condition for the establishment of evaluation and accreditation of the provision of these services.

Recommendations:

It is necessary that the state ensures, with adequate geographic spreading, direct short-term and long-term specialist support services for each victim that was exposed to any type of violence covered by the Convention, as well as for all women violence victims and their children.

Article 23 – Shelters

Law on Social and Child Protection addresses social welfare of the victim which involves “material and non-material aid, accommodation and social work services.”¹⁷¹ This Law defines the right to the provision of accommodation service, including the accommodation “in an institution, shelter and other types of accommodation”.¹⁷²

Shelters for violence victims managed by women’s NGOs provide accommodation and food services, psychological support and assistance (individual and group work with violence victims), as well as legal aid (counselling, writing applications and representation of violence victims before court), transport in urgent situations, service of accompanying confidential person. Women and children in urgent violent situations stay in the shelters.

Secretariat for Social Welfare of the Capital City consigned for temporary use a house managed by NGO Women’s Safe House, while overhead expenses and costs of services are covered by foreign donations and projects. NGO Telephone Helpline for Women and Child Violence Victims Nikšić, with a view of better protection of women and child violence victims, in partnership with Nikšić Municipality, in 2010, launched an initiative for the construction of a

¹⁷¹ Article 12 of the Law on Social and Child Protection

¹⁷² Article 64 of the Law on Social and Child Protection

shelter for women and child violence victims. The land for the construction of shelter was ensured by Nikšić Municipality, which also freed the organization from the obligation to pay fees for municipal land equipment. However, the funds for the construction of the shelter, amounting to 300 000.00 €, are ensured by NGO Telephone Helpline Nikšić exclusively from international donors.

Services of accommodation, legal and psycho-social support and aid for violence victims provided in shelters are **free of charge**.

Shelters are open 24 hours a day, 7 days a week. Standardized procedure of entering the shelter for violence victims and rules of operation of the shelter do not exist, but each non-governmental organization which manages the shelter has their own procedures and rules. In Montenegro, patriarchal ideology still has a very strong influence, so most frequently, due to the feeling of shame, a number of violence victims do not want to initiate procedure before competent institutions, which is not a necessary condition to accommodate the victim in the shelter. There is no standardized rule on the duration of stay of victims in shelters, but each of the three organizations defines that by their internal rules. Shelters do not have police security. In order to ensure the safety of victims and engaged staff, Women's Safe House in Podgorica and Telephone Helpline Nikšić have installed surveillance cameras.

In compliance with the **Protocol on acting, prevention and protection against domestic violence**, the responsibility of police is to inform victims about the possibilities of going to a shelter, and, if necessary, to take the victim to the shelter. Then, the responsibility of center for social work is, among others, to establish cooperation with a shelter or non-governmental organization if a victim looks for accommodation beyond their family.

The **Rulebook on detailed conditions for the provision and use, norms and minimum standards for service of accommodation in a shelter**¹⁷³ was adopted in 2014. The Rulebook stipulates that the service of accommodation in a shelter is also ensured to domestic violence victims. Strategic documents for 2015 envisaged the introduction of the system of accreditation for the organizations which provide services of social and child protection. License for service provider will be issued by the Ministry of Labor and Social Welfare, but there are no formal preconditions set yet.

As already stated, each non-governmental organization managing shelters has their own rules and procedures for the admission of victims. A juvenile cannot stay without a parent or a

¹⁷³ "Official Gazette of Montenegro", no. 26 /14

guardian in Women's Safe House in Podgorica. Juvenile girls older than 14 may stay without a parent or a guardian in Telephone Helpline for Women and Child Violence Victims Nikšić. Older juvenile (boys) cannot stay in Women's Safe House with their mothers, if girls above 14 years of age stay in the shelter at that time, while boys above 15 years of age cannot stay in Telephone Helpline shelter in Nikšić. The shelters introduced those limitations due to the lack of overall capacities for high quality response to all needs of children at that age and impossibility to manage numerous risks. The shelters develop individual plans for victims of violence against women. In shelters, there are no written rules and procedures for the creation of individual plan for children accommodated with their mothers. Staff employed in shelters for violence victims undergo training before being engaged.

Juvenile violence victims are accommodated in the Center for Support to Children and Family in Bijelo Polje, which has been existing since 2008 and providing protection and admission of children that are the victims of abuse, neglect, torture and other types of violence. The Center was founded by Bijelo Polje Municipality in cooperation with the Ministry of Labor and Social Welfare, Ministry of Justice and UNICEF.

Taking into account the fact that shelters for violence victims are managed by non-governmental organizations, information on shelters and available types of aid are obtained by violence victims via media, social networks, available informative material and public campaigns. In case a violence victim firstly asks the police for help or the center for social work, and if they ask for accommodation beyond their family, competent institutions are obliged to direct the victim to shelters and to contact them.

Data on the number of victims accommodated in shelters

Women's Safe House Podgorica			
Year	2014	2015	2016
Number of children accommodated in the shelter	73	52	46
Number of women accommodated in the shelter	71	99	81
Number of persons accommodated in the shelter (total):	144	151	127

Crisis Center (shelter) Telephone Helpline Nikšić			
Accommodation	2014	2015	2016
Women	32	39	41
Children	37	45	48
TOTAL	69	84	89

Shortcomings:

Law on Social and Child Protection stipulates that shelters be financed by municipalities¹⁰², but all shelters for violence victims are managed by non-governmental organizations financed mainly from foreign funds and donation, while the support of the state is sporadic and insufficient.

The latest research on availability of support services originates from 2013 and it was conducted by WAVE (Women Against Violence Europe). Pursuant to such **report**, there are three shelters for women in Montenegro with the capacity for accommodating 38 women. On the basis of the recommendations of the Council of Europe, Montenegro needs around 63 places in shelters for violence victims, which means that Montenegro lacks 25 places or 40% of recommended number of accommodation capacities for shelters.

According to 2013 **WAVE Report**¹⁷⁴ per states, shelters are 70% financed by foreign donations, 15% by the state in the form of temporary financing based on public calls and 5% private donations.

Recommendations:

It is necessary to open sufficient number of shelters for women and child violence victims with sufficient geographic coverage.

To ensure financing of female shelters with minimum three-year contract;

¹⁷⁴ 2013 WAVE Report available at: <http://www.wave-network.org/sites/default/files/03%20Montenegro.pdf>

To ensure the access to all women and children to female shelters, including the women without documents, refugees, female asylum seekers and women with disabilities;

To ensure safety measures in all female shelters;

Female shelters should have professional support;

Women and children should obtain support from qualified staff in shelters, trained for the provision of gender-sensitive and empowering access;

Human rights and safety of women and their children should be prioritized;

All children have to have the right to accede female shelters with their mothers, regardless of their age and gender.

Article 24 – Telephone helplines

National free telephone helpline for the support to domestic violence victims started working on 1 September 2015, under the patronage of the Ministry of Labor and Social Welfare and UNDP, and it has been managed by NGO Telephone Helpline for Women and Child Violence Victims Nikšić. This is, for now, a pilot project with approved funds until the end of 2017. In future, the Government of Montenegro should ensure the financing of this service from the state budget. The helpline is anonymous, free of charge and active 24 hours a day. It is available 365 days a year to all violence victims in Montenegro, regardless of their place of residence, which is in compliance with the Convention. Telephone number for the aid to domestic violence victims is 080 111 111.

Well-trained, competent staff with specialist knowledge in the area of gender-based violence and female and female-human rights, with more than 17 years of experience in the work with violence victims, work at the telephone helpline. The staff acquired specialist knowledge on active measures of protection of women and child violence victims at the regional and international level. The staff act in a manner so as not to destroy integrity and autonomy of domestic violence victim. All actions are taken with the approval of the victim, whose anonymity, confidentiality and gender-based approach at work are guaranteed in the context of human rights. Telephone helpline service empowers and provides support to a violence victim through informing, directing and psychological counselling. It provides information to a victim about their rights, possibilities and types of support, mediates between the victim and the police, centers for social work, and other services in municipality of residence. Received calls and

requests of telephone helpline have been actively solved. When a victim gives a call, staff member on duty:

1. Actively listens to a victim;
2. Provides information on violence and the rights of a victim;
3. Provides psychological and emotional support and empowerment via the phone;
4. When necessary, refers to other organizations;
5. Upon the desire of a client, report on the cases of violence and contacts institution;
6. Represents clients before other organizations and institutions;

Telephone helpline service is well networked with other services and institutions.

Telephone helpline services are also provided by local non-governmental organizations Telephone helplines for women and child violence victims and Women's Safe House Podgorica. Telephone helpline are currently active in 5 municipalities: Nikšić, Podgorica, Ulcinj, Berane and Bijelo Polje. Target group are all women and child violence victims, regardless of ethnic, religious or social belonging. The service for the user group is free of charge.

Two out of five telephone helplines and Women's Safe House are available for the target group 24h/7, 365 days a year, while the others are available on workdays during the working time. Three out of five telephone helplines provide services via landline, while four of them provide services via mobile line. The work of telephone helplines is to a largest extent based on voluntarily contribution and carried out by organizations which employ on average 3 to 5 persons ¹⁷⁵.

Staff trained for conversation and support to victims work at the telephone helplines. Services the victims may obtain via telephone helpline are the provision of information to victims on further actions with regards to domestic violence, confidential conversations with the victim as a form of emotional empowerment, psychological support, urgent interventions upon call, networking with other systems which may provide aid to the victim, legal counseling. Each organization has a protocol of recording received calls, but other procedures are heterogeneous. Only two organizations have a protocol on work, while three organizations have

In 2014, telephone helpline Nikšić together with other 4 telephone helplines launched an initiative for the development of sustainable national telephone helpline for domestic violence

¹⁷⁵ Source, Analysis of capacities and services of telephone helplines in Montenegro, October 2014. Records of Telephone Helplines for Women and Child violence victims Nikšić

and violence against women. Within this initiative, draft Rulebook for work of a single telephone helpline for domestic violence and violence against women was developed and submitted to the Ministry of Labor and Social Welfare and the Ministry of Human and Minority Rights.

Shortcomings:

There are no integrated statistical data on the national level on the number of domestic violence victims who have asked for help. Certain institutions (police, courts, misdemeanors authorities, centers for social work), as well as telephone helplines maintain their statistical data. These statistical data are greatly integrated into the Report on the implementation of the Strategy on Domestic Violence Prevention, but the problem is the fact that they are not uniformed, and therefore it is not possible to collect and compare them and thus it is not possible to analyze them properly. Action Plan for the Achievement of Gender Equality distinguishes, as one of the key problems, the non-existence of a single database on the number of victims seeking for help, since available data cannot be integrated. This database has still not been established, although according to strategic documents, its implementation should have taken place not later than 2014.

Telephone helplines as NGOs are financed in compliance with the Law on NGO by financial support from the budget, as organizations dealing with activities of public interest, and by international projects and donations, voluntarily allowances, incomes from commercial activities, and their own project activities and voluntarily work. Regarding financial support from local self-governance, it does not exist, but telephone helplines are financed as all other NGOs when municipalities launch calls for the allocation of funds to non-governmental organizations. **Law on Value Added Tax**¹⁷⁶, Article 26 paragraph 10 prescribes that “services performed by non-governmental organizations founded in compliance with a regulation on activity of such organizations, if it is not likely that such tax release will lead to disturbance of competition”, may be released from paying VAT, if they are of public interest. Experience of Telephone Helpline Nikšić has shown that the Government of Montenegro, i.e. competent Ministry of Finance is not willing to implement this provision. In October 2014, Telephone Helpline Nikšić sent a request to the Ministry for VAT release of the company which conducted electrical installations in Telephone Helpline shelter. Despite obvious facts that the construction of a shelter for women

¹⁷⁶ See <http://www.poreskauprava.gov.me/biblioteka/zakoni>

and children is of public interest and that VAT release in no way jeopardizes competition, the request was rejected.¹⁷⁷

Free national telephone helpline for domestic violence victims is elaborated in detail in Article 22. Within the period September 2015 – April 2017, national telephone helpline for domestic violence victims, managed by Telephone Helpline for Women and Child violence victims Nikšić received 4925 calls in total. Majority of calls came from Nikšić – 1532, then from Podgorica - 1100. The number of calls from other towns is as follows: Bar - 355, Herceg Novi - 322, Berane - 142, Kotor - 233, Pljevlja - 129, Budva - 179, Danilovgrad - 82, Cetinje - 94, Bijelog Polje - 126, Rožaje - 123, Mojkovac - 22, Ulcinj - 53, Andrijevica - 8, Tivat - 18, Kolašin - 12, Plav - 24, Gusinje - 2, Žabljak - 2, Plužine - 5, Šavnik - 3, Tuzi – 1 and Petnjica - 4 calls.

National telephone helpline provided a total of 6338 services in the following segments: 2907 information, 1969 confidential conversations, 227 mediations in institutions, 121 urgent interventions, 632 psychological counselling sessions, 33 directions and 449 other services.

In the mentioned period, 749 persons asked for help.

Recommendations:

It is necessary to ensure permanent financing of telephone helplines not only for counselling, but also for providing information and prevention, raising awareness, campaigns and work with the public.

All staff costs, including multilingual counselling, should be covered by the state.

Article 25 – Support for victims of sexual abuse

The state is obliged to ensure sufficient number of available crisis centers for the cases of raping or centers for the victims of sexual violence, which would provide services of medical and forensic check to victims, as well as adequate aid in cases of trauma and counselling.

Shortcomings:

¹⁷⁷ Source, Records of Telephone Helpline Nikšić

There are neither crisis centers nor similar institutions for victims of sexual violence in Montenegro. The results of the research on sexual violence against children¹⁷⁸ conducted by Ombudsman show that professionals are not satisfied with the cooperation with health care institutions. Centers for social work do not have envisaged programs of protection and aid to children with sexual abuse experience, in overcoming trauma and their full reintegration and re-socialization. The most presented measures in acting of courts, prosecution and police are hearing of a victim in the presence of a social worker.

Neither general nor specialist protocols on acting with victims of raping exist, nor specialist free services for the victims of raping and other sexual crimes. Also, there is no free specialist psychological support for overcoming trauma of raping. The checks of victims of sexual violence are done in general hospitals and Clinical Center of Montenegro, by ordinary staff.

Recommendations:

- *As soon as possible, crisis centers should be established for cases of raping or centers for the victims of sexual violence, which ensure the services of medical and forensic check to victims, as well as the support in case of trauma and counselling.*

Article 26 – Protection and support for child witnesses

The **Law on Domestic Violence Protection** is aligned with the Convention standards in that it ensures a framework for treating minors as victims of violence even in the cases when they are not directly subject to violent conduct. This primarily means that a violent act committed in the presence of a minor child constitutes a misdemeanor act. In addition, the act is considered a misdemeanor act even in a situation when a child is a primary victim of violence. Therefore in the cases when a minor is a victim, the law prescribes that special priority be given to such a procedure.

¹⁷⁸ Research of sexual abuse of Children was conducted by Ombudsman, primarily, with a view to determine the level of understanding of the term sexual abuse by competent services and authorities, as well as understanding trends in this area, 2011, Podgorica; available at http://www.ombudsman.co.me/djeca/docs/izvjestaj_o_seksualnom_iskoriscavanju_djece_u_CG.pdf

As for the situations when minors are affected by family violence, either as direct victims or witnesses, **Protocol on Actions, Prevention of and Protection against Family Violence** defines the principles and a manner of work to be pursued by all the actors involved in the child protection system. To that effect, police, centers for social work and judicial authorities are obliged to treat minors properly, taking into account their rights and needs.

Namely, in a situation when a minor is affected by family violence, either directly or indirectly, the police are under an obligation to call representatives of a center for social work and inform them about the violence reported, so that they can undertake measures of social and family-law protection that fall within the purview of the social protection system. In addition, statement may be taken from the child only by a trained police officer, wearing civilian clothes, in the presence of any confident person of child's own choosing – except for the abuser who cannot be considered a person of confidence. A psychologist must be present at the time a statement is taken from the child. When a victim of family violence, child is entitled to legal aid – this should be communicated clearly to the child and his legal representative.

The Criminal Procedure Code places a special emphasis on the way child witnesses are treated within the criminal proceedings. The Code prescribes that child who is being examined as witnesses, is entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney are given the possibility to view the course of hearing from other premises and to pose questions to the witness, after having been duly instructed by the court thereon.¹⁷⁹ When a minor is heard, especially if a minor was injured by the criminal offence, special care will be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. When necessary, the minor is heard with assistance of a psychologist or another expert.

In accordance with the Criminal Procedure Code, it is strictly prohibited to examine child witnesses who, due to their age and mental development, are not capable of grasping the importance of their right to refrain from testifying. Besides the Criminal Procedure Code, **Act on the Treatment of Minors in Criminal Proceedings**¹⁸⁰ places special emphasis on the proper treatment of minors. Treatment of minors and their hearings are carefully analyzed within Article 56.

Shortcomings:

¹⁷⁹ Article 113 para 5 Criminal Procedure Code

¹⁸⁰ Official Gazette of Montenegro, No. 64/2011.

Even though certain provisions of the criminal legislation framework provide for a specific treatment of minor witnesses, committing an act of violence in the presence of a minor is still not recognized as a punishable act which constitutes a form of domestic violence. Witnessing domestic violence is still not recognized as an emotional abuse. The police and CSW (centers for social work) do not assess the risk to minors, except in the cases when a child is directly affected by physical or sexual violence, and even in these situations risk assessment is not regularly conducted.

For instance, in certain violence cases, abusive fathers are awarded visitation right shortly after the violent act, although the victims still reside in the shelter. These visits are sometimes organized in a "controlled environment", most often on the CSW premises, whereas in certain cases it happens that an abusive parent exercises his visitation right under no control. Since no protection is provided in these situations, the visits are not safe, and there is also a possibility that a father may take children away, which has already happened several times. It was reported that during one visit arranged in the "controlled environment", a father took his children away from the CSW premises. In these circumstances, women are forced to maintain further contact with the abuser, which commonly leads to repeated acts of violence.

Abusive partners should attend counseling sessions which would be oriented towards safety of victims, and it should be set as a precondition for obtaining their visitation right. However, it does not exist in practice.

Minors' needs are often not taken into account. If it happens that children are afraid and don't want to see their abusive parent, most often their fathers, CSW starts from the assumption that their attitude is a result of the influence the other parent – mother has exerted. In certain situations, when terrified children would refuse to meet their fathers, after having reported violence to CSW, their mothers were punished in consequence.

Misdemeanor authorities courts do not determine child protection measures, not even in the cases when children are directly affected by violence upon their parents' divorce; instead they give the highest priority to a contact between parents and their child, claiming that in this respect a judgement on dissolution of marriage is to be observed, since it is of special legal relevance.

CSW lacks capacities for continuous counselling services for children, and they also do not require (although sometimes they do recommend) counselling sessions.

When minors visit a psychologist, what they reveal in the conversation is treated as confidential information, regardless of the fact that the information may indicate that their safety has been endangered.

In the event a psychologist invites one of the parents (most often father) for counseling, and he does not respond, regardless of how important it is for child's welfare, neither healthcare centers nor CSW consider it as neglect, and they do not undertake anything in this respect.

When informed about cases of children being abused by violent parents (e.g. Father prevents a child from seeing his mother), CSW does not conduct assessment, and they also do not initiate procedure for restriction/deprivation of parental rights, even though such a violent act constitutes a gross violation of parental rights pursuant to the Family Law.

In cases when in the course of marriage/ non-marital partnership abusive father displays conduct that negatively affects children or undermines mother's authority, such father is not invited for counselling (only one interview conducted in the best case scenario) and he does not face any consequences in this respect.

The institutions do not undertake any measures even in those situations when father (with his own child as a witness) reports false mother's abuse over the child (in one particular case this happened even five times) and court proceedings prove these allegations wrong.

CSW does not initiate proceedings even in those cases when father grossly violates his child's rights: does not give his consent for the child's passport to be issued, or for the child's travel abroad (even when the child is supposed to travel on an excursion or to take part in a sports competition), does not pay for child's maintenance, does not pay visits to his child, in extreme cases even threatens his child (which can be documented by relevant judgements or pending proceedings). It has been recorded that in one particular case a father did not give his consent for an official change of a place of residence (even though the child does not actually change his place of residence, the only thing that is to be changed is his previously registered address which is now outdated, it is the address of a place where the child was born and at which he/she lived for no more than fifteen days), and for this reason his health insurance card cannot be verified and he cannot get vaccinated. The only measure the CSW undertakes in this respect is contacting father occasionally and "asking" for his consent. The institutions do not initiate neglect proceedings or the proceedings for termination of parental right.

Recommendations

A violent act committed in the presence of a minor child should be criminalized and recognized as a criminal offence of domestic violence.

When deciding on contact maintenance, visitation right and custody, violent conduct of an abusive parent should be taken into account. Any change of circumstances should be reported to the court, or it may give rise to new proceedings, if the best interest of the child.

In case of violent conduct of an abusive parent/partner, relevant institutions should initiate a procedure for deprivation or restriction of contact maintenance, visitation right and custody. When a child has been made a victim or a witness of violence, institutions should initiate a procedure for amending the decision on granting custody or visitation rights, or a right to visit children in a controlled environment, in line with Article 89 of the Family Law.

Due regard should be given to child protection from both direct and indirect violence, and children should be provided with active violence protection.

Relevant institution should prevent additional victimization of a non-violent parent and should ensure necessary support and protection.

Violent partners should attend counseling sessions which would be oriented towards safety of victims, and which should serve as a precondition for obtaining a visitation right.

Article 27 –Reporting

Pursuant to the **Criminal Procedure Code**¹⁸¹ citizens are under an obligation to report any criminal offence which is prosecuted ex officio, but also other acts which could endanger safety of a minor. Criminal charge should be filed with the competent State Prosecutor whether in writing or orally. If the charge is filed orally, the informant is cautioned as to the consequences of false information. Oral charge is entered in a record, and where the information is filed over the phone or other means of electronic communication, an official annotation is made thereabout.

¹⁸¹ Official Gazette of Montenegro, No.57/09 as of 18 August 2009

In the event the charge is filed with a court, the police authority or a State Prosecutor lacking jurisdiction, they receive the information and immediately forward it to the State Prosecutor having the jurisdiction. When in the course of criminal proceedings the court establishes that reasonable suspicion exists that a person has failed to perform the abovementioned duty and that such omission may result in a reasonable suspicion as to the commission of the criminal offence of neglecting and abuse of a minor, the court shall notify the competent State Prosecutor accordingly.

In line with the **Law on Domestic Violence Protection**, a state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities.

It is stated clearly in **The Protocol on Actions, Prevention of and Protection against Family Violence**¹⁸², within its part addressing the duties of police, that a police officer is under an obligation to register the denunciation regarding family violence that can be expressed verbally (directly, via telephone), written or anonymous; the police officer is also obliged to write minutes about the registered denunciation, making sure not to victimize the victim of violence when registering the denunciation by asking unnecessary questions.

Shortcomings :

Since domestic/intimate partner violence is still thought of as a private issue which is to be resolved within a family/ between partners, citizens rarely report it to the competent authorities. Such a remark is supported by findings of the latest survey already discussed in Article 11.

Recommendations

To organize public campaigns with a view to raising awareness of domestic violence as a social and not private family problem and encouraging citizens to report violence to competent authorities.

Article 28 – Reporting by professionals

In accordance with the Criminal Procedure Code each person acting in an official capacity and responsible persons in state authorities, local governance authorities, public companies and institutions are under an obligation to file a charge for criminal offences, subject to prosecution

¹⁸² Official Gazette of Montenegro No. 46/10

by virtue of office, of which they have been informed or which they have learned while performing their office. The same should apply to all natural and legal persons who are granted certain public powers pursuant to law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of minors care and education, if they learn about a criminal offence while performing or in connection with their profession.

Persons filing a criminal charge concerned will indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of criminal offence as well as other evidence.

The **Law on Domestic Violence Protection** imposes the same obligation for any state administration agency, other agency, a health, education or other institution, which is hereby supposed to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities¹⁸³. Under the duty to report violence to the police is the head of the agency or institution concerned, as well as a health and social care worker, teacher, pre-school teacher and other person who is in a direct contact with a violence victim. A misdemeanor body and police are under an obligation to promptly inform the center for social work about the violence reported, with a view to undertaking protection measures and providing victims of violence with assistance.

As defined by the **Protocol on Actions, Prevention of and Protection against Family Violence**, when a professional from the Center for Social Work, in the course of his/her work, learns from any person or in any way of the family violence, he/she will report to the police without delay the suspicion that violence has been exerted. CSW will immediately and without delay contact the victim of violence when the information about violence was provided from other institutions and will write official minutes which should contain information about victims of violence, existence of possible earlier reports, manner in which violence was exerted and all other available information and reports regarding cases of violence and the abuser. Moreover, they are under an obligation to write official minutes, note or a report about each action taken, and to draft an individual plan for the victim protection, and ensure coordination with other institutions in charge of affording protection against violence.

As further defined by the Protocol, other institutions (preschool institutions, elementary and high schools) are also under an obligation to report to the police and CSW any suspicion of domestic

¹⁸³ Article 9 Duty to report violence Law on domestic violence protection (Official Gazette of Montenegro No. 46/10).

violence, and to draft minutes on all the activities conducted and afford other relevant actors with an insight into documentation. Schools will ensure that appropriate boxes are set in the places accessible to children, so that children can inform the professional staff about their problems. Staff of the institutions should check boxes on a daily basis and, as a first step, draft an official note about the discovered violence, in a manner described above.

In case of suspecting any form of violence, the staff of healthcare institutions will enter the suspicions into the health record and will issue medical documents with the facts that were obtained and established through the medical examination to the victim, free of charge, and will subsequently report the case to the police and CSW. For the cases involving child victims, a special procedure for medical workers has been prescribed.

The Law on Domestic Violence Protection imposes misdemeanor liability and a fine ranging from two-fold to ten-fold minimum salary in Montenegro for responsible persons within a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person who, although knowing of the violence, fail to report it to the police, or although knowing that an offender does not observe the protection measures imposed, fail to report it to a misdemeanor body, CSW, or other institutions in charge of social and children protection, police or state prosecutor.

Shortcomings:

As indicated by the **Reports of Women's NGOs**¹⁸⁴ and uncoordinated data on domestic violence provided by public institutions involved in the process of domestic violence protection,¹⁸⁵ professional staff do not observe their mandatory reporting obligations to an extent necessary, not even in those situations when such reporting is required by victims themselves. To date no criminal or misdemeanor proceeding has been initiated against civil servants who failed to report violence or to enter a notification into the register.

Recommendations

To undertake necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or

184 "Protection and Access to Justice for Women Victims of Domestic Violence" – a report drafted as a result of monitoring of human rights of the women domestic violence victims, which the Women's Right Centre conducted in partnership with Women's Safe House and SOS hotline for women and children victims of violence Nikšić, November 2014

185 Information on implementation of the Strategy on protection from domestic violence, the Ministry of Labour and Social Welfare, March 2014

authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

To initiate proceedings against the officials who do not observe their mandatory obligation to report violence and do not keep records of the complaints filed by victims.

To conduct necessary assessment of a primary aggressor instead of mutual complaints, to the detriment of victims.

CHAPTER V - SUBSTANTIVE LAW

Article 29 – Civil lawsuits and remedies

As prescribed by the **Law on Obligations**, everyone is entitled to claim that the court or other competent agency order the cessation of an action by which the integrity of human person, personal and family life and other rights pertaining to his person are violated, as well as reputation of legal entity. The court or the other competent agency may order cessation of the action by threatening the payment of a certain amount of money, determined as a lump sum or per time unit, to the benefit of the person suffering damage.¹⁸⁶ However, this possibility has never been used.

The Law on Obligations further guarantees the right to a compensation to be awarded for non-material damage, for physical pains suffered, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honor, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground for such a compensation.¹⁸⁷ One who inflicts to another bodily injury or impairs his health, will be under an obligation to reimburse his medical expenses, as well as other related necessary expenses, including recovery of the salary lost due to inability to work during medical treatment. Should the injured person due to total or partial disability lose his salary, or should his needs become permanently increased, or should possibilities of his

186 Article. 151 Law on Obligations

187 Art 207 Law on Obligations

further development and advancement be destroyed or reduced, the person liable will pay to the injured party specific annuities as damages for such a loss.¹⁸⁸

In particular cases, the Law allows for equitable damages to be awarded for mental anguish suffered by a person who was induced to unlawful intercourse or lewd act by deceit, coercion or abuse of a relationship of subordination or dependence, as well as a person that was a victim of some other criminal offence against sexual freedom.¹⁸⁹

As closely defined in the above provisions, protection is provided by a basic court having the subject matter jurisdiction in these cases in line with the general rules prescribed by the **Law on Civil Procedure**, stating that a burden of proof is initially on the claimant to prove the facts, whereas the costs of evidence and other court expenses incurred in the course of a proceeding are borne by a party proposing such presentation of evidence, even though upon the final outcome of the proceedings the expenses are borne by a losing party. In the disputes initiated with a view to protecting a minor's right, as well as in custody disputes, the costs incurred through the evidence procedure initiated with the proposal of a minor are covered by the court.

¹⁹⁰

If, the court finds that due to their general financial situation, the parties to the proceedings cannot cover the costs without jeopardizing the necessary support of themselves and their families, the court may decide to exempt these parties from paying court fees, from depositing advance payment for the costs of witnesses, expert witnesses, preliminary investigation and presentation of other evidence.

A victim of domestic violence, which constitutes a criminal and misdemeanor act, may exercise their right to legal aid, in which case they are automatically exempted from the court fees.

In addition to all the possibilities elaborated under Article 5 of the Convention and referring to the situations when competent authorities fail to act, a victim of violence can lodge a complaint with the Constitutional Court.

Protector of human rights and freedoms may decide to act upon a pending complaint and lodge a constitutional complaint in respect of a pending complaint, if a complainant is in agreement with such a decision.

In the event a violation is caused by commission or omission of a public authority, a public administration body, local self-government body, a legal entity or any other entity which

188 Art 202 Law on Obligations

189 Art 209 Law on Obligations

190 Art 353 para 2 of the Family Law., Official Gazette of MNE, No.1/2007, Official Gazette of MNE, No. 053/16

exercises public powers, the Constitutional Court, by virtue of its decision to adopt a complaint, may order suspension of individual act enforcement, or may order enactment of a document or undertaking other appropriate measures or actions with a view to correcting the negative consequences that have already been caused, or may subsequently be caused by the established violation of human rights and freedoms guaranteed by the Constitution.¹⁹¹

In the event a party has suffered a damage inflicted upon him/her as a result of a fault of public administration bodies, litigation proceedings may be initiated with a claim for damages, in line with Article 166 of **the Law on Obligations**, prescribing that a legal person is held liable for a damage its body inflicts upon a third person in the exercise of their duties or in connection therewith.

Shortcomings:

Procedures against public administration bodies who failed to fulfill their obligations or undertake necessary preventive and protective measures have been initiated in a very small number of cases, even in those situations when a serious violation of victims' rights have been established, people still lack trust in public institutions, due to the dominant permissive atmosphere which allows for civil servants to pass without being punished.

This is supported by the fact that majority of criminal charges that NGOs (SOS hotline Nikšić, Women's Safe House and Women's Right Centre) brought against civil servants who acted in a negligent manner when informed about violence against women, were dismissed, as discussed under Article 1.

Recommendations

To promote and implement the extant regulations allowing for courts to order cessation of an activity which implies violation of human integrity, private and family life, and other personal rights, as well as the right to compensation of pecuniary and non-pecuniary damage inflicted upon a party.

The state should take all legislative or other the necessary measures to provide victims with adequate civil remedies against public authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 - Compensation

¹⁹¹ Art. 76 and Article 52 of the Law on Constitutional Court

As a result of litigation proceedings, violence victims may be awarded compensation for material and non-material damage. Compensation claim may be filed both within criminal and misdemeanor proceedings by virtue of a property claim either during the main hearing held before the first instance court, or until a decision on misdemeanor is issued. The property claim will be taken into consideration provided that it does not cause significant delays for the criminal proceedings.

In the course of misdemeanor procedure, the misdemeanor authority having territorial jurisdiction will inform the injured party that in case their evidence is still not sufficient for settling the property claim, the claim, in whole or in part, may become a subject of litigation proceedings. The victim, being an injured party, is under an obligation to put a designation on his/her claim and to submit evidence.

The courts commonly refer to the relevant provisions stating that property claims can be taken into account only if they do not cause significant delays in proceedings, and in most of the cases do not award compensation for property claims.

Montenegro has ratified the **European Convention on the Compensation of Victims of Violent Crimes**.

Montenegro has not established either a fund for compensation of damage inflicted upon victims of the criminal offences containing elements of violence, or the fund for compensation of damage inflicted upon women violence victims. However, ratification of the **European Convention on the Compensation of Victims of Violent Crimes** has set a legal basis for a new law which would guarantee the right to compensation of any damage suffered due to violent acts committed with wrongful intent. To that effect, the Government of Montenegro has enacted the Law on Compensation of Damage for Victims of Criminal Acts, implementation of which has been postponed, and which prescribes that a victim of a criminal offence committed with wrongful intent may be entitled to the following types of compensation: compensation of costs incurred due to loss of earnings, compensation of costs of health protection (costs of medical treatment and hospitalization) and compensation of costs of funeral. In the event that a criminal offence results in death of a victim, the right to compensation will be transferred to his/her dependent family members. Financial resources required for compensation payout will be allocated from the state budget. The Law will enter into force on the day Montenegro accedes to the European Union.

NGO Women's Right Centre has drafted a Proposal for Amending the Law on Compensation of Damage for Victims of Criminal Acts, which suggests that a self-sustaining Fund be established for compensation of the damage inflicted upon victims of criminal act. The Proposal also

suggests a shorter deadline for putting the Law into effect – 1 January 2019. The Proposal was drafted in cooperation with representatives of the Supreme Court, the Supreme Public Prosecutor's Office and the Office for Fight against Trafficking in Human Beings.

Shortcomings:

Although we do not have the exact statistical data in this respect, the experience of the female NGOs shows that victims of violence are rarely awarded compensation in the proceedings initiated before the Montenegrin courts.

Recommendations

The Law on Compensation of Damage for Victims of Criminal Acts should be amended by the end of 2018 so as to stipulate creation of a self-sustaining Fund for compensation of the damage inflicted upon victims of criminal act, in line with the Proposal submitted by the Women's Rights Center.

Article 31 Custody, visitation rights and safety

The Family Law addresses the issue of custody. When deciding in a custody dispute a court is under an obligation to act in the best interest of a child, and thus observe both national legislation and the UN Convention on the Rights of the Child¹⁹². Therefore, the Centre for Social Work should give the highest priority to the interest of a child, and when writing the report concerned and deciding whether a parent is capable of taking care of the child and maintaining a personal contact, they should take into account parents' violent behavior.

Furthermore, in line with the **Protocol on Actions, Prevention of and Protection against Family Violence**, centers for social work are obliged to ensure that a contact between children and the abusers is maintained within a controlled environment.

As defined by Amendments to the Family Law as of July 2016¹⁹³, when rendering a decision on granting a custody or maintenance of relations with other parent, the court will ensure that

192 Official Gazette SFRY – International Agreements, No. 15/90 and Official Gazette of SRY – International Agreements No. 4/96 i 2/97.

193 Law on Amendments to Family Law ("Official Gazette of MNE", No. 053/16).

granted custody or regular contact with other parent do not threaten safety of either a child or a victim.¹⁹⁴

Shortcomings:

Although parental violence when witnessed by a child may be said to constitute emotional abuse, this is not how this phenomenon is commonly perceived in practice. Even in those cases when partner violence is committed in the presence of a minor, centers for social work insist on a regular, uncontrolled contact between an abusive parent and a child, not taking into account the possible consequences and the subsequent risk.

This happens primarily because the legal provision does not recognize partner violence as legal grounds for deprivation/restriction of parental right.

Article 26 Protection and Support for Child Witnesses fully addresses the issue of children protection.

Recommendations

To promote and implement Family Law provisions which provide more details on granting a custody or maintenance of relations with other parent in a manner which does not question safety either of a minor or a victim.

Centers for social work, courts and professional staff in charge of assessing parenting competences should carefully examine the circumstances which indicate the existence of domestic violence. If they find out that one of the parents acts violently either towards other parent or a minor, or they find out that violence exists even though it has never been reported, they should render an appropriate custody decision which would ensure welfare and safety of a minor and a non-abusive parent.

Centers for social work should exercise more effective supervision over the relations between parents-perpetrators of violence and children and in case they find out that the abusive parent misuses his parental right, they should consequently initiate proceedings for restriction/deprivation of parental right, in line with their obligations stipulated by the Family Law.

¹⁹⁴ Art 363 para 4 Family Law

Article 32- Civil consequences of forced marriages

A marriage is entered into by consent of wills of a woman and a man, and it may therefore be annulled if a spouse has given such a consent due to the fear caused by force or a serious threat.¹⁹⁵ Annulment of marriage cannot be required if one year elapsed from the day when coercion ceased or when the misleading was noticed, and the spouses lived together during that time.¹⁹⁶ Annulment of marriage entered into under coercion or through misleading may be required only by a spouse who was forced or who consented to enter into the marriage after being misled. The proceeding is conducted by the rules for litigation proceedings, set out in the parts relating to Articles 29 and 30 of the Convention (burden of proof and costs incurred in the proceedings), whereby victims of forced marriages are not granted any privileges in the annulment process.

Shortcomings:

Since competent authorities in State Parties are supposed to conduct the annulment process without creating an additional financial burden for a victim, one comes to a conclusion that Montenegrin domestic legal framework has not been fully aligned with the Convention. **It is therefore necessary to consider the possibility for exempting these victims from paying court fees.**

Recommendations

To align Montenegrin legislation with the Convention standards and exempt forced marriages victims from paying court fees.

Article 33 - Psychological violence

As defined by criminal legislation of Montenegro, a criminal offence constitutes domestic violence insofar as it involves gross violence which may violate bodily and mental integrity of

¹⁹⁵ Art .49 of Family Law

¹⁹⁶ Art 53 of Family Law

other family members or members of a family community. When such an offence contains basic elements of a criminal act, the perpetrator is punished by a fine or a prison term up to one year.

The Criminal Code imposes punishments for other criminal offences, including coercion and endangering safety, which may be in direct relation with exertion of physical violence within a family context. In both cases the Criminal Code defines threat as an act which in the first case results in (unwanted) commission, omission or abiding, and in other case it is defined as endangering safety. Whereas the act of endangering safety entails a threat of attacking one's life, the act of coercion implies physical violence, of any kind, that may have led to a desired goal, which is a consequence of the act concerned. Punishment prescribed for the act of coercion is a prison term ranging from three months to three years. Anyone who commits the act of endangering safety is punished by a fine or a prison term up to one year.

According to the data provided in the **Statistical Yearbook for 2014**¹⁹⁷, 81 persons were reported for having committed the criminal offence of endangering safety (general safety of people and property), out of which number 93 percent persons were male. The total number of indictments brought in this year was 75, with 26 adults convicted in this year, whereas male persons constituted 86 percent of the total number.

According to the data provided in the **Statistical Yearbook for 2015**¹⁹⁸, 176 persons were reported for having committed the criminal offence of endangering safety (general safety of people and property), whereas 90 of them were known perpetrators. 90 percent of known perpetrators were male. The total number of indictments brought during this year was 60, 35 adult persons were convicted, whereas male persons constituted 86 percent of the total number.

Shortcomings:

The experience of local NGOs shows that domestic violence criminal proceedings are initiated only in the cases of gross physical violence, whereas other types of ruthless and offensive behavior rarely result in criminal proceedings, even in the cases when such behavior seriously affects mental health of a victim.

Recommendations

To align Montenegrin legislation with the Convention standards, it should introduce psychological violence which affects mental integrity as a distinct criminal offence.

¹⁹⁷ Statistical Yearbook for 2014, Statistical Office, MONSTAT, available at: <http://www.monstat.org/userfiles/file/publikacije/godisnjak%202014/GODISNJAK%202014.pdf>

¹⁹⁸ Statistical Yearbook for 2015, Statistical Office, MONSTAT, available at: http://www.monstat.org/cg/publikacije_page.php?id=1368

Article 34 - Stalking

Although Montenegrin legislation does recognize elements of stalking within criminal offences of endangering safety and coercion, in which part it adheres to the Convention standards, the definitions of criminal offences concerned do not address relevant pattern behavior, nature of continuous threats, stalking and intimidation

In 2015 female NGOs started an initiative for amending the Criminal Code and introducing the criminal offence concerned.¹⁹⁹ The 2017 Proposal Amending the Criminal Code has introduced the criminal act of stalking.

Shortcomings:

It is of vital importance to have uniform terminology which would be used in the context of domestic violence, therefore the word *body* should be replaced by phrases *bodily or mental integrity*. Fine cannot be considered an appropriate sanction to be imposed for this criminal offence.

Recommendations

To align Montenegrin legislation with the Convention standards and to criminalize stalking as a distinct criminal offence, both in the family context and beyond.

Article 35 – Physical violence

The Criminal Code of Montenegro criminalizes physical violence, both when it appears in the family context or elsewhere. Gross violence which may violate bodily and mental integrity of other family members or members of a family community is sanctioned as a fundamental form of criminal offence domestic violence. The criminal sanction imposed for this form of violence is a fine or a prison term up to one year. Furthermore, if the offence concerned is committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or for seriously impairing one's health the perpetrator is punished by a prison term from

¹⁹⁹ The Initiative available at: <http://www.potpisujem.org/cg/1236/amandmani-upuceni-poslanicama-za-izmjene-krivicnog-zakonodavstva>

three months to three years. When the act of gross violence results in a violation of bodily and mental integrity of family members, including minors, the perpetrator is punished by a prison term from one to five years. If the offence concerned results in the death of a family member or a member of family community the perpetrator is punished by a prison term from three to twelve years.

In respect of physical violence committed against women that are not considered family members, the Code recognizes criminal offences of serious bodily injury and minor bodily injury. The criminal offence can be said to constitute a serious bodily injury if a perpetrator causes a grievous bodily harm to his/her victim or seriously impairs his/her health, and the criminal sanction imposed for the primary form of the criminal offence is a prison term, from six months to five years.

If as a result of such a bodily injury one's life becomes endangered or any vital part of his/her body gets destroyed or permanently or considerably damaged or weakened, or the injured person's permanent inability to work or permanent and serious impairment of his health or deformation is caused, the perpetrator is punished by a prison term from one to eight years.

If the injured person has died as a result of the criminal offence concerned, the perpetrator is punished by a prison term from two to twelve years.

A person who inflicts a light bodily injury to other person or lightly impairs other person's health may be said to have committed a criminal offence of minor bodily injury. These offences are sanctioned by fine or a prison term up to one year. Where such an injury is inflicted by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injuries or seriously impairing health, the perpetrator is punished by a prison term of up to three years.

The analysis provided under Article 11 - Data Collection and Research contains relevant data on the number of judgements rendered in the cases of domestic violence, punishments most often imposed on the perpetrators, as well as other available data in this respect.

Shortcomings:

Lenient punishments, imposed even for the cases of gross physical violence, often come as a result of inefficient data collection procedure conducted by investigation bodies, and their failures to record the history of violence committed. As a rule, the victims do not report each violent act, and the police on their side do not submit all the recorded files to the prosecutor's office.

Recommendations:

All relevant information on the previous history of the case should be entered into a case file.

Criminal legislation should be amended so as to ensure adequate measures for protecting a victim in the course of criminal proceedings.

The system should encourage misdemeanor judges to give priority to those legal instruments which ensure safety of victims, including order of removal from place of residence or other premises. Medical treatments for substance abuse and psychosocial treatments must not be used as a replacement for the measures which are supposed to protect victim's safety.

Article 36 - Sexual violence, including rape

Rape²⁰⁰ is a criminal offence which implies forcing another into a sex act or other act of equivalent nature by using force or threatening to take life and harm the body of that or of other person, and this offence is punished by a prison term from two to ten years (paragraph 1).

When the offence under para. 1 was committed under a threat of revealing information about that or other person that would harm their honor or tarnish their reputation or by a threat of committing other grave wrong, the perpetrator will be punished by a prison term from one to eight years (paragraph 2).

Where as a result of the offences under paras 1 and 2 a serious bodily injury was inflicted on a person, or where the offence was committed by several persons in an especially cruel or especially degrading manner, or upon a juvenile, or where the offence resulted in pregnancy, the perpetrator will be punished by a prison term from three to fifteen years.

Where as a result of the offences under paras 1 and 2 the victim died or where the offence was committed upon a child, the perpetrator will be punished by a prison term for at least ten years.

Analysis of alignment of the legislative and strategic framework with the standards of the CoE Convention on preventing and combating violence against women and domestic violence²⁰¹

²⁰⁰ Art. 204 Criminal Code

²⁰¹ Analysis available at <http://www.potpisujem.org/cg/2437/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-crne-gore-sa-konvencijom-se-o-sprjecavanju-i-suzbijanju-nasilja-nad-zenama-i-nasilja-u-porodici>

provides legal definitions for the following criminal offences: sex act over helpless person²⁰², sex act over a child, sex act through abuse of position of authority²⁰³, unlawful sex acts²⁰⁴

Shortcomings:

According to legal definitions for criminal offences of rape and unlawful sex, use of force and threat are the constituent elements of these offences, and it is thus implied that a passive person offers physical resistance in these cases. Such an attempt to consider physical resistance when determining whether an act constitutes a criminal offence is not in line with Art 36 of the Convention.²⁰⁵

Furthermore, the Criminal Code does not recognize marital rape as a criminal offence. In 2016, Women's Safe House submitted the initiative for alignment of legislative framework with the Convention standards, thus suggesting that the criminal offence of rape without consent be introduced and the relevant law be amended so as to define the relevant circumstances of rape committed in a family context, including marital rape, which could therefore be qualified as a rape to be prosecuted ex officio.²⁰⁶ Likewise, in 2017, the Women's Rights Center submitted the Proposal Amending the Criminal Code, which required, among other things, for the definition of rape to be aligned with the Convention, however this Proposal was dismissed. Instead, the Ministry of Justice has introduced a criminal offence of privileged rape, which does not entail use of force and require more lenient punishments, such as a fine or a suspended sentence. The 2017 Draft of Law Amending Criminal Code does not criminalize the offence of marital rape.

Recommendations:

To change the extant definitions for criminal offences of rape and unlawful sex act, so as to omit force or threat as constituent elements of the offences, and include the element of non-consent;

To introduce the offence of rape committed in the family context, including marital rape as a classified form of rape;

²⁰² Art 205 Criminal Code

²⁰³ Art 207 Criminal Code

²⁰⁴ Art 208 Criminal Code

²⁰⁵ The relevant part of ECHR judgment in the case M.C. v. Bulgaria reads as follows: State parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; and to ensure that the use of measures against abuse, sexual assault and other forms of violence provide women with adequate and effective protection, while respecting their integrity and dignity, and sexual autonomy of each and every person; whereby relevant standards and obligations imposed on the State Parties under Articles 3 and 8 of the Convention must be interpreted as an obligation to punish and effectively prosecute each act that is committed without the consent of a victim, including even those cases when a victim does not offer physical resistance.

²⁰⁶ Initiative available at: <http://www.potpisujem.org/cg/2052/prosiriti-krug-zasticenih-lica-od-nasilja-u-porodici-i-uvesti-nove-oblike-krivicnog-djela-silovanja>

Article 37 – Forced marriage

Montenegrin legislation is only partly aligned with the standard provided under Article 37 of the Convention. Namely, if a marriage is concluded under force or threat, such a marriage will be declared void, and the perpetrator will be punished by a prison term from six months to five years²⁰⁷. The measures prescribed are not aligned with the established standard in that they do allow for prosecution to be undertaken only if the marriage concluded in the abovementioned manner has been declared void. Such a decision poses an additional burden on victims and **it would be advisable to reconsider its justifiability**.

Where a public official authorized to conclude marriages knowingly allows while acting in his official capacity the conclusion of a marriage which by law is prohibited or void, he will be punished by a prison term from three months to three years.²⁰⁸

In this context, the identified culpability may be based on the criminal offence of trafficking in persons.²⁰⁹ A person is considered to have committed the criminal offence of trafficking in persons if by use of force or threat, deceiving or keeping in deception, abuse of power, trust, dependence, position of vulnerability of another person, dispossession of personal documents or giving or receiving payments or other undue advantage to achieve the consent of a person having control over another person commits any of the following: recruits, transports, transfers, surrenders, sells, buys, mediates in sale, conceals or keeps another person for the purpose of exploitation of his labor, forced labor, submission to servitude, commission of criminal activity, prostitution or other type of sexual exploitation, beggary, exploitation for pornographic purposes, unlawful extraction of organs for transplantation, or for exploitation in armed conflicts. A criminal sanction imposed for this type of offence is a prison term from to ten years.

The abovementioned acts above will constitute criminal offences when committed against minors even where the perpetrator did not use force, threat or any other of the methods listed above.

²⁰⁷ Art 214, para. 2 Criminal Code

²⁰⁸ Art 215 Criminal Code

²⁰⁹ Art 444 Criminal Code

As stated in **the Strategy on Protection from Domestic Violence 2016-2020**, it is necessary to draft guidelines for acting in the cases of forced marriages concluded in Roma and Egyptian communities, for prosecuting these cases, and to share the guidelines with police, centers for social work, schools, courts and healthcare centers.

Shortcomings:

There are no official statistics on the number of forced marriages. Likewise, there is no available data on perpetrators or victims. The system for prevention and combating child marriages and forced marriages has not been developed.

According to the Study on the Obstacles to Education in Montenegro²¹⁰, Roma and Egyptian children enter into marriage at an early age. 20% of mothers in Roma and Egyptian families entered into marriage until age of fifteen, in contrast to the situation in the majority of other families where only 1% of mothers entered into marriage at that age.

According to the data presented by NGO Center for Roma Initiative, 21 forced marriages were reported in the period from 2012 to 2015. Three cases are currently pending before the Basic Court in Podgorica.

Recommendations

To ensure financial and human resources for undertaking necessary measures in the fight against child and forced marriages.

In cooperation with Roma and Egyptian non-governmental organizations engaged with the problem of forced marriages and those organizations engaged with the right of RE population, it would be advisable to draft guidelines for acting in the cases of forced marriages concluded in Roma and Egyptian communities and for prosecuting these cases, and distribute the guidelines to police, centers for social work, schools, courts, and healthcare centers.

To organize specialized programs with a view to training the staff of police, centers for social work, schools, courts and healthcare centers on how to provide adequate assistance and support for the victims of forced marriages.

²¹⁰ Study on Obstacles to Education in Montenegro: Roma and Egyptian Children, June 2013., UNICEF, IPSOS available at http://www.unicef.org/montenegro/Studija_UNICEF-za-web-cg.pdf

Article 38 – Female genital mutilation

The act of genital mutilation, which constitutes a criminal offence according to the Convention, has still not been criminalized in Montenegro. The Draft Amending Criminal Code introduces the criminal offence of genital mutilation.²¹¹

Extant criminal legislation allows for the perpetrators to be punished only for having committed the offence of serious bodily injury which may be a result of genital mutilation. It remains unknown whether any of the cases prosecuted primarily due to serious bodily injuries include the elements of genital mutilation.

Shortcomings:

The current Bill Amending the CC does not criminalize an attempt at conducting genital mutilation or assisting with such an act in the same manner it regulates the criminal offence of unlawful termination of pregnancy, and the sanctions prescribed for this offence are too lenient.

Recommendations:

The act of mutilation, as well as an attempt at conducting it or assisting with such an act should be criminalized and regulated in the same manner as the offence of unlawful termination of pregnancy.

More severe punishments should be prescribed for the cases when such an act is committed against a minor female (up to 18), when the act results in a death of a woman or her serious health impairment, or is committed against several women.

The sanction for this criminal act should be aligned with the sanction imposed for the act of permanent organ impairment referred to under para 2 of Article Serious bodily injury.

Article 39 – Forced abortion and forced sterilization

The act of forced abortion has been criminalized as the offence of unlawful termination of pregnancy²¹². Anyone who, in breach of the regulations governing the termination of pregnancy,

²¹¹ The Bill Amending Criminal Code of MNE available at : <http://www.paragraf.me/dnevne-vijesti/13012017/13012017-vijest5.html>

²¹² Article 150 Criminal Code

carries out an abortion with the pregnant woman's consent, starts carrying out an abortion or assists a pregnant woman in terminating her pregnancy will be considered to have committed the criminal offence concerned (para.1). The perpetrator is punished by a prison term from three months to three years. Anyone who carries out or starts carrying out an abortion without the consent of a pregnant woman and, where she is younger than eighteen, without her consent or a written agreement of her parent, adoptive parent or guardian will be punished by a prison term from one to eight years (para.2).

Where, due to the abovementioned acts, the woman subjected to abortion dies or her health is heavily impaired or another serious bodily injury is inflicted upon her, the perpetrator will be punished for the offence referred to in para. 1 above by a prison term from six months to six years and for the offence referred to in para. 2 above by a prison term from two to twelve years.

Forced sterilization, although not prescribed as a distinct criminal offence, is treated within the broader category of serious bodily injuries.

Shortcomings:

There are no official statistics on the number of forced abortions and forced sterilizations. The countries where the gender ratio is 108 male births to 100 female births are the countries with the widespread prenatal sex selection and greatest number of selective abortions. According to findings of relevant research, Montenegro is one of the four countries with the most serious disorder in the ratio between female and male births. Due to the widespread use of selective abortions over the previous 15 years, the number of women in reproductive period has decreased by three thousand. The number of abortions conducted on an annual basis is 1.4 thousand, but if the number of unregistered abortions²¹³ is included as well, the overall figure increases significantly. The Council of Europe asked for the information on prenatal sex selection, following the research conducted by UN Populations Fund (UNFPA: Sex imbalances at Birth), which indicates that in certain European countries prenatal sex selection is conducted in favor of male population. As indicated by the research findings, Montenegro is one of the countries which record the most serious disorder in the ratio between female and male births²¹⁴, together with Albania, Azerbaijan and Armenia. According to the data of the Statistical Office, this trend which favors male population has been thriving over years. In 2011, number of male births was

²¹³ "Miljanović: Selective abortions pose a great problem", Vijesti, 16/9./2014, available at: <http://www.vijesti.me/vijesti/miljanovic-selektivni-abortusi-su-veliki-problem-796109>

²¹⁴ "Authorities confirmed sex selective abortions because of the half of children population", Olivera Nikolić, Radio Slobodna Evropa, 13.12.2013, available at: <http://www.slobodnaevropa.org/content/vlasti-potvr-dile-zloupotrebe-u-prenatalnom-odabiru-pola-djece/25199877.html>

higher than the number of female births by 4%, in 2012 it was higher by 4.2%, in 2013, by 3.8%, in 2014 by 4.9%, and in 2015, the number of male births was higher by 4.7%.

The Draft Amending Criminal Code has introduced the criminal offence of forced sterilization²¹⁵.

Recommendations

To align Montenegrin legislation with the Convention standards and introduce the criminal offence of forced sterilization.

Efforts should be made towards raising awareness among the public and decreasing the number of sex selective abortions.

Article 40 – Sexual harassment

Shortcomings:

The Criminal Code of Montenegro does not criminalize sexual harassment. On the other hand, **the Law on Domestic Violence Protection** stipulates that violation of sexual integrity constitutes a form of domestic violence insofar as it has been committed among family members, whereby the degree of perpetrator's culpability is established within a misdemeanor procedure.

Within the **Antidiscrimination Law** harassment and sexual harassment are treated as distinct forms of discrimination, but only if the discrimination was done by a legal entity. Likewise, harassment and sexual harassment experienced at work or in relation to work are treated within **The Labour Law**²¹⁶ and the **Law on Prevention of Harassment at the Workplace**²¹⁷.

According to the Law on Prevention of Harassment at the Workplace this act is punished by a fine in the amount of EUR 500- do 10.000.²¹⁸

When compared with the Convention standards, which impose the obligation of criminalizing sexual harassment, the domestic legal framework is not fully aligned in this respect.

There are no official statistics on the number of judgements/cases related to offence of sexual harassment. Women's Safe House has filed a request for free access to information with all

215 Draft Amending Criminal Code of Montenegro available at: <http://www.paragraf.me/dnevne-vijesti/13012017/13012017-vijest5.html>

216 Official Gazette of Montenegro, Nos. 49/2008, 88/2009, 26/2009, 26/2010, 59/2011, 66/2012, 31/2014 i 53/2014.

217 Official Gazette of Montenegro, No. 30/2012.

218 Art 30 Law on Prevention of Harassment at the Workplace

misdemeanor authorities (17). According to the data covering the period from 01/01/2013 to 31/12/2014 competent misdemeanor authorities did not render any rulings in respect of a misdemeanor act of harassment and sexual harassment under Art. 8 of the Labor Law and Art. 30 the Law on Prevention of Harassment at the Workplace²¹⁹.

In the reporting period, local misdemeanor authorities in Nikšić and Podgorica rendered two final decisions each, all of them related to misdemeanors of violation of sexual integrity of a family member under Art.36 para.1 item 6 of the Law on Domestic Violence Protection. The rulings issued by misdemeanor authority Nikšić were not provided for insight, and it is therefore not possible to present information on punishments, perpetrators or victims. As for the ruling issued by the misdemeanor authority in Podgorica, the perpetrator, father-in-law of the injured party, was found guilty and was sentenced to a prison term of 30 days and a restraining order was imposed on him for the territory of Podgorica, which was effective for 6 months. As for the other procedure, conducted under Art. 36, para.1, item 6 of the Law on Domestic Violence Protection, at the misdemeanor authority in Podgorica, this procedure became time-barred and finally suspended in line with Article 135 paragraph 135 item 1 indent 9 of the Misdemeanor Law. Namely, the misdemeanor procedure was initiated upon request of Police Directorate, after it was found that the accused was violating sexual integrity of his wife by forcing her into a sexual intercourse.

Even the Draft Amending the Criminal Code does not criminalize sexual harassment²²⁰.

Recommendations:

To align Montenegrin legislation with the Convention standards and criminalize sexual harassment.

To amend the Antidiscrimination Law so that it recognizes physical entities as perpetrators of sexual harassment and imposes appropriate punishments.

²¹⁹ Local misdemeanor authorities in the following municipalities: Bijelo Polje, Herceg Novi and Rožaje did not respond to the request for free access to information within the prescribed statutory deadline..

²²⁰ Draft Amending Criminal Code of Montenegro available at: <http://www.paragraf.me/dnevne-vijesti/13012017/13012017-vijest5.html>

Article 41 – Aiding or abetting and attempt

Criminal Code of Montenegro establishes abetting²²¹ and aiding²²² to commit a criminal offence and in the commission of a criminal offence, as a separate criminal offence, in the following manner: Anyone who acts with wrongful intent to instigate another person to commit a criminal offence, i.e. who acts with wrongful intent to aid another in the commission of a criminal offence, will receive a punishment as if s/he committed the crime by himself/herself, and in case of aiding, will be punished as if s/he committed it himself/herself, but may receive a lighter punishment. Anyone who acts with wrongful intent to instigate another person to commit a criminal offence which carries five-year prison term or a more severe punishment, but does not even attempt commission will receive the punishment laid down by law for the attempted criminal offence. The application of the general rules on abetting and aiding encompasses all the offences stipulated by the Article 41, paragraph 1 of the Convention.

Shortcomings:

Criminal Code does not stipulate a punishment for each attempt, as it is prescribed by the Convention, but only when the offence carries five-year prison term or a more severe punishment, and for the attempt of other criminal offence, only when the law explicitly stipulates punishment even for the attempt. Based on this, it may be concluded that the legal framework of Montenegro is partially aligned with the Article 41 of the Convention.

As regards this criminal offence, we also consider that it is inappropriate for the stipulated penalty to be still so low, especially due to the fact that in the case law, there was a tendency to prosecute criminal offences of trafficking in human beings as per this Article of the Criminal Code of Montenegro. The Group of Experts of the Council of Europe (GRETA) reported thereof in their Report on the activities against trafficking in human beings in Montenegro.²²³

²²¹ Art. 24 of the Criminal Code.

²²² Art. 25 of the Criminal Code.

²²³ GRETA Report (The Group of Experts on Action against Trafficking in Human Beings Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Montenegro, GRETA(2012)9) p.40: „According to the prosecutors, the indictments as per two abovementioned Articles are less difficult to prove and, therefore, it is easier to pass verdicts based on them. As an example, so-called case „Afrodita“ was cited, which included two night clubs.“ The Report is available on the following link: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f72>; GRETA (2016)19 as of 28/09/2016 (p. 34, item 155) available on the following link: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a8d1e>

Apart from this, there were some examples of concluding Plea agreements (Agreements on the admission of guilt) between the Prosecution office and defendants for brokering prostitution, according to which the perpetrators of the mentioned offences, some of whom had been previously convicted of similar crimes, received monetary fine in the amounts whose payment did not present any problem for them.

Recommendation:

Align Montenegrin legal framework with the Article 41 of the Convention.

Stipulate more severe punishments and, apart from a prison term, impose monetary fines in the amount which will prevent perpetrators from reoffending.

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honor”

The court will fix the punishment for the perpetrator of a criminal offence within the statutory limits for that particular offence, taking into account the purpose of the punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances), in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected good, circumstances under which the offence was committed, perpetrator’s history, his/her personal situation, his/her behavior after the commission of criminal offence, particularly his/her attitude towards the victim of the criminal offence, as well as any other circumstances concerning the perpetrator’s personality.²²⁴ Simultaneously, where the offence was committed out of hatred toward racial and religious affiliation, national or ethnic affiliation, gender, sexual orientation or gender identity of another person, the Law stipulates that the court will deem such a factor as an aggravating circumstance, unless it was stipulated as an element of a basic or more severe form of a criminal offence.

Therefore, it may be concluded that culture and religion are not specifically mentioned as circumstances, taking into account that the list of aggravating and mitigating circumstances is open. However, culture, customs, religion, tradition or any other personal reason may not be

²²⁴ Art. 41 of the Criminal Code.

considered as a legally relevant justification for such offences, which would in any manner affect the criminal or other type of liability of the perpetrator of violence.

Liability for criminal offence of a person who instigates a child to perpetrate any of the above mentioned acts of violence against women and domestic violence is not reduced. **Criminal Code** defines a criminal offence – abetting (instigation) in a general sense, which certainly may include the aforementioned instigation of a minor to perpetrate violence.

Shortcomings:

It often happens in practice that the fact that a perpetrator of a criminal offence of domestic violence is “a family man” or that he is in unfavorable financial position, is considered as a mitigating circumstance for him. Additionally, the system often does not recognize children as witnesses of violence, and it is not uncommon that the presence of children during the act of violence is not treated as an aggravating circumstance.

There is a well-known case when a husband beat up his minor wife, inflicting 28 strokes on her, due to which she suffered intensive pains, and thereafter she died. Originally, this case was qualified as grave murder and, afterwards, the indictment was modified and the act was qualified as domestic violence, which implies considerably lighter sentence – from two to 12 years in prison. The perpetrator received a prison term lasting only eight years²²⁵.

Recommendation:

- *The abovementioned practice ought to be changed and prosecutors and judges ought to be sensitized in relation to the topic of violence against women and domestic violence.*

Article 43 – Application of criminal offences

The relationship between victim and perpetrator will not affect the existence of a criminal offence.

²²⁵ Newspaper text, Portal “Vijesti”: <http://www.vijesti.me/vijesti/svirepo-ubistvo-vise-ne-pominju-berisa-odgovora-za-nasilje-u-porodici-838554>

Shortcomings: However, some criminal offences still contain privileges for perpetrators who are family members, e.g. lighter sentences for domestic violence in relation to the penalties for violence committed in a public area, as well as the fact that the burden of proof of a criminal offence lies on a victim. Thereby, the legislator sends the message that violent acts committed against family members are less serious than publicly committed criminal offences.

Recommendation:

- *Strengthen penal policy for domestic violence.*

Article 44 – Jurisdiction

Criminal Code of Montenegro proclaims territorial principle of applicability of the criminal legislation of Montenegro. It will be applied to anyone who commits a criminal offence in its territory (including an offence perpetrated on board of a domestic ship, on a domestic civil aircraft or on a domestic military aircraft, regardless of where the aircraft was located at the time of commission of a criminal offence), irrespective of the citizenship of the perpetrator of a criminal offence.²²⁶ There are certain exceptions to the principle of territoriality, as follows: in case where prosecution of a foreign national, who perpetrated an offence in the Montenegrin territory, may be referred, under the condition of reciprocity, to a foreign country and where the criminal proceedings were instituted or completed in a foreign country, prosecution in Montenegro will be instituted only upon approval of the Supreme State Prosecutor of Montenegro.²²⁷

Criminal Code also recognizes a personal principle, which broadens the application of the domestic legislation to the Montenegrin nationals also in cases where they commit a criminal offence abroad, provided that they are found in the territory of Montenegro or get extradited to Montenegro²²⁸.

Prosecution will be instituted under no circumstances if, among other, under a foreign law, such criminal offence is prosecuted upon request of the injured party, and such a request has not been filed.²²⁹ Moreover, prosecution will be instituted only where the criminal offence in question is

226 Art. 134 of the Criminal Code.

227 Art. 138, para. 1 and 2 of the Criminal Code.

228 Art. 136 of the Criminal Code.

229 Art. 138, para. 3, indent 4 of the Criminal Code.

also punishable under the law of the country where the offence was committed, and in the contrary, prosecution will be instituted solely upon the approval of the Supreme State Prosecutor.²³⁰

Recommendation:

It is necessary to derogate the limitations of the Criminal Code that are in contravention with the Article 44, paragraphs 3 and 4 of the Convention.

Article 45 – Sanctions and measures

Shortcomings:

Sanctions laid down for criminal offences stipulated by the Convention may be considered inadequate for the majority of offences, having in mind the international and regional recommendations stating that criminal offences including domestic violence should be more severely sanctioned than similar crimes committed outside of a family context.²³¹ Penalties are, mostly, lesser than or equal to the penalties imposed for the criminal offences perpetrated outside of the family context. For example, if the use of grave violence resulted in a heavy bodily injury or serious disturbance of health of a family member or a member of a family community, it will be punished by five-year prison term, which is the maximum stipulated for the criminal offence – serious bodily injury (aggravated assault)²³².

In the period 2010-2015, misdemeanor courts passed 982 verdicts of release, rejecting 41 cases out of the total number of 5.015 cases, i.e. 19,6% of all cases. The following sentences were imposed: 1.428 fines (33,10%), 378 prison sentences (8,76%), 480 suspended sentences (11,12%), 414 reprimands (9,59%), 28 correctional and disciplinary measures (0,64%). In 223 cases, procedure was suspended (5,17%), while in 35 cases – a motion for instituting proceedings was rejected (0,81%), and in 982 cases a verdict of release was passed (22,76%).²³³ Orders of protection: removal from place of residence or other premises ('removal from

²³⁰Art. 138, para. 4 of the Criminal Code.

²³¹See UN Women Virtual Knowledge Centre to End Violence against Women and Girls, available on <http://www.endvawnow.org/en/articles/445-criminal-sanctions-and-sentencing-provisions-.html>.

²³² Minimum sentence is six months in case of domestic violence.

²³³Data acquired from the Report on Implementation of the Law on Domestic Violence Protection for the period from 2010 until 2011, Ministry of Justice, Podgorica, September 2016.

residence'), restraining order, as well as prohibition of harassment and stalking were imposed in only 17% cases, which were maintained before the misdemeanor courts from 2010 until 2015.

The tendency of imposing fines and suspended sentences was noticed, and there are significant number of verdicts of abandonment and verdicts of release. We are of the opinion that such a penalty policy brings into question the purpose of reporting violence and general prevention, i.e. preventing perpetrators from reoffending. Soft penalty policy indicates that the meaning and importance of domestic violence problem is not recognized at institutional level.

Montenegrin legislative framework does not stipulate the possibility of surveillance and monitoring of convicted persons after the served prison sentence. Exceptionally, the normative framework only defines that the Probation Department performs control of implementation of orders of protection – restraining order, removal from place of residence or other premises ('removal from residence'), and enforcement of prison sentence in the place (premises) of residence of convicted person.²³⁴

Orders of protection

The Court will impose an order of protection to the perpetrator of a criminal offence against sexual freedom, criminal act of domestic violence or violence in a family community, criminal offence of incest or some other crime jeopardizing the life or body of a person – restraining order in relation to a victim or other person or a group of persons or a certain place when there is a risk that the perpetrator could repeat the same criminal offence or crime of the same character toward the mentioned persons or at the mentioned place. Duration of this order cannot be shorter than one year or longer than five years, starting as of the day of the finality of the decision. The Court will impose an order of protection on the perpetrator of a criminal offence of domestic violence or violence in a family community - removal from place of residence or other premises ('removal from residence'), if there is a risk that the perpetrator could reoffend. The Court will impose an order that cannot last shorter than three months or longer than three years, starting as of the day of the finality of the decision. The time spent in prison will not be calculated in the time of duration of any of these orders. Monitoring of these orders is also entrusted to the Probation Department.

234Art. 152, para.2, item 3 and Art. 153, para. 2, item 3 of the Law on Enforcement of Prison Sentences, Fines and Orders of Protection.

Shortcomings

Orders of protection may be imposed only upon the finality of court judgment. In practice, the courts do not impose such orders and prosecutors do not propose them.

There is no clear legal basis that would ensure the consideration of a risk for safety and security of a victim implied in other decisions, such as decision on guardianship, but this is a discretionary authorization of the court.

Women's non-governmental organizations filed an initiative in 2015 for changes and amendments of the Criminal Code in terms of intensifying penalty policy²³⁵, and the same proposal was submitted to the Ministry of Justice on the basis of the invitation to the public discussion on the Draft Law on changes and amendments to the Criminal Code.²³⁶ The Ministry of Justice did not adopt the proposals of the non-governmental organizations.

We are of the opinion that the sanctions, even those proposed by the Changes and amendments to the Criminal Code, are still the lowest ones in the region and in Europe for this criminal offence. The fact that the possibility of a fine still remained, as is the case with misdemeanors, and that a higher degree of violence than the one stipulated for a minor offence liability is required, sends a message to the perpetrators of domestic violence that they will be privileged if they commit this offence, by means of which the sanction also loses its preventive purpose. The experience of domestic violence victims shows that actually they are the ones who pay the fines imposed on the perpetrators, as well as that the financial consequences of the fines are suffered by the victims – most often women and children. In this manner, additional damage is incurred to the victims and children, given that the mentioned fine directly impacts their existence, which discourages the victims to report new incidents of violence. We consider that, also in case of more serious forms of this criminal offence, sanctions need to be aligned with the sanctions stipulated for the criminal offence serious bodily injury (aggravated assault) and that the perpetrators of domestic violence must not be privileged through lighter sanctions, due to the fact that they do not commit a criminal offence against unknown persons, but against the members of their own family.

235 Initiative available on <http://www.potpisujem.org/cg/1236/amandmani-upuceni-poslanicama-za-izmjene-krivnog-zakonodavstva>

236 Report from the public discussion available on http://www.pravda.gov.me/rubrike/Javna_rasprava/169968/Izvjestaj-sa-javne-rasprave-povodom-Nacrta-zakona-o-izmjename-i-dopunama-Krivnog-zakonika-Crne-Gore.html

Recommendations

Intensify penalties for criminal offences of domestic violence in relation to the same criminal offences committed outside of family environment.

Collect information actively on the history of violence in all domestic violence cases, about previous formal charges or verdicts, be it a minor offence or a criminal offence and about orders of protection.

Avoid suspended sentences that put victims in the risk of further violence, as well as fines that economically jeopardize the victims sharing joint financial means with the perpetrators in domestic violence cases. Judges should place priority on prison sentences that should be higher in cases of a repeated violence.

Inform the parties about the orders of protection and prioritize the issuance of the orders of protection (Articles 77a and 77b of the Criminal Code) to the maximum allowed period as per the law.

Article 46 – Aggravating circumstances

The circumstances contained in the Article 46 of Istanbul Convention are mainly incorporated in the national criminal legislation. The part of the mentioned circumstances, in the largest number of the incriminated criminal offences, represent the elements of more serious forms of criminal acts, while, on the other hand, other circumstances may be treated as aggravating circumstances that the court must take into account when determining a sentence. Thus, for example, the fact that the perpetrator had previously been convicted, especially of an offence of a similar nature, will be deemed in each particular case and it will represent an aggravating circumstance, although it is not explicitly stated in the law.

Shortcomings:

Records of prior convictions in criminal proceedings are not accessible for misdemeanor courts.

Recommendation

It is necessary to upgrade and link the records from misdemeanor and criminal proceedings, so that information on prior convictions would be accessible also to misdemeanor judges, as well as judges in criminal cases and family disputes.

Article 47 – Sentences passed by another Party

Although the obligation of the court to obtain data on prior convictions of a person against whom proceedings are instituted before the competent authorities abroad is not explicitly stipulated, the criminal law normative framework enables for the court to deem the prior convictions of the perpetrator before the foreign court of the member states to the Convention as well, when determining and weighing sentences for criminal offences.

Shortcomings:

In practice, however, prior convictions verification (as aggravating circumstance) of native citizens is reduced to the verification of the decisions of national courts, while for foreign citizens, excerpt from the criminal records of their state of origin is rarely obtained, but the court relies on the statement of the accused person instead.

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

Apart from the principle of opportunity (the institute of postponing prosecution of a crime) and plea bargaining, **the Criminal Procedure Code** does not recognize any other form of alternative dispute resolution in the cases stipulated by the Convention. Basic state prosecutors have a statutory option to implement the institute of postponing criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender's past and personal attributes.

Institute of postponed criminal prosecution in fact represents the manner of „non-instituting“ criminal proceedings, with the fulfillment of certain obligations by the suspect.

Montenegrin legislation offers a possibility of concluding Agreement on the admission of guilt for criminal offences punishable by a prison term up to 10 years.²³⁷ The injured party will be informed on the hearing when the Agreement on the admission of guilt will be considered. Also, the injured party will be entitled to file an appeal to the decision on the adoption of the Agreement on the admission of guilt.²³⁸ Apart from this, one of the conditions for the adoption of the Agreement on the admission of guilt is the prior establishment that such an Agreement does not violate the rights of the injured party.²³⁹ In this manner, the observance of the rights of the

237 Art. 300 of the Criminal Procedure Code.

238 Art. 302, para. 10 of the Criminal Procedure Code.

239 Art. 302, para. 8, indent 4 of the Criminal Procedure Code.

injured party is ensured to a certain extent, when it comes to this type of alternative sentence determining, as well.

Legal framework of Montenegro is aligned with the Article 48 of the Convention in the segment of the Family Law, where brokering in violence cases included in the Convention is prohibited. On the other hand, non-alignment still exists in the criminal frameworks.

Shortcomings:

Standard prescribed by this Article of the Convention is not consistently incorporated in the national legislation.

Although the rights of a victim of criminal offence are somewhat respected through the application of the postponed criminal prosecution institute, by means of postponing the prosecution, the perpetrator remains unpunished, i.e. not registered in the criminal records. Hence, the question is, if s/he reoffends, in which manner the state authorities realistically estimate a social risk and determine adequate sanction.

The experience of non-governmental organizations shows that mediation is still applied in domestic violence cases.

Recommendations

Limit the application of the institute of postponed criminal prosecution and Agreement on the admission of guilt when it comes to the criminal offences of domestic violence;

It is necessary to explicitly regulate the duty of the court to assess the material position of a victim and possible negative consequences on the victim on the occasion of pronouncing the sentence.

Request that all mediators be trained about domestic violence.

Cease the practice of mediation and reconciliation in domestic violence cases.

Abolish successful mediation as the condition for the receipt of mediator's fee.

IV - INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES

Article 49 – General obligations

General principle of a prompt trial is defined in the Article 15 of the **Criminal Procedure Code**. The court will be obliged to conduct the proceedings without delays and to prevent all abuses of rights that are vested in participants in the proceedings. Exceptionally, the duty of all public authorities participating in the criminal proceedings and authorities providing legal aid to them is stipulated to act with a particular urgency, if the accused is in detention. However, for the purpose of a more efficient conducting of criminal proceedings, **the Criminal Procedure Code** recognizes the institute of a shortened procedure, which may be conducted for offences punishable by a fine or prison term up to 5 years.

Law on Domestic Violence Protection explicitly stipulates urgent acting of the authorities, as well as the **Protocol on Actions, Prevention of and Protection against Domestic Violence**.

Shortcomings:

National legal framework is not completely aligned with the Convention in this segment.

According to the data of the Judicial Council for the year of 2015, the average duration of the court procedure for a criminal offence of domestic violence or violence in a family community, as per the Article 220 of the Criminal Code, amounted to 179 days, i.e. around 6 months.

Recommendations

Align domestic legal framework with the Convention in the segment of urgent acting of the authorities in domestic violence cases in criminal proceedings, as it is regulated by the Law on Domestic Violence Protection in misdemeanor cases.

Harmonize laws in the segment especially related to victims of gender-based violence in the manner stipulated by the Convention.

Article 50 – Immediate response, prevention and protection

Criminal Procedure Code contains general provisions applicable regardless of a concrete criminal offence, in accordance with which the police have a number of authorizations and duties. Namely, if there is a reasonable suspicion that a criminal offence prosecuted ex officio

has been committed, the police authorities will notify the competent State Prosecutor and, upon their own initiative or upon the request of the competent State Prosecutor, undertake the necessary measures to find the perpetrator of a criminal offence, so that the perpetrator or accomplice would not hide or run away, reveal and secure the traces of the criminal offence and objects that may serve as evidence, as well as collect all notifications which can be useful for successful conducting of criminal proceedings. Also, police officers may deprive of liberty a person caught in the act of committing a criminal offence or if there are grounds for detention (such as, for example, danger from reoffending, influence on witnesses). Apart from this, an authorized police officer may enter another person's dwelling or other premises without a search warrant and, if necessary, carry out the search, provided that the tenant so requires or if it is necessary or for the purpose of preventing the commission of a criminal offence or outright capturing a criminal offender or for the purpose of saving people and property. Also, authorized police employees may, without a search warrant and without the presence of witnesses, carry out a search of persons when enforcing a warrant on compulsory apprehension or when depriving of liberty, if suspicion exists that the person owns weapons or dangerous tools, or if suspicion exists that the person would reject, hide or destroy the objects that need to be taken from him/her as evidence in a criminal procedure.

As an addition to the general provisions of the Criminal Procedure Code, **the Protocol on Actions, Prevention of and Protection against Domestic Violence** contains the concrete principles of work and acting in domestic violence cases. In case of (denunciation) learning of domestic violence, the police authorities are obliged to send urgently and without delay minimum two police officers to the actual scene, preferably a male-female couple of officers, in order to check the quotes from denunciation, but often it is not possible to observe this minimum standard due to a low number of women in the police. The Protocol stipulates that, when entering the place of residence and other premises, the police will be obliged to take the position that prevents contact between the victim of violence and the abuser, to secure the scene of the offense, to keep the abuser under constant supervision. When interviewing the victim, the abuser must not be present in the same room. It is necessary to engage in an undisturbed interview with the victim in a separate room and obtain the necessary data on the possible need to ensure medical assistance, to inform the victim about his/her rights (to choose a confidant, free legal aid, shelter...), to inform the victim about the possibility to go to the shelter, and if necessary, take the victim to the shelter and simply inform the relevant institutions about that fact, without revealing that information to the abuser or other family members. If necessary, and based on the wish of the victim of violence, assist the victim and escort him/her to a safe place chosen by the

victim. Finally, the police will be obliged to conduct field verification of the family in regular intervals in the course of six months, and if necessary more often within a longer period and to prepare the risk analysis for the abuser. It is very important that the police observe all the mentioned steps given that the quality of the victims' protection in the field depends on their assessment. It is equally important that the police officers compose as detailed reports on the found situation as possible, given the fact that the trial is based on material evidence and statements of the actors in the event. Reports in the proceedings may be of crucial importance, taking into account that victims in the proceedings often use their statutory right not to testify.

Criminal Code offers the possibility of imposing order of protection on the perpetrator of a criminal offence of domestic violence or violence in a family community – **restraining order and/or order of removal from place of residence or other premises**, upon the finality of the court decision. In the scope of the protection provided by misdemeanor authorities, **the Law on Domestic Violence Protection** stipulates the orders of protection: order of removal from place of residence or other premises ('removal from residence'); restraining order; prohibition of harassment and stalking; mandatory addiction treatment and mandatory psycho-social therapy. The orders of protection: order of removal from place of residence or other premises ('removal from residence'), restraining order, prohibition of harassment and stalking of the victim are performed by the organizational unit of the Police Directorate, on whose territory the permanent, i.e. temporary place of residence of the victim is situated. The Head of the organizational unit designates a police officer who will manage the enforcement of the order of protection. The police officer managing the enforcement of the order of protection, based on the notifications by the competent authorities and institutions, data from the records, kept by the Police Directorate as per the law, and information gathered from the victim and persons from his/her working and life environment, prepares the risk assessment for the victim, containing the data on abuser, his/her reporting and behavior after imposing the order of protection and, if the order of protection was imposed on him/her previously, data on the victim and his/her behavior after imposing the order of protection and assessment of the abuser's and victim's conduct during the period of the order of protection. Based on the assessment, the police officer managing the enforcement of the order of protection, with the consent of immediate supervisor or a person designated by the supervisor, adopts the Plan of enforcement of the order of protection. The Plan of enforcement of the order of protection contains, among other things, data on measures and actions that will be conducted during the order of protection, police officers designated for implementation of the measures and activities with the deadlines for completion, boundaries of places or areas for enforcement of the order of protection, the manner of acquainting other police

officers with the order of protection and the plan for its enforcement. The police will be obliged to acquaint the victim of violence with the order of protection implying removal or approximation of the abuser, with the facts implied under harassment, as well as with the telephone number of the police officer in charge of enforcing the mentioned orders of protection.

Shortcomings:

Although there is a legal framework aligned with the standards from the Convention, their consistent application in practice is lacking and, therefore, it is necessary to undertake measures aimed at improving their implementation. This was mentioned in the scope of the Article 5– State obligations and due diligence.

Women’s non-governmental organizations possess numerous testimonies of women who stated that police officers, instead of arriving to the scene upon denunciation, requested from them to come to the police station and lodge a complaint.

Judicial authorities are obliged to secure a victim of violence when coming to the court, and allocate special premises for the victim of violence until the moment of giving a statement (separate the victim physically from the abuser). **However, separation of the victim from the abuser is not realized in practice due to the limited capacities of the courts.**

Soft penalty policy and high degree of impunity of the perpetrators of violence

According to the data of the Judicial Council,²⁴⁰ in 2015 the courts in Montenegro were processing 228 cases due to the criminal offence of domestic violence or violence in a family community as per the Article 220 of the Criminal Code. Out of this total number, 142 cases were finalized, with 128 convictions. Termination or suspension was registered in two (2) cases, while the verdicts of release were passed in six (6) cases. In 2016 the courts in Montenegro were processing 249 cases due to the criminal offence of domestic violence or violence in a family community as per the Article 220 of the Criminal Code, which is by circa 9% more in relation to the previous year. 181 cases were finalized, out of which 167 cases with convictions, while the verdicts of release were passed in six (6) cases, and the procedure was terminated or suspended in four (4) cases. **The type of imposed sentences that do not ensure the security and safety of victims is concerning, given that in 64% cases those were suspended sentences, community work sentences and fines.**

According to the data of the High misdemeanor court of Montenegro, in 2015 misdemeanor courts were processing 1.717 cases in total, out of which 1.090 were finalized. The mentioned

²⁴⁰ Available on http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

cases were finalized with the following being imposed: 334 fines, 75 prison sentences, 148 suspended sentences, 74 reprimands, eight (8) correctional measures, the motion was rejected in six (6) cases, the procedure was suspended in 74 cases, while the verdict of release was passed in 279 cases. In 2016, misdemeanor courts were processing 2.073 cases due to violations of the Law on Domestic Violence Protection. In total, 1.573 or 75,88% cases were finalized. The mentioned cases were finalized with the following being imposed: 489 fines; 107 prison sentences; 177 suspended sentences; 94 reprimands; 9 correctional measures; the motion was rejected in 33 cases; the procedure was suspended in 104 cases; the verdict of release was passed in 489 cases, while 71 cases were resolved in a different manner. **In misdemeanor courts, there were less than 60% of convictions, which means that almost half of the processed complaints resulted in verdicts of release, which is very concerning. The fact that in 90% convictions, a reprimand, a fine or a suspended sentence was imposed on the abuser causes additional concern. The mentioned case laws do not send a message that in any segment encourages and empowers domestic violence victims, but on the contrary contributes to maintaining the attitude that domestic violence is not a social problem.**

According to the data of the Judicial Council for 2015, there were 114 women and 17 men, 12 minors, as well as four (4) persons over the age of 65 in the capacity of injured party in the criminal offence of domestic violence and violence in a family community. Misdemeanor Council states that in 2015, there were 1.228 or 92,53% adults who were the victims of violence, out of which 824 or 67,10% female victims and 404 or 32,89% male victims. There were 99 or 7,46% minors who were the victims of violence, out of which 52 or 52,52% male victims and 47 or 47,47% female victims. It is positive that the official data of the institutions are more often presented as gender-disaggregated data. By the analysis of these data, the information is obtained that in the criminal proceedings, men are victims in 12% cases, while this percent is considerably higher in misdemeanor cases and it amounts to almost 33%. There are no reliable data on the causes of this imbalance. **Increasingly often, women's NGOs face so-called counter complaints in practice, which men, as the abusers, file after the procedure is instituted against them, and the results are often convictions, given the fact that the institutions of the system do not recognize who is the primary aggressor. Taking into account that the counter complaints are processed in the scope of misdemeanor proceedings, it may be assumed that they are one of the reasons for a high percent of male victims in the misdemeanor courts.**

Weak monitoring of the orders of protection by the police

Apart from the fact that the orders of protection are not sufficiently imposed, the police fail to conduct monitoring of the observance of the orders of protection in practice and to be proactive in informing the State prosecution service in case of their non-observance.

According to the data of the Women's Safe House which sent the request for free access to information to all Basic courts (15) for submitting of all final judgments passed in period from 01/01/2013 until 31/12/2014, regarding a criminal offence of domestic violence or violence in a family community and violation of the orders of protection²⁴¹. Since the Basic court in Podgorica, which has the highest number of cases, did not respond to the request, a general conclusion about the degree of sentence and the procedure itself can not be reached. As regards 14 Basic courts that submitted the required information, only 3 procedures related to the violation of the orders of protection were processed before them. The passed judgments are convictions, including two suspended sentences lasting one year each, i.e. one year and six months, under the threat of a prison sentence, and one imposed order of protection – extramural mandatory psychiatric treatment in duration not longer than 3 years. Two persons were men, the former marital partners of the injured parties and one person was a woman, mother and sister of the injured parties. The Women's Safe House sent the request for free access to information to all misdemeanor courts in Montenegro (17) and according to the obtained data for the period from 01/01/2013 until 31/12/2014, not one decision was passed regarding the liability for the abuser's non-observance of the police's order for removal from or ban of return to the place of residence or other premises.

Recommendations:

Provide a reliable mechanism for monitoring the implementation of the obligations defined by the Protocol by the officers of all institutions.

It is necessary to enable regular monitoring of the enforcement of suspended sentences and orders of protection, and in cases of non-observance, it is necessary to initiate the procedure for revocation of the suspended sentence without delay, i.e. to institute criminal proceedings due to the non-observance of the orders of protection.

Establish the practice of pronouncing judgments that are above the legal minimum.

Improve technical and spatial capacities of the courts.

Prosecutors should undertake a more active role in judicial investigation in the cases of violence against women and domestic violence and they should ensure fast collection of all available evidence, including witnesses' testimonies.

241 Paragraph 5 of the Criminal Code of Montenegro, Article 220.

*The practice of cases' termination when a victim abandons testifying should cease and the provision of the Criminal Procedure Code should be applied, binding the authorities conducting the proceedings to warn the witnesses that it will be possible to use their statement, if they decide to testify, as evidence, regardless of their later decision, as well as to enter the warning and response in the record*²⁴².

The safety of victims should be in focus of all institutions' acting, the prosecutors and judges should inform the victims about the types of the orders of protection that are available to them.

Undertake measures in order to ensure fast and efficient police investigation, inclusive of fast collection of all available evidence, including photographs and medical documentation in relation to the injuries suffered by the victim.

Article 51 – Risk assessment and risk management

In case of domestic violence, the **Protocol on Actions, Prevention of and Protection against Domestic Violence** instructs the police to prepare risk analysis for the abuser. Also, the Center for Social Work will be obliged to prepare the risk assessment and an individual protection plan for the victim. Indicators of the risk of violence are not defined in either case. **The Protocol** stipulates the obligation of the police to establish circumstances of possible possession of weapons and to take all legal actions to seize it, regardless of the fact whether it is legal or illegal possession of weapons.

Also, **Rulebook on More Detailed Manner of Enforcing Order of Removal from Place of Residence, Restraining Order and Prohibition of Harassment and Stalking**, instructs the police officer who leads the enforcement of the orders of protection to prepare the risk assessment for the victim, which will further serve as the basis for the preparation of the plan of the enforcement of measures.

Shortcomings:

Women's NGOs dealing with the protection of women and children against domestic violence do not possess information whether the abovementioned is observed in practice. Monitoring of NGOs demonstrated that the institutions do not conduct risk assessment, although appropriate questionnaires/protocols for such an assessment were established in the Centers for Social Work. This issue poses an obstacle for an efficient protection of victims and violence protection to a significant degree.

²⁴² Article 109 , paragraph 3 of the Criminal Procedure Code.

SOS telephone Nikšić which maintains a national, free SOS line for domestic violence victims provided information for the period from 01/09/2015 - 01/04/2017 that in 1 out of 4 denunciations of suspicion that the abuser possessed weapons, the police officers did not undertake any actions in order to check the quotes of the denunciation²⁴³. In one case in the period from 15 September 2015 – 15 November 2015, SOS telephone Nikšić informed the Security Centers in several Montenegrin towns about the fact that the abuser possessed weapons (a rifle, bombs and a dynamite) and that he threatened to murder his wife and children, along with her family. Due to inefficient acting of the police services, the weapons were not found and it resulted in the use of the mentioned weapons by the abuser due to which one person lost life, two persons were injured and two minor children witnessed murder and attempted murder. NGO SOS Nikšić, Women's Safe House and Center for Women's Rights filed criminal charges in November 2016, against the officers of the Security Centers, Centers for Social Work and Basic state prosecution offices due to the criminal offences defined in the Article 416 and Article 417 of the Criminal Code of Montenegro.²⁴⁴ (Elaborated in more detail in the Article 5)

Recommendations:

Establish adequate protocols for performing risk assessments in the institutions that do not have them and establish an efficient mechanism for monitoring the enforcement of this measure.

Ensure consistent implementation of the police's obligation to establish possible possession of weapons as per each denunciation of domestic violence.

Article 52 – Emergency barring orders

Competent authorities and institutions are obliged to act urgently in the proceedings related to domestic violence protection, taking care that the interest and well-being of the victim are the priority in such proceedings, particularly if the victim is a child, older (elderly) person, a person with disability and a person not capable of taking care of himself/herself.²⁴⁵ The legislator

²⁴³ Available in the Archive of SOS telephone for women and children victims of violence Nikšić /national SOS line for domestic violence victims.

²⁴⁴ Article 416 of the Criminal Code of Montenegro – criminal offence of misuse of office, Article 417 of the Criminal Code of Montenegro – criminal offence of malpractice in office.

²⁴⁵ In the original in English language, this Article reads as follows: „Parties will take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient

stipulated that such services should be provided 24 hours a day. After learning about violence, the police will be obliged to undertake measures to protect a victim without delay, in accordance with the **Law on Domestic Violence Protection** and the laws regulating the work and authorizations of the police²⁴⁶, misdemeanor proceedings²⁴⁷ and criminal proceedings²⁴⁸. Legal authorizations of the police involve safeguarding of life and health of the victim of violence, arresting the perpetrators of violence, filing a request for determining order of protection, instituting misdemeanor proceedings, filing a criminal charge, and in case of the criminal offence of domestic violence or violence in a family community²⁴⁹, informing the Center for Social Work, notifying the appropriate medical institution for the purpose of providing medical assistance, etc.

Police officer may, for the purpose of eliminating risk for physical integrity of the victim, order to the perpetrator of violence **the removal from or prohibition of return to the place of residence or other premises**, which cannot last longer than three days²⁵⁰. Written order of the removal from or prohibition of return to the place of residence or other premises must be delivered by the police officer to the perpetrator of violence and victim without delay, and within two hours at the latest, in the presence of an adult who may be another police officer, but not a family member. The written order must contain: day and hour of the removal from or prohibition of return to the place of residence or other premises, boundaries of the area within which the perpetrator of violence must not move, reside or approach the victim and address of residence of the perpetrator of violence during the removal or prohibition of return.²⁵¹ When leaving the place of residence or other premises, the perpetrator of violence is entitled to take his/her personal belongings necessary for daily life and is obliged to deliver to the police officer the keys of the

period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article will give priority to the safety of victims or persons at risk.“ (The last sentence is completely left out from the official translation of the Convention.) This is translated as follows: „Strane se obavezuju da preduzmu neophodne zakonodavne ili druge mjere i obezbjede da u situacijama neposredne opasnosti nadležni organi imaju ovlašćenje da izdaju nalog učiniocu nasilja u porodici da napusti mjesto stanovanja žrtve ili ugroženog lica u dovoljnom vremenskom periodu i da zabrane učiniocu da pristupi boravištu, odnosno stupi u kontakt sa žrtvom ili ugroženim licem. Mjere koje se preduzimaju u skladu sa ovim članom daće prioritet sigurnosti žrtve ili osobama izloženim riziku.“ (translation of Vanja Macanović).

²⁴⁶ Article 6 Urgency of acting, Law on Domestic Violence Protection (Official Gazette of the Republic of Montenegro no. 46/10).

²⁴⁷ Internal Affairs Law (“Official Gazette of Montenegro”, no. 44/12 and 36/13).

²⁴⁸ Misdemeanor Law (“Official Gazette of Montenegro”, no. 1/11 and 39/11).

²⁴⁹ Criminal Code (“Official Gazette of the Republic of Montenegro”, no. 70/03 and 46/06 and “Official Gazette of Montenegro”, no. 40/08, 25/10, 32/11 and 40/13).

²⁵⁰ Article 220 of the Criminal Code of Montenegro (“Official Gazette of the Republic of Montenegro”, no. 70/03 and 46/06 and “Official Gazette of Montenegro”, no. 40/08, 25/10, 32/11 and 40/13).

²⁵¹ Article 28 Order, Law on Domestic Violence Protection (Official Gazette of the Republic of Montenegro, no. 46/10).

place of residence or other premises. The police officer will attach the written order to the official report on the event and will inform the misdemeanor authority and Center for Social Work thereof immediately, and within 12 hours at the latest. The misdemeanor authority will, within three days, decide whether it will issue an order of protection.

In case that the perpetrator of violence does not act in accordance with the order of the police officer on the removal from or prohibition of return to the place of residence or other premises, a fine amounting to at least 800 eur or a prison term of at least forty days is stipulated.

Beside the police order, the misdemeanor procedure has **emergency barring orders** at its disposal as well. They are, in accordance with the Law on Domestic Violence Protection, issued by the competent misdemeanor court, before and during misdemeanor proceedings, and 48 hours as of the request filing at the latest. If the request was filed before initiation of the procedure, and the person who filed the request does not lodge a motion for initiation of the procedure within five days, the misdemeanor court will abolish the issued order of protection. The misdemeanor court will be obliged to warn the applicant of the consequences of failure to file the request.

Complaint may be lodged against the decision on determining order of protection within three days as of the date of the delivery of the decision. The second-instance authority will decide upon the complaint within three days as of the day of the complaint's receipt. The complaint will not postpone the execution of the decision on determining the order of protection²⁵².

Shortcomings:

In 2013, 40 **police orders of removal from the place of residence** were issued in total and in 2014 this number was twice lower – 22. In 2015, the police issued the orders of removal from the place of residence 24 times. Statistical data indicate obvious lack of consistence of the police practice in issuing the orders of removal from the place of residence – in 2013, as many as 32 orders, i.e. 80% of them were issued in one town (Nikšić), by only one authorized police officer, while only 8 of them were issued in all other Montenegrin towns. In 2015, the police orders of removal from the place of residence were most often issued by the Security Center in Nikšić (74,4% cases), while the Security Center in Podgorica, which covers 1/3 of the Montenegrin population did not issue any orders of this kind. Monitoring of the non-governmental organizations dealing with the protection of women victims of violence has showed that inspectors in Podgorica avoid issuing orders as a manner of urgent victims protection, relying completely on the orders of protection within the competence of the misdemeanor authorities.

²⁵² Art. 30 of the Law on Domestic Violence Protection.

The fact that year after year, instead of increased application of this extremely important mechanism for the protection of the safety of victims, there is a decreasing trend at almost 50% is particularly concerning. Women's NGOs do not possess information whether the procedures were initiated due to the violation of police order. (More details about this topic in the Article 50)

There are no official data on the number of issued **emergency barring orders** (before launching misdemeanor proceedings), but the practice of women's NGOs shows that the misdemeanor courts issue them extremely seldom, and that the police rarely propose them, too. Apart from NGOs, nobody informs the victims about the possibility of requesting the orders.

The misdemeanor courts rarely issue the orders of protection during the proceedings as well – in the period from 2010 until the end of 2017, only 17% of the orders of removal from the place of residence, prohibitions of harassment and stalking, and restraining orders were issued.

Recommendations:

Enable an efficient mechanism for monitoring the enforcement of the police order of removal from the place of residence.

Police should perform regular checks of the orders of protection after issuing the order of removal from the place of residence.

Establish the protocol/rulebook for harmonization of the application of the police order of removal from the place of residence of the perpetrator of violence in all Security Centers.

It is necessary that the misdemeanor courts speed up all protection procedures, use "shortened procedure", as allowed by the law, in all domestic violence cases, regardless of the evidence of physical violence.

It is necessary that the misdemeanor courts issue emergency barring orders within 48 hours on the basis of the testimony of the victim.

Article 53 – Restraining or protection orders

Protection orders in criminal proceedings

Changes and amendments to the Criminal Code from July 2013 introduce new security measures: restraining order (Article 77a) and removal from the place of residence or other premises (Article 77b). Namely, these security measures are targeted at removing the risk of repeated commission of certain criminal offences (reoffending) by prohibiting to the perpetrator to approach the victim of criminal offence, i.e. to approach a certain place, or by his/her removal from the place of residence. By means of the introduction of the mentioned security measures,

the Criminal Code has been harmonized with the Convention in this part. The measures in the area of criminal law protection represent the part of the criminal proceedings and may be issued along with a prison sentence or a fine.

Shortcomings:

These measures are not applied in practice. Apart from this, as opposed to the misdemeanor regulations, the criminal legislation did not regulate emergency barring orders in case of the criminal offence of domestic violence, and as per the official court data, the trials for these criminal offences last six months on average. **In the scope of the criminal law protection, it is also necessary to enable the right to emergency barring orders before the finality of the decision for the victims of violence who demand protection without delay.**

Protection of the victim in misdemeanor proceedings

Law on Domestic Violence Protection stipulates the following orders of protection:

- 1) order of removal from place of residence or other premises (hereinafter referred to as: 'removal from residence');
- 2) restraining order;
- 3) prohibition of harassment and stalking;
- 4) mandatory addiction treatment;
- 5) mandatory psycho-social therapy.

Orders of protection are issued for the purpose of preventing and curbing family violence, removing the consequences of the perpetrated violence and circumstances that favour and incite repeating of violence, as well as for the purpose of changing violent behavior of the abuser. One or more orders of protection may be imposed on the abuser. They may be imposed along with the sentence or as an individual sanction (Article 26). The order of protection issued before and during the proceedings may last until the cessation of reasons due to which the order was determined, and until the finalization of the procedure at the latest. Before the finalization of the procedure, the misdemeanor authority may replace the order of protection issued before and during the proceedings with another order of protection. Minimum duration of regular orders of protection is 30 days, and maximum 6 months for the order of removal from the place of residence, i.e. up to one year for the restraining order and prohibition of stalking and harassment. According to the Law on Domestic Violence Protection, a complaint may be lodged against the decision on determining the order of protection within three days as of the date of the decision's delivery. The second-instance authority will decide upon the complaint within three days as of

the date of the complaint's receipt. The complaint does not postpone the execution of the decision on determining the order of protection. Also, the decision of the court issuing the security measure in the scope of the criminal law protection may be refuted by means of the complaint, which, however, delays its enforcement.

The procedure in the scope of which a decision is taken on the orders of protection against domestic violence is conducted solely as a separate misdemeanor procedure for the protection against domestic violence, within which the issuance of one or several orders of protection may be requested. The orders of protection may be issued along with the sentence or as individual sanctions.

Shortcomings:

The orders of removal from the place of residence are rarely issued. Apart from this, instead of their increased number, one may observe a drastic decrease in the number of the issued orders. During 2014, 39 orders of removal from the place of residence were issued, in 2015 – 32 were issued, while in 2016 there were only 19 of them.

The available data on the issued orders of protection in the misdemeanor courts for the period from 2014 until 2016 show²⁵³ that the most frequently issued order of protection in the observed period was **prohibition of harassment and stalking** and it makes up more than 40% of all issued orders during 2014, a slight increase was observed during the year of 2015, and considerably less frequent issuance of this order – 17,9% was observed in 2016. Although the Law enables the victim to file a request for issuance of the order(s) of protection by himself/herself, a small number of victims are acquainted with this legal benefit. The mentioned legal possibility is an extremely significant mechanism for increasing the number of issued emergency barring orders, since it does not depend on the decision of the police officer as to how they will qualify the denunciation, i.e. whether they will or they will not use the procedure of urgency. SOS telephone Nikšić has experience that in all situations when the mentioned request was prepared and filed by the victims, the Misdemeanor court in Nikšić issued the orders²⁵⁴, which is not practice in other towns. Opinion of the Security Center and Center for Social Work is requested for the issuance of the orders of protection, and thus in practice the misdemeanor authorities rely too much on the legal provisions enabling the participation of other institutions in

²⁵³SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro, 2017 year under the project „Protection against gender based violence - condition for the development of democracy and the rule of law“ financed by EU through EIDHR 2014 programe.

²⁵⁴Available on Archive of SOS telephone for women and children victims of violence Niksic.

the evidence gathering, neglecting the statement of the victim which should be sufficient for the issuance of the order of protection. The misdemeanor authority is obliged to deliver the decision on the issued order of protection to the Security Center and Center for Social Work, on whose territory the victim and abuser have the permanent or temporary place of residence. On the other hand, the experience of the clients of women's non-governmental organizations shows that the exchange of information and evidence among the institutions of the system is not developed to a sufficient extent.

Report of the Ombudsman for 2015²⁵⁵ shows that 227 orders of protection were issued as follows: 39 orders of removal from the place of residence or other premises; 65 restraining orders; 94 prohibitions of harassment and stalking; 15 mandatory addiction treatments of alcoholics; six mandatory addiction treatments of narcotics users; two mandatory treatments of substance abuse or dependence; four mandatory psychiatric treatments; two mandatory psycho-social therapies. In 2016, 252 orders of protection were issued as follows: 117 prohibitions of harassment and stalking; 45 restraining orders; 31 orders of removal from the place of residence or other premises; 23 mandatory addiction treatments of alcoholics; 13 mandatory addiction treatments of narcotics users; 13 mandatory psychiatric treatments in a medical institution; 7 mandatory extramural psychiatric treatments; 3 mandatory psycho-social therapies.

Women's NGOs possess numerous testimonies of women, who reported the violation of the orders of protection, that their denunciations were not processed by the State prosecution service due to various explanations, e.g. perpetrators of violence did not undertake a court decision on the issued orders of protection. Violation of the order of protection – prohibition of harassment and stalking is not processed if the abuser sends messages that do not contain a direct threat, if the abuser under the restraining order passes continuously and for days, several times, by the place where the victim works or resides. Women's NGOs registered the cases which resulted in death, where the action upon such denunciations for the violation of the orders of protection did not take place. (More detailed explanation in the Article 5)

Issuance of the orders of protection in the absence of perpetrator

Laws in the scope of protection provided by misdemeanor authorities do not explicitly regulate the issuance of the orders of protection in the absence of perpetrator. However, through the interpretation of the provisions of the Article 182 of the **Law on Misdemeanors**, which regulate passing of decision in the absence of the accused, the conclusion is reached that it is possible to

²⁵⁵ Available on http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

issue orders of protection in the absence of the accused. Namely, if the accused who has been duly summoned fails to appear at the hearing which has been scheduled on the basis of the motion to commence misdemeanor procedure and cannot justify his/her absence, the court will, with presence of the party who filed the motion, and on the basis of the proposed or presented evidence, render decision in absence of the accused. If it was not possible to sufficiently determine facts needed for the decision to be rendered, or the party who filed the motion specified request at the hearing, the new hearing will be scheduled, while presence of the accused will be secured by issuing arrest order. Prison sentence cannot be imposed on the accused in his/her absence.

In the scope of the criminal proceedings, the defendant may be tried in absence only if s/he is a fugitive or otherwise unavailable to public authorities and if especially important reasons exist for trying him/her, although s/he is absent. Upon a motion of the State Prosecutor, the Panel will render a ruling on the trial in absence of the defendant. The appeal will not delay the execution of the ruling²⁵⁶.

Recommendations

Establish mechanism for monitoring acting of the institutions in the process of violations of "emergency" barring orders.

It is necessary to conduct fast and efficient procedures in case of violations of orders of protection.

Witnessing the violence by children should be recognized as psychic violence and protection orders for children should be issued.

Issuance of orders of protection should not be delayed due to the absence of the accused.

Article 55 – Ex parte and ex officio proceedings

Prosecution for the criminal offence of domestic violence is, apart from the basic form of the criminal offence of light bodily injury, undertaken ex officio, independently from the will of the party injured by the criminal offence. The principle of legality instructs the prosecutor to undertake criminal prosecution, if evidence exist that the criminal offence was perpetrated. When the state prosecutor finds that there are no grounds for undertaking prosecution for the criminal offence prosecuted ex officio or that there are no grounds for undertaking prosecution against some of the reported accomplices, the injured party may act as plaintiff in his/her stead.

²⁵⁶ Article 324 of the Criminal Procedure Code.

When it comes to the criminal proceedings, **the Criminal Procedure Code** did not regulate the issue of the presence of the representatives of the organizations and services which would represent specific support to the victims. On the other hand, the **Law on Domestic Violence Protection** regulates the possibility of the presence of the confidant during the misdemeanor proceedings. Namely, the victim may choose the person who will attend all the procedures and activities in relation to the protection. The confidant may be a family member, person from the authority, institution, non-governmental organization or other legal entity or some other person that the victim has confidence in. The perpetrator of violence cannot act as the confidant. The competent authorities are obliged to enable the presence of the confidant in all the proceedings and activities where the victim is involved, regarding the family relations.

Recommendations:

Initiate changes and amendments to the Criminal Procedure Code that will unambiguously regulate the issue of the presence of the representatives of the organizations and services that would represent the specific support to domestic violence victims.

Article 56 – Measures of protection

Criminal Procedure Code offers the possibility of the protection of witnesses, i.e. injured parties from intimidation. Namely, if reasonable concern exists that by giving a statement or answering certain questions witnesses would put in danger their, their spouse's, close relative's or a close person's life, health, physical integrity, freedom or property of great value, witnesses may withhold from giving personal data, answering certain questions or giving the statement altogether until their protection is secured. Witness protection will consist of special ways of participating and hearing witnesses i.e. injured parties, and the court is obliged to warn them thereof. Special ways of participating and hearing witnesses in the criminal procedure are: hearing of witnesses under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike²⁵⁷. Protection measures are solely targeted at witnesses and injured parties, and not at the members of their family.

Additionally, the special law²⁵⁸ regulates the provision of out-of-court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of bringing evidence

²⁵⁷ Art. 121 of the Criminal Procedure Code.

²⁵⁸ Law on Witness Protection (Official Gazette of the Republic of Montenegro, no. 65/2004 and 31/2014).

about the criminal offences punishable by five-year prison term or more severe sentence under the Law, would expose the witness to severe danger to life, health, corporal inviolability, freedom or property of large scale, where other measures do not suffice. The protection and assistance, may, at the request of the witness, be provided to a person close to him or her as well. The measures by which the protection of witness or person close to him or her is provided will be as follows: physical protection of person and property, temporary or permanent relocation from his/her permanent or temporary place of residence, concealing identity and information about ownership, as well as change of identity. Decision on the application, termination, cessation or extension of the application of the Protection Programme will be passed by the Commission for the application of the Witness Protection Programme at the request of the Supreme State Prosecutor. There are no available data on the approved Witness Protection Programmes in the territory of Montenegro.

Shortcomings:

Criminal legislation of Montenegro does not contain the obligation of information sharing, i.e. the right of the victim to know when the perpetrator was released (if s/he served a prison sentence), or to participate or be informed about the outcome in the probation procedure. This represents a significant risk for the security of the victim in practice.

Injured person, although the role of the party is not formally recognized to him/her, is entitled to point to all the facts in the course of investigation and to propose evidence that are of importance for a criminal matter and his/her property claim. **Changes and amendments to the Criminal Procedure Code** from June 2015 stipulate even the possibility for the injured party or a person who pressed criminal charge when there is no injured party or the injured party is not familiar, to file a complaint with the immediately higher state prosecution office, requesting re-examination of the decision on rejecting the criminal charge.²⁵⁹

At the hearing, the injured party is entitled to be warned that s/he does not need to testify, in the statutory defined cases. The judgment will be delivered to the injured party if s/he is entitled to file an appeal on the judgment, while the final judgment will be delivered to the injured party at his/her request.

Criminal Procedure Code stipulates which persons may refuse to testify. The accused persons' spouses and their extra-marital partners; accused persons' direct blood relatives, collateral blood relatives up to the third degree as well as their relatives by marriage up to the second degree;

²⁵⁹ Art. 271a of the Criminal Procedure Code.

accused persons' adopted children or adoptive parents of the accused are exempted from the duty to testify. However, the exemption from the duty to testify will not relate to persons that were invited to testify in the procedure for the criminal offence of neglecting and abusing a minor, domestic violence or violence in a family community and incest, when a minor person is the injured party.

Shortcomings:

As regards the concerned criminal offences committed against the family members or relatives, who are according to the currently valid Code also exempted from the duty to testify, the only proof in the procedure are often precisely the statements of those injured parties. The practice showed that, due to the exemption from the duty to testify, criminal charges are rejected and criminal proceedings are terminated, which brings to the lack of sentencing of the perpetrators of very serious criminal offences against the family members. Having in mind the abovementioned, changes and amendments to the Criminal Procedure Code were adopted in June 2015, according to which one testimony will suffice in the cases of violence, and hence decreasing of the number of the rejected criminal charges due to the lack of evidence is expected²⁶⁰. The mentioned provision of the Code is not implemented in practice and domestic violence victim gives statement at least twice: before a police officer and before a prosecutor. SOS telephone for women and children violence victims Nikšić learned that, in one case, due to the mentioned practice, processing of the denunciation for domestic violence did not take place, and the case resulted in death of the domestic violence victim.²⁶¹

If the victim does not understand the language in which the procedure is conducted, s/he will be examined with the assistance of an interpreter, i.e. a translator. The Code stipulates that parties, witnesses and other persons participating in the proceedings will have the right to use their own language or the language they understand in the proceedings. If proceedings are not conducted in a language those persons understand, interpretation of statements and translation of documents and other written evidence will be provided. The translation and interpretation will encumber the budget expenses. **There are no reliable data on the implementation of the mentioned legal provision.**

Protection of minors

²⁶⁰ Art. 109, para. 3 of the Criminal Procedure Code.

²⁶¹ Available on Archive of SOS telephone for women and children violence victims Nikšić.

Criminal Procedure Code explicitly stipulates that minors who, taking into consideration their age and mental development, are not capable to comprehend the importance of the right that they are not obliged to testify, cannot be heard in the capacity of a witness. When a minor is heard, especially if a minor was injured by the criminal offence, special care will be taken in order to ensure that the hearing would not have an adverse effect on the minor's mental condition. When necessary, the minor will be heard with assistance of a psychologist or another expert. If a minor is present at the main hearing in a capacity of the witness or injured party, s/he will be removed from the courtroom as soon as his/her presence is no longer needed. Also, if a witness who is to be examined happens to be minor, the Panel may decide to exclude the public during his/her examination. Apart from the general provision of the Criminal Procedure Code, special rules on witnessing of minors are stipulated by the **Law on Treatment of Juveniles in Criminal Proceedings**. According to this Law, actions, by the rule, are undertaken by the persons with specialized knowledge of the rights of the child and rules for treatment of juvenile offenders and juveniles as parties to criminal proceedings, taking care of the age, personal characteristics, education and circumstances in which a minor lives. The Law explicitly excludes the possibility of the confrontation of a juvenile under the age of 14 (child) injured by the offence or heard as a witness with the accused person. Additionally, where a juvenile above the age of 14 is in a particularly difficult psychological state due to the nature of the criminal offence, its consequences or other circumstances, the confrontation with the accused is prohibited.

Hearing of a juvenile will be performed by a state prosecutor and a judge of the same sex as the juvenile in a separate room equipped with technical devices for audiovisual recording. By exception, a juvenile may be heard again if there are justified reasons for doing so.

Apart from the aforementioned general provisions applicable in every case when minors are involved, **the Protocol on Actions, Prevention of and Protection against Domestic Violence** contains instructions for treating minors in the cases of domestic violence. Above all, statement may be taken from the child by a trained police officer only, wearing civilian clothes, in the presence of the confidant chosen by the child. A psychologist must be present at the time of taking a statement from the child. Taking of the statement by the judicial authorities is regulated in the same manner. Police will be obliged to ensure a special room where no one will disturb or interrupt the interview, which is equipped with adequate furniture, posters, and toys. It is necessary to provide conditions to the child that permit the use of various ways of expression (adequate toys, color pens, paper, play dough...). The need to prevent the possibility of secondary victimization of the child during the implementation of the protective measures was

recognized and, therefore, the limitation of the number of interviews with the child to maximum two is recommended. Also, whenever possible, modern technical aids for statement taking should be used (two-sided mirrors and audio and video techniques to record the statement of the child and its later use in court, in order to avoid exposing the child to new traumatic experiences).

Shortcomings:

The Report of the Protector of Human Rights and Freedoms for the year 2014²⁶² indicates that the recommended standards in the scope of juvenile justice are not completely observed in practice, particularly when children are witnesses or injured parties. The research showed, namely, that many Basic state prosecution offices do not use separate rooms and installed technical devices for audiovisual recording, although they have adequate spatial and technical capacities for the work and treatment of juveniles, while in certain Basic state prosecution offices the equipment is still not installed. The results of the research also showed that one Security Center does not have the elementary spatial conditions (premises) and that it is far from the recommended standards when it comes to the work and treatment of children/juveniles. Officers, who are specialized for the work and treatment of juveniles, perform this part of the job in official premises (offices) where other officers are often present. Not one Security Center possesses a special room, which is equipped in accordance with the needs, of both younger and older juveniles.

Based on the abovementioned, it may be concluded that the Montenegrin legal framework is not completely aligned with the Article 56 of the Convention. Although the security measures for witnesses exist, they are not automatically applicable to all witnesses, but they are the matter of approval of the acting authorities.

Recommendations:

Ensure consistent application of the provision of the Criminal Procedure Code, according to which one testimony is sufficient in the cases of domestic violence.

Ensure complete observance of the recommended standards in the scope of the juvenile justice, especially when it comes to children, who are witnesses or injured parties.

Ensure a special status to the victims of domestic violence, sexual assault and partner violence ex lege in the scope of the criminal proceedings, with the right to use information and communication technologies when giving statement, without the

²⁶² Available on http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html

presence of the parties and other participants in the proceedings in the room, right to the presence of the confidant in all phases of the proceedings, right to have the hearing and the proceedings conducted by the judge and the state prosecutor of the same sex, psychological assistance, physical protection, etc.

Article 57 - Legal aid

Provision of legal aid, as professional service, is regulated by the **Law on Legal Practice**, which primarily regulates the provision of the legal aid to the parties with monetary compensation. However, this Law does not prevent the provision of the free legal aid. Primarily, in the scope of the criminal law protection, the **Criminal Procedure Code** allows the designation of attorney, due to the reason of fairness, when the criminal procedure is conducted for a criminal act punishable by the law with a prison term over three years, and the injured party cannot bear the expenses of the representation due to his/her financial position. If the injured party is a minor, the court will assess in the course of the entire criminal proceedings ex officio, whether it is necessary to appoint an attorney for him/her. Similarly to the criminal proceedings, there is a possibility to appoint a qualified attorney in the civil procedure. In the area of civil law protection, **the Law on Civil Procedure** stipulates that the first-instance court will, at the request of the party who is not able to bear the expenses of a qualified attorney based on his/her general financial position, order that the party be represented by the qualified attorney, if this is necessary for the protection of the justified interest of the party. The area of legal aid is regulated by the special law – **Law on Legal Aid**, which was adopted on 5 April 2011, and its implementation started as of 1 January 2012²⁶³. Changes and amendments to this Law²⁶⁴ enabled the provision of legal aid to domestic violence victims in misdemeanor and criminal proceedings. Exercising the right to legal aid pursuant to this Law will not limit provision of legal assistance by services, non-governmental organizations and other organizations established pursuant to law (Article 5).

The procedure of legal aid granting is conducted through the services established in all Basic courts in Montenegro. The resources for legal aid financing are provided for the competent court from the state budget. Legal aid implies the right to the provision of legal information and legal counselling, preparation of all kinds of pleadings, representation in proceedings before the court,

²⁶³ Valid Law on Legal Aid prescribes the right to free legal aid only for victims of the criminal offence of domestic violence. Changes and amendments to this Law are ongoing.

²⁶⁴ Law on changes and amendments to the Law on Legal Aid, Official Gazette of Montenegro, no. 20/15.

legal aid in any procedure for out-of-court dispute settlement and public enforcement procedure. The legal aid also implies the exemption from payment of the costs of court proceedings.

Shortcomings:

The scope of this right is limited only to court procedures, and thus it should be broadened to administrative procedures.

In practice, women's non-governmental organizations dealing with the protection from violence face the problem of the lack of information of domestic violence victims about the right to legal aid. For example, the Legal aid service in the Basic court in Podgorica provided legal aid for 7 persons only, i.e. in 7 cases²⁶⁵.

In 2013, there were 14 legal aid applications before the Basic courts by the victims of violence, out of which 12 were approved, while in 2014 there were 16 domestic violence victims who filed in application, and 15 applications were approved. The Legal aid service in the Basic court Podgorica provided legal aid for 7 persons only, i.e. in 7 cases²⁶⁶. The quality of free legal aid is also questionable. Victims often report inefficiency of lawyers allocated to them by the court, and several times they stated that the lawyers tried to settle with the opposite party to their detriment.

Women's non-governmental organizations offer free legal aid and representation to women who survived domestic violence in all the necessary legal procedures. The Center for Women's Rights in cooperation with the Association of Judges of Montenegro, with the support of the Embassy of the United States of America (Democracy Commission Small Grants Program) in 2013, organized training for lawyers about the representation of the victims of violence. As the result of the project, 26 lawyers completed the initial training on the representation of women victims of violence and domestic violence victims, but a small number of them showed sensibility for the representation of victims and readiness for the provision of pro bono services. Manual for lawyers who represent women victims of violence and domestic violence victims was prepared. Two female lawyers, who completed the training, provide free legal aid to female clients of the Center for Women's Rights.

Recommendations:

Broaden the scope of the right to free legal aid to administrative procedures.

Consider the possibility of broadening the right to free legal aid to the victims of forced marriages.

²⁶⁵SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro.

²⁶⁶SOS telephone for women and children victims of violence Podgorica, Berane and Ulcinj - Monitoring report on violence against women and domestic violence in Montenegro.

Raise the level of knowledge of citizens about the right to free legal aid.

Amend the Criminal Procedure Code, Law on Social and Child Protection, Law on Internal Affairs, Law on Health Care and Law on Emergency Medical Services in order to include the obligation for the police, actors in the criminal justice system, providers of the health care and social protection services and other professionals on the first line of intervention to notify the victims and potential victims about their rights to free legal aid, support and protection, as well as the manner of realization of their rights.

Develop adequate mechanisms and indicators for monitoring the quality of the provision of free legal aid.

VII MIGRATION AND ASYLUM

Article 59 – Residence status

One of the grounds for temporary residence is family reunification²⁶⁷. A temporary residence permit for family reunification will be granted to a foreigner who is an immediate family member of a Montenegrin national or an immediate family member of a foreigner who was granted the status of a permanent or temporary resident in Montenegro. Temporary residence for family reunification will be granted for a term not exceeding one year or until the expiry of the temporary residence permit of the foreigner with whom the reunification was requested. Temporary residence permit for family reunification may be extended when a Montenegrin citizen has died, as well as in the case of termination of marriage that lasted in Montenegro for at least three years²⁶⁸. Non-alignment with the Convention is evident when it comes to the requirement related to the duration of marriage. Apart from this, deviation is reflected in the fact that the Foreigners Law does not recognize the category of a partner, as prescribed by the Article 59, paragraph 1 of the Convention.

However, the new **Foreigners Law** introduces the possibility of granting temporary residence permit for humanitarian reasons to a foreigner who is assumed to be a victim of a criminal act of human trafficking or victim of the offence of domestic violence or violence in a family community²⁶⁹. The temporary residence will be issued on the basis of adequate evidence of an international organization, non-governmental organization or state authority that provides to the foreigner a support and protection, or an evidence of the competent state authority, which confirms that the foreigner cooperates in resolving process of the offences. Fulfillment of the criteria, such as the possession of the resources for maintenance, secured accommodation and

²⁶⁷ Art. 37 of the Foreigners Law (Official Gazette of Montenegro, no. 56/14).

²⁶⁸ Art. 43, para. 7 of the Foreigners Law.

²⁶⁹ Art. 50, para. 1, item 1 of the Foreigners Law.

health insurance are not required for granting temporary residence. There are no reliable data as to which extent granting of temporary residence due to humanitarian reasons is applied in cases of domestic violence victims.

The Law does not regulate special renewal of residence due to humanitarian reasons. It seems, therefore, that the general provisions which generally regulate the extension of residence are applicable, which among other, require the evidence on the justification of the request for the issuance of temporary residence permit. In the light of the aforementioned, it is unclear whether the original status of a victim when granting the temporary residence is sufficient for the extension of the temporary residence, regardless of the fact that criminal procedure has been maybe finalized in the meantime. In this sense, the recommendation is to regulate the right to the extension of residence to the victims even after the finalization of the criminal proceedings for the concerned criminal offences for the reasons of legal security.

A permanent residence permit may be issued to a foreigner who lawfully resided in Montenegro for five consecutive years, based on a temporary residence permit or approved additional protection in accordance with the law governing asylum. Exceptionally, permanent residence may be granted to another foreigner who was granted temporary residence in Montenegro for less than five years continuously before the application, if so required by reasons of humanity, or would be of interest for Montenegro, taking into account that the reasons of humanity are not precisely stated.

There is a specific ban to remove a foreigner who was issued a temporary residence permit due to humanitarian reasons because of illegal entrance or illegal residence in Montenegro. Protection and realization of the rights in accordance with the Law governing witness protection will be provided to a foreigner when reasonable fear exists that testifying in the scope of criminal procedure, would expose the witness to danger to life, health, corporal inviolability, freedom.

Minor foreigner for whom it was established that s/he was a victim of a criminal act of human trafficking will not be returned to any state, if after the risk assessment for his/her safety, there are circumstances indicating that such a return would not be in his/her best interest. Also, a foreigner must not be forcefully removed to a state where his/her life or freedom would be endangered due to the race, religion, language or nationality, affiliation to a particular social group or political opinion, or where s/he could be subjected to torture, inhuman and degrading treatment and punishment.

Permanent residence will cease if a foreigner left Montenegro or continuously stayed longer than six months out of Montenegro. Since the exception to this rule was not stipulated, **it is necessary**

to change the Foreigners Law so that it would enable the victim of a forced marriage to renew the status acquired before the forceful bringing to another state.

Recommendations:

Harmonize legal regulations in the part related to the temporary residence permit for the purpose of family reunification, in terms of marriage duration in accordance with the Convention. Also, align the Foreigners Law with the Article 59, paragraph 1 of the Convention which recognizes the category of a partner, as a legal basis for residence permit granting.

Harmonize legislation in the manner that, due to the legal security of the victim, the right to the extension of residence of the victim is regulated, also after the finalization of the criminal proceedings for the concerned criminal offences.

Change the Foreigners Law so that it would enable to the victim of forced marriage the renewal of the status acquired before the forceful bringing to another country.

Article 60 – Gender-based asylum claims

Montenegro ratified **UN 1951 Convention relating to the status of refugees and Additional protocol from 1967. Law on Asylum** adopts internationally recognized concept of a subsidiary protection, which may be accorded to an alien who has not met the requirements for the recognition of refugee status, but to whom the residence and protection will be approved, since s/he would be subjected to torture or inhuman or degrading treatment or punishment, or whose life, safety or freedom would be threatened on account of generalized violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, in case he or she is returned to his or her country of origin or another state. This solution is in accordance with the international standards and a good practice in this field.

According to the **Law of Asylum and Refugee Convention**, persecution must be related with some of the stipulated grounds. If the gender-based violence in practice may be interpreted in the scope of the parameter “affiliation to a certain social group”, then the stated criteria are applicable. The Law on Asylum does not provide the definition of the criterion „well-grounded fear of persecution “ or „inflicted suffering“ from the Refugee Convention, which means that they are interpreted by the competent authorities in the context of the given circumstances.

Asylum seekers will be treated in a gender-sensitive manner at all the stages of the asylum procedure. An asylum seeker will have the right to communicate with an official and interpreter

of the same gender. Females who are accompanied by males will be informed of their right to file their own personal asylum applications. Discrimination in the asylum procedure is prohibited on any basis, and in particular on the basis of race, color, sex, citizenship, social origin or birth, religion, political or other opinions, country of origin, economic status, culture, language, age, or mental or physical disability.

In the asylum procedure, care will be taken of the special needs of persons subjected to torture, rape or other serious forms of mental, physical or sexual violence and other vulnerable persons. Persons with special needs will be given special accommodation and care. United Nations High Commissioner for Refugees (UNHCR), the Montenegrin Red Cross and other organizations dealing with the protection of refugees may organize pedagogical, educational or other programs in the Center and may provide legal or other assistance, upon the prior consent of the competent body.

Shortcomings:

Law on Asylum does not recognize either sex or violence against women as one of the grounds on the basis of which a refugee status may be requested. However, violence against women could be legally considered as the ground „affiliation to a certain social group”. However, the possibility of ascribing the violence against women to the affiliation to a certain social group is subject to the interpretation of the competent authorities in charge of conducting the asylum procedure. If, however, the violence against women may be interpreted as affiliation to a certain social group, **it is desirable to consider the possibility of amending the Law in this sense.**

Furthermore, apart from the provisions stipulated by the Law on Asylum, the gender-sensitive guidelines or measures for the treatment of asylum seekers were not adopted.

Recommendation:

Amend the Law on Asylum so that it stipulates violence against women as one of the grounds on which a refugee status may be requested.

