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GENDER-BASED DISCRIMINATION AND LABOUR IN MONTENEGRO



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WOMEN'S RIGHTS CENTER
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GENDER-BASED DISCRIMINATION AND LABOUR IN MONTENEGRO

By Olivera Komar, Ivana Mihailović, Maja Raičević, Milena Pejović Eraković, Božana
Mašanović

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Authors: Olivera Komar, Ivana Mihailović, Maja Raičević, Milena Pejović Eraković, Božana Mašanović

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We hope that the product of our work will contribute to a better understanding of gender-based discrimination at work in the region and consequently inspire and lead actions by all relevant stakeholders in order to reduce it.

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ACRONYMS AND ABBREVIATIONS

CEDAW	Convention on the Elimination of Discrimination against Women
CSO	Civil society organization
WCSO	Women's rights civil society organization
EC	European Commission
EIGE	European Institute for Gender Equality
EU	European Union
Eurostat	European Union Statistical Office
ILO	International Labour Organization
LGBTQIA+	Lesbian, gay, bisexual, trans*, queer/questioning, intersex, asexual
MONSTAT	National Statistical Office of Montenegro MONSTAT
NSSD	National Strategy for Sustainable Development of Montenegro
OI	Ombudsperson Institution
UN	United Nations
UNDP	United Nations Development Programme
WRC	Women's Rights Centre

EXECUTIVE SUMMARY

Gender-based discrimination related to labour is still a very relevant topic in Montenegro and exists in both private and public sector of employment. Even though laws in Montenegro forbid any form of discrimination on any basis, including gender, many women and men still face discriminatory actions on their workplace. However, as was the case in 2018, when the first report on this topic was produced, still very little empirical evidence exists about it. This is the second report on this issue, which is the part of a regional Western Balkan initiative supported by the European Union (EU) and Sweden/Sida. Continuing with the methodology introduced in the first report in 2019, the research sought to explore the extent of and any changes in awareness and experiences related to gender-based discrimination among people and institutions, to assess the extent to which institutions are implementing their legal responsibilities related to addressing gender-based discrimination in labour and safeguarding women's labour rights, and to assess any changes in institutional response since the end of 2017, when the first report was produced.

The legal analysis builds upon the overview of relevant international agreements and instruments and their relationship with domestic law, the analysis of the domestic (national) legislative framework in the area of discrimination, employment and rights arising from the labour relationship, as well as workers' rights from a gender equality perspective which was provided in the 2019 publication *Gender based discrimination in the field of work and employment in Montenegro*. Two years later, this report takes into account the relevant legislative changes (especially the new Labour law and amendments of the Law on Pension and Disability Insurance) as well as the changes in the global and national context (COVID-19 pandemic) to examine the extent to which changes, in the legislative and institutional framework for treating gender-based discrimination have taken place.

Namely, even though the Government employed number of measures to mitigate the effects of the COVID-19 pandemic on labour market, the pandemic strongly affected women and men, and in many cases exacerbated the existing vulnerabilities and inequalities regarding work as well as cause new (including very popular "work at home" mode).

The new Labour law (2019) introduced several novelties when it comes to the prohibition of discrimination and adopted several recommendations from 2019 WRC report. Discrimination based on gender, gender reassignment, gender identity and sexual orientation was specified. The employee's fixed-term employment contract that expires during pregnancy and the use of temporary incapacity for work based on high-risk pregnancy management leave, maternity or parental leave, are extended until the expiration of the right to leave. Also, the principle of equal pay now applies to all employees, regardless of their sex. Finally, now both parents have the right to parental leave in equal parts (in practice this would mean about 4.5 months per parent), and the possibility of transferring part of the parental leave to the other parent.

However, number of WRC recommendations from the 2019 report have not been implemented with the adoption of the new Labour Law included. For example, no misdemeanour liability, that is, no fine is predicted for an employer who violates the principle of equal pay for equal work. Also, the time spent on pregnancy and maternity leaves in the total duration of fixed-term contracts, allowing for their transformation into permanent employment contracts.

Our online survey showed that gender-based discrimination related to labour has continued in Montenegro, including discrimination related to hiring, promotion, working conditions, maternity leave, paternity leave, parental status and sexual harassment. In the last two years, workers faced added challenges, rights abuses and, in some instances, gender-based discrimination, because of the COVID-19 pandemic, which has exacerbated the already weak position of many workers. In the survey 44% of women said that had experienced gender-based discrimination related to labour. The sample of men who completed the full

questionnaire was small, but 11 of the 25 men who completed the survey stated that they have experienced gender-based discrimination related to labour. Among the persons surveyed, 76% of women who had at least one job interview in the past three years, thought that they had faced discrimination during the hiring process. The most frequently encountered form of discrimination in hiring, according to survey participants, was political preference, followed by age-based and gender-based discrimination.

Also, 66% of the surveyed women and 47% of surveyed men who had at least one job interview in the last three years said that they had experienced questions during job interviews that might imply discrimination. For example, 59% of surveyed women and 29% of men indicated that they were asked about their marital status during a job interview and 41% of women and 18% of men were asked if they have children. Finally, 7% of the women who had at least one job interview were asked for medical proof that they were not pregnant before employers would consider them for a job opening.

Reporting discrimination still seems to involve social stigma for people who report it. Most experiences of gender-based discrimination related to labour go unreported (in 80% of cases reported by the online survey participants). More people seem to recognise the Labour Inspectorate and Ombudsperson Institution as institutions where gender-based discrimination should be reported. However, official statistics suggest that in practice people turn to the Ombudsperson Institution more often.

When it comes to the prevalence of the cases before different institutions, the number of cases before different institutions remains very low. However, the fact that the institutions do not track cases of gender-based discrimination related to labour before them creates additional reason for concern.

The Labour Inspectorate, Judicial council on behalf of the courts and Ombudsperson Institution provided their statistics, while the police and prosecution did not. In total, from 2018 to 2020, the Labour Inspectorate had 18 work-related cases of discrimination. The Inspectorate did not have any information as to how many of these cases involved gender-based discrimination, as they do not disaggregate their data based on this ground. During the same period, five cases of work-related discrimination were taken before basic courts and none before higher courts in Montenegro. Courts similarly do not maintain sex or gender-disaggregated data, or the information as to whether sex/gender was a basis for discrimination. Meanwhile, 64 cases of work-related discrimination were reported to the Ombudsperson Institution, of which at least 22 involved labour related discrimination on the basis of sex or gender.

In the final chapter we sought to answer the question how relevant institutions respond in cases of discrimination. Even though some of the interviewed representatives of relevant institutions tended to demonstrate knowledge and understanding of gender-based discrimination, this did not apply to all. It would be fair to say that there were more among them who either did not understand the concept or tried to avoid any responsibility in such cases.

Given low reporting of gender-based discrimination, amid the lack of trust in institutions and fear of potential consequences, few institutions or organisations have had experience treating gender-based discrimination cases. This makes it difficult to assess their capacities to treat such cases. Specifically, labour inspectors' shirking of their duties to treat such cases, amid unclarity in the legal framework, has hindered any comprehensive institutional response to gender-based discrimination. CSO and union representatives also reported of poor treatment of cases by some representatives of institutions.

INTRODUCTION

This report is a second edition, following a report prepared in 2018, with the aim of assessing gender-based discrimination related to labour in Montenegro. The research sought to explore the extent of and any changes in awareness and experiences related to gender-based discrimination among people and institutions; to assess the extent to which institutions are implementing their legal responsibilities related to addressing gender-based discrimination in labour and safeguarding women's labour rights; and to assess any changes in institutional response since the end of 2017, when the first report was produced.

Gender-based discrimination is defined as discrimination that affects a person because of her or his gender. Although it relates to both women and men, evidence suggests that it tends to affect women more often than men, as will be shown in this report. This research focuses on gender-based discrimination related to labour, including labour outside formal employment and efforts to secure employment. Contrary to common perceptions, gender-based discrimination in connection to labour, exists in both public and private sectors. Even though laws in Montenegro forbid any form of discrimination on any basis, including gender, many women and men still face discriminatory actions on their workplace daily.

Although little data exists regarding the extent of gender-based discrimination in labour in Montenegro, official statistics can shed some light on the context within which women and men participate in the labour force. Official employment statistics suggest that men tend to participate in the labour force at significantly higher rates than women. According to official preliminary data for 2020, 60.6% of men participated in the active labour force, compared to 46.4% of women. Employment rate for men was 50.5% and 37.9% for women.¹ Prior research suggests that gender-based discrimination may be contributing to these inequalities in women and men's labour force participation.

Montenegro's 2020 European Commission (EC) Country Report specifically emphasized that although there are active employment policies in place, women remain among the most vulnerable groups in the labour market, along with youth, Roma and low skilled workers.² The Report recommended that the Government implement the revised Labour Law, revise the anti-discrimination law, and introduce better quality employment measures focused at young people, women, disabled people, and minorities.³ The report stated that "women in Montenegro continue to experience inequality in accessing employment, economic opportunities, and a clear wage gap remains in the country."⁴ Moreover, according to the report, women "continue to be underrepresented on the labour, market, in entrepreneurship, policy-making and policy."⁵ Women remain "vulnerable to discrimination" which results in "lower participation and lower income generation rates and, in turn, hindering access to long-term employment contracts and access to paid maternity leave."⁶ The Parliament enacted a new Labour Law in December 2019 that was supposed to align national legislation with the EU directives 2006/54/EC on equal opportunities in employment, as well as 92/85/EEC on pregnant workers. However, the European Commission (EC) concluded that "further progress still needs to be made." According to the EC, one of the reasons why the legislative framework has not produced adequate results in addressing gender-based discrimination has been the "insufficient prioritization of gender equality in the overall state and public accountability

¹ National Statistical Office Monstat, data available at:

<https://www.monstat.org/cg/page.php?id=1762&pageid=22>, accessed on July 15, 2021.

² European Commission, Progress Report for Montenegro, 2020, available at:

https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf, p. 99, accessed on July 15, 2021.

³ Ibid.

⁴ Ibid, p. 30.

⁵ Ibid, p. 38.

⁶ Ibid, p. 100.

mechanisms.”⁷ The report concluded that “the gender gap in employment and pay, sexual harassment in the workplace, affordable childcare, unpaid work and tax benefit systems remain largely unaddressed.”⁸ The new Labour Law hardly attends to the EU directive 2019/1158 on work-life balance for parents and carers,⁹ which can contribute to gender equality by promoting women’s participation in the labour force, more equal sharing of care responsibilities between men and women, and the closing of gender gaps in earnings and pay.

In 2020, the Montenegrin National Statistical Office (MONSTAT) published *Women and Men in Montenegro*, giving an overview of the situation of women and men in Montenegrin society. According to the publication, the difference between men and women is particularly visible in the labour market. The data indicate concerning levels of inequality; in 2019, every second woman was inactive in the labour market, while only 4 out of 10 women were employed.

A year earlier, in 2019, Montenegro published its first *Gender Equality Index*, based on the European Institute for Gender Equality’s methodology.¹⁰ The report revealed systematic gender inequalities in the three most relevant domains: work, money and time. For example, a woman who is 15 years old “today” was, on average, expected to be active in the labour market for the next 27.9 years, while the expectancy for a man is 34.4 years.¹¹ The report explained that the difference could be ascribed to women having more difficulties finding employment or because women’s employment frequently is discontinued following maternity (especially due to short-term contracts that some employers use to avoid employing mothers). According to the same report, unpaid work is another domain in which inequality persists. Namely, data show that 42.7% of women spend time caring for children, the elderly, disabled, and/or relatives, among others, compared to 23.8% of men. At the same time, 68% of women spend at least one hour doing housework every day, while the same is true for only 10.3% of men.¹²

Amid these pre-existing inequalities, the COVID-19 pandemic was declared to have reached Montenegro in April 2020. The long-term consequences of the pandemic on the Montenegrin economy and labour market are yet to be fully understood. However, the adverse effects of the pandemic on women’s employment have become visible already. Official data from the National Employment Service shows that the number of unemployed women in June 2021 increased by 8,774 compared to June 2020¹³, representing 56% of the total newly unemployed. This suggests that employers laid off more women than men during the crisis.

The crisis negatively affected GDP, that according to the report prepared by the Montenegrin Central bank, was -6.8% compared to the year before pandemic.¹⁴ All these worrying figures indicate that men and women are not equally participating in the labour force.

It is beyond the scope of this report to map all of the reasons and factors that contribute to the gender disbalance in different aspects of work, starting from generational

⁷ Ibid, p. 38.

⁸ Ibid, p. 100.

⁹ The EU directive 2019/1158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>.

¹⁰ EIGE, Ministry for Human and Minority Rights, Government of Montenegro, Monstat, UNDP, *Gender Equality Index Montenegro*, 2019, available at: https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_2019_report_final.pdf, accessed in June 20, 2021.

¹¹ Ibid, p. 15.

¹² Ibid, p. 26.

¹³ National Employment Agency, Monthly-Report, 30 June 2021, at: <https://www.zzzcg.me/wp-content/uploads/2021/07/Statistical-Monthly-Report-30-June-2021.pdf>.

¹⁴ The Montenegrin Central bank, *Analiza realnog sektora*, Podgorica, 2021, available at: <https://www.cbcbg.me/me/statistika/statisticki-podaci/realni-sektor>, accessed on January 30, 2021.

inequality in education¹⁵, to cultural norms and tradition leading to gender discrimination and unequal opportunities for employment and promotion, etc. However, other reports further explain such gender differences. For example, recent research by UNDP¹⁶ showed that during three months of the COVID-19 pandemic (April, May, and June 2020), women earned an estimated 122.3 million euros in cash equivalent of the value of unpaid care and domestic work, while men earned 63.5 million euros. Thus, women worked 92% more than men in the field of unpaid care and domestic work.

This report will try to describe the mechanisms and to investigate the causes of gender-based discrimination at the workplace, that especially lack evidence and empirical background.

The literature review conducted at the outset of this research suggested that minimal empirical evidence exists on gender-based discrimination related to labour. Most evidence has been anecdotal or “hearsay” and most surveys and research that focus on discrimination do not focus on gender-based labour-related discrimination. They most often mention this type of discrimination as a subsidiary topic. Further, while official statistics related to gender-based discrimination and labour exist, data is not regularly collected or published. Moreover, available survey data usually refers to perceptions and not to prevalence of discrimination. The minimal data available is not in open format, so it cannot be used for further analysis by researchers.

In the rare instances when governmental strategic plans include quantifiable indicators, they do not provide follow-up reports in which one could see measurable progress in achieving set goals. This report aimed to address this gap and to serve as a baseline study that could inform future advocacy and outreach efforts towards decreasing the prevalence of gender-based discrimination related to labour. Towards this goal, this research aimed to answer the following research questions:

- To what extent is the legal framework complete and what has changed since 2017 with this regard?
- To what extent have institutions been implementing their legal responsibilities related to addressing gender-based discrimination related to labour and safeguarding women’s labour rights?
- How many work-related discrimination cases have been reported to different types of institutions from 2017-2020?
- For what reasons have few discrimination cases been reported and/or filed?
- How have relevant institutions treated discrimination cases to date? Has there been any changes in institutional response since end of 2017 when the first report was produced?
- Have there been any changes in awareness related to gender-based discrimination among people and institutions?

Methodology

This comprehensive research was conducted for the Women’s Rights Centre (WRC) from January to July 2021 to address the previously enlisted research questions. The research involved mixed research methods. It was jointly designed by six partner organisations involved in an EU-funded regional action to address gender-based discrimination in labour, led by the Kosovo Women’s Network. First, a legal analysis was conducted to examine and assess current

¹⁵ Zavod za statistiku Monstat, *Women and Men in Montenegro in 2016*, Podgorica: 2017.

¹⁶ UNDP Montenegro report, *Women’s Contribution to the Economy of Montenegro – Utilization of Care work by women during Covid-19*, November 2020, p. 14, at: <https://www.me.undp.org/content/dam/montenegro/docs/undp-2020-mne-women-contribution-economy-report-eng.pdf>.

anti-discrimination legislation in place in Montenegro, including any shortcomings in aligning national legislation with the *Acquis Communautaire*, with a specific focus on gender equality related legislation. This analysis examined international laws, treaties and conventions; the Constitution of Montenegro; and Montenegro's relevant national laws and secondary bylaws. The legal analysis also served to identify relevant institutions, their roles and responsibilities. These institutions later were interviewed. This analysis also focused on identifying any changes in the relevant legislation since the first report was drafted in 2017.

Second, the existing literature and available data on discrimination was reviewed. The literature review included studying available reports, manuals and strategic documents concerning gender-based discrimination at work. The review focused on reports, especially empirically based ones. Since manuals and strategic documents sometimes contain situation analyses and interesting data, they were included as well. All reviewed reports were published between 2017 and 2020. Each report was analysed with regards to its topic, time of data collection, target groups and methods employed.

Third, existing data related to discrimination cases, disaggregated by gender, was requested and collected from institutions that have a legal responsibility related to addressing discrimination.

Fourth, 33 representatives of these institutions (selected using variation sampling) were interviewed using a semi-structured interview guide to measure their knowledge, awareness and experiences with gender-based discrimination and labour. Interviews were conducted with four police directorate employees (in Bijelo Polje, Podgorica, Herceg Novi and Bar), four prosecutors (from the north and centre of the country), ten representatives of the basic courts (in Bijelo Polje, Podgorica, Bar and Ulcinj), four interviews with criminal court judges (in Bijelo Polje), two interviews with the Labour Inspection, two interviews with labour union representatives, one interview with the Chamber of Commerce and six interviews with representatives of CSOs (Juventas, Sigurna ženska kuća, Queer Montenegro, Spektra and CEDEM).

Fifth, an anonymous online survey using Lime Survey was launched with the aim of collecting input from diverse women and men regarding their knowledge of anti-discrimination legislation, personal experiences with discrimination, whether such cases were reported and the reasons as to why they did not report discrimination when it occurred. The survey was promoted broadly, also targeting under-represented groups, including through media, email and Facebook boosting. In total, 435 people (94.3% women and 5.7% men), completed at least 90% of the survey. Considering that the number of respondents to each question differed, the precise number of respondents is presented in the findings ("n"). Considering the small sample size and the fact that it was not a random sample, few analyses were performed regarding the relationship between responses and ethnicity, age or rural/urban location, respectively. Any statements including the term "significant" in relation to the survey findings suggest statistical testing with a confidence level $\alpha = 0.05$. However, given the limitations affiliated with convenience sampling, findings referred to as "statistically significant" should be interpreted as suggestive, but not conclusive nor generalizable. Considering that this online survey was promoted as a survey about gender-based discrimination, "self-selection" bias likely exists. Therefore, it is important to note that the survey is not a good measure of prevalence of gender-based discrimination and cannot be used to assess it. This means that it is only representative of the people who completed the questionnaire, and not of the working age population in Montenegro. Despite these limitations, it does provide evidence of trends and an indication of the different forms of discrimination that occur at work in Montenegro.

Finally, the Women's Rights Center provided several anonymised case studies when they provided legal representation in gender discrimination related to work. These case studies are used to better describe real life situations people, mostly women, face with this regard.

LEGAL ANALYSIS

The 2019 publication *Gender based discrimination in the field of work and employment in Montenegro* provided an overview of relevant international agreements and instruments and their relationship with domestic (national) law. At the same time, it considered the domestic (national) legislative framework in the area of discrimination, employment and realization of rights arising from the labour relationship, as well as workers' rights from a gender equality perspective. Two years later, taking into account the changes in the context (especially regarding COVID-19 pandemic) this chapter examines the extent to which changes, and improvements, in the legislative and institutional framework for treating gender-based discrimination have taken place.

Governmental Responses to COVID-19

During 2020 and 2021, Montenegro, like the entire world, faced a health crisis caused by the spread of the novel coronavirus (COVID-19). The Order of the Ministry of Health to Declare an Epidemic of Contagious Disease COVID-19 officially declared the epidemic in Montenegro on 26 March 2020.¹⁷ The epidemic revealed pre-existing weaknesses in Montenegro's systems and brought about severe disturbances in economic and social fields, as well as in the labour market. The crisis in the labour market has had a particularly adverse impact on most vulnerable groups, such as youth, women, persons with disabilities, those employed under precarious contracts (fixed-term labour contracts; temporary and occasional jobs; service contracts, etc.), and persons working "in the black market". This section discusses the impact that the pandemic has had on women and men's labour force participation and analyses the legal actions taken by the Government of Montenegro to address this situation, from a gender perspective.

The International Labour Organization (ILO) stated in its report on the impact of COVID-19 on the labour market, at the time of the coronavirus pandemic, the labour market was caught by "the most severe crisis since World War II", considering that 1.25 billion workers worldwide have been exposed to the increased risk of dismissal or income reduction.¹⁸ In its latest analysis of the impact of COVID-19 on the labour market, the ILO recorded massive damage caused by the crisis, relating to working time and income of employees, with the prospect of a slow, uneven and uncertain recovery in 2021. According to this Report, women have been more affected than men by the pandemic's labour market disruptions; globally, employment losses for women stand at 5%, versus 3.9% for men. Women have been exposed much more than men to the risk of leaving (or being pushed out of) the labour market and becoming inactive.¹⁹

In Montenegro, the negative effect of the pandemic on women also has been observed by UNDP's Montenegro Report *Women's Contribution to the Economy of Montenegro – Utilization of Care work by women during Covid-19*, published in November 2020. The research indicated that overall, daily family care for children and the elderly often has been

¹⁷ Order to Declare an Epidemic of Contagious Disease COVID-19 ("Official Gazette of Montenegro", no. 24/2020) dated 26.03.2020. The mentioned Order was declared null and void by passing the Order to Declare the Termination of the Epidemic of Contagious Disease COVID-19 ("Official Gazette of Montenegro", no. 52/20) dated 03.06.2020. On 21.07.2020, the Order to Declare the Epidemic of Contagious Disease COVID-19 of Major Epidemiological Significance entered into force ("Official Gazette of Montenegro", no. 73/20 and 8/21).

¹⁸ ILO, "ILO Monitor: COVID-19 and the world of work", available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf.

¹⁹ Seventh edition of ILO Monitor: "COVID-19 and the world of work", available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_766949/lang--en/index.htm.

transferred from institutions to women, and that the women are working 92% more than men in the field of unpaid domestic work during the pandemic.²⁰

The measures targeted at preventing the spread of COVID-19 led to the cessation of a major part of economy, which had a direct impact on work in terms of employment²¹, working conditions²², and working time, among other areas. Towards diminishing the negative consequences of the health crisis on the economy and on employees and citizens, the Government of Montenegro adopted three packages of relief measures. Of particular relevance, the Package for Support to the Economy and Employees sought to mitigate the negative effects of COVID-19 through ten (10) measures and one (1) recommendation by the Government of Montenegro; through subsidies for entrepreneurs and companies whose work was banned by the orders of the Ministry of Health or that decreased the scope of their activities to a significant extent; and through subsidies for wages of employees on paid absence, as well as for employees in quarantine and isolation.

The Package also introduced a measure allowing one parent, guardian, foster parent, adoptive parent or single parent of a child under age eleven (11) and a child with special educational needs or disabilities under age eleven (11) a paid leave of absence from work, during the period in which educational institutions were closed. This measure has remained in force, despite some interruptions. This measure simultaneously provided a subsidy to employers to pay employee income during the leave period. However, this measure has not been equally applied to all employees in Montenegro. Several groups of employees were excluded from the scheme, including employees in the health sector and certain government or social service offices whose employees were vital to supporting efforts to respond to the crisis. The exceptions are made only in cases if both parents are employed by the excluded employers.²³

Short term measures that the Government passed in January 2021 were important mechanisms for supporting the economy and citizens when dealing with problems caused by COVID-19 epidemic. Among other things these measures have increased the list of companies who were at risk, and which could apply for certain subventions before Government. Also, it included improving mechanisms directed at new employment.

Since declaring the epidemic, the competent authorities have appealed to employers to organize, within their capabilities, work from home where possible. Although this recommendation has multiple aspects of significance in terms of protecting the life and health of employees, the impact of home-based work on the labour, social and societal position of employees has received little attention. Considering the duration of the epidemic, several employees have faced difficulties in terms of reconciling their professional and family obligations. This particularly applies to working women who often, apart from caring for children (including additional work related to supporting online learning) and/or caring for older members of their household, faced constraints in finishing their work even after working

²⁰ Page 14, available at <https://www.me.undp.org/content/dam/montenegro/docs/undp-2020-mne-women-contribution-economy-report-eng.pdf>.

²¹ According to Employment Agency, on the day of declaring of the epidemic in Montenegro, the Agency had 35,466 registered unemployed persons, while on 31.12.2021, 57.386 unemployed persons were registered. Among them 34.522 were women (60.1%).

²² Due to the measures that led to the interruption of work in numerous economic branches, by means of the decision of the state authorities, employees were entitled to wage compensation amounting to 70% of the basis for compensation, which is comprised of the average wage realized in the preceding semester and may not be lower than the minimum wage in Montenegro (please, see the Article 25 of the General Collective Agreement ("Official Gazette of Montenegro", no. 14/2014, 39/2016 – Consent for the extension of the application, 40/2018, 37/2019) and Article 103 of the Labour Law ("Official Gazette of Montenegro", no. 74/2019, 8/2021, 59/2021 and 68/2021);

²³ The Order for Taking Temporary Measures to Prevent the Introduction into the Country, to Contain and to Prevent the Transmission of the Novel Coronavirus ("Official Gazette of Montenegro", no. 103/20 and 5/21);

hours. They did not have the option of so-called “disconnecting”. Besides this, the absence of daily social contacts with colleagues from work inevitably creates certain challenges.

It is necessary to emphasise that the measures and instruments introduced to combat the epidemic (e.g., quarantine and social isolation, limited movement, curfew, work from home, paid absence, absence from work due to the interruption of work without the fault of the employee) created a favourable environment for the escalation of domestic violence. This increase in Montenegro has been estimated to amount to 30% more cases compared to the period preceding the epidemic.²⁴

WRC monitored the drafting and implementation of the measures to support the economy and citizens who faced consequences during epidemic. While doing so, WRC urged the Government to include gender perspective in making policies regarding mitigating effects of the crises that the country was dealing with.²⁵

During the epidemic, the two most frequently used Labour Law provisions, were: a) termination of work without the fault of the employee; and b) work outside the employer's premises. Termination of work without the fault of the employee is defined by Article 103 of the Labour Law and Article 25 of the General Collective Agreement. In those sectors that were obliged to suspend their work by the order of the competent authorities, employees were paid a salary in the amount of 70% of the basis for compensation. Employees in tourism, catering and services were particularly hit by this measure, which implied a reduction of income and job uncertainty.

The Labour Law recognises the possibility of concluding an employment contract for performing work outside the employer's premises, which includes working from home and working remotely²⁶. Due to the recommendations of the competent authorities, this provision was widely applied as a sort of response to the pandemic, which is why it should be viewed as a temporary or alternative work arrangement. The long duration of the pandemic pointed to the need for a more precise and comprehensive regulation of this type of work engagement in Montenegrin legislation. Working from home provides numerous benefits in terms of greater flexibility in order to achieve a balance between business and family obligations, saving travel costs to and from work, etc. However, such work can lead employees and employers to a number of challenges in the long run, such as: the issue of respect for working hours (the right of employees to disconnect in order to reconcile professional and family obligations); the issue of respecting the privacy of employees as employers have a greater possibility of electronic surveillance; limited possibility for labour inspectors to access the work place (due to respect of the right to privacy of the private homes); the issue of safety and health at work; the issue of long-term isolation that may cause psychosocial, health and other risks to employees; the issue of access to professional development and promotion; the issue of exercising trade union rights and freedoms; the issue of working conditions and provision of means for work; the question of voluntariness. All these issues affect women more, due to their high contribution to the economy of care and unpaid domestic work, as proven by recent research.²⁷ “Working at home” mode is particularly wide spread in the Montenegrin IT sector, telecommunications sector, banking sector and part of administrative affairs.

Thus, we can conclude that even though the Government employed number of measures to mitigate the effects of the COVID-19 pandemic on labour market, the pandemic strongly affected women and men, and in many cases exacerbated the existing vulnerabilities and inequalities regarding work. Additionally, the new work environment (including very popular “work at home” mode) brought new challenges.

²⁴ UNDP, “Rapid Social Impact Assessment of the COVID-19 outbreak in Montenegro,” April - June 2020, available at: <https://montenegro.un.org/en/90471-report-rapid-social-impact-assessment-covid-19-outbreak-montenegro-april-june-2020>

²⁵ WRC Letter to the Ministers of Economic Development and Finance and Social Welfare 27/01/2021

²⁶ Pogledati član 42 i 43 Zakona o radu („Sl.list CG”, 74/2019, 8/2021, 59/2021 i 68/2021);

²⁷ For more specific studies about this issue, see the “Introduction” of this report.

INTERNATIONAL LEGAL FRAMEWORK

Montenegro has signed and ratified almost all relevant international instruments of the United Nations and the Council of Europe. As per the Stabilisation and Association Agreement between Montenegro and the European Union (EU), Montenegro has finalised the transposition of the EU *acquis* in certain areas, while in other areas, transposition is either ongoing or yet to be started.

The 2019 publication outlined the relevant international legal framework, including: the Universal Declaration on Human Rights and relevant binding UN agreements, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms, the European Social Charter (revised), International Labour Organization (ILO) Conventions no. 111 on Discrimination in terms of Employment and Occupation, 100 on Equal Remuneration Convention and 183 on Maternity Protection Convention.²⁸ Additionally, it is important to emphasise that Montenegro has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), despite signing in October 2006,²⁹ or the 2014 Protocol to the Forced Labour Convention 1930³⁰.

After two years of discussion, the ILO, at its 108th session in June 2019, adopted the historical Convention 190 on Eliminating Violence and Harassment in the World of Work with the accompanying Recommendation. The Convention is a new standard of the ILO, by means of which, for the first time, the general right of all workers to work without violence and harassment has been established. It relates to all sectors, private and public, including both the formal and non-formal economy. This Convention defines violence and harassment in the world of work as a range of unacceptable behaviours and practices, or threats thereof, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment. The term "gender-based violence and harassment" is defined as violence and harassment that is directed at a person because of the person's sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment. The Montenegrin Government passed Bill for Ratification of the International Labour Organization Convention No. 190 on Violence and Harassment in the Field of Work in December 2021 and send it to the Parliament of Montenegro.³¹ The Bill should

²⁸ The entire list of the Agreements on human rights of the United Nations (UN), ratified by Montenegro, is available on the web page of the Office of the United Nations High Commissioner for Human Rights: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=116&Lang=EN. The list of the conventions of the Council of Europe that Montenegro acceded to is stated in the Report on accession, available at: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11457&Lang=EN>, in the section 19.1 (Conventions). The complete list of the conventions of the International Labour Organization that Montenegro ratified is available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102734.

²⁹ The text of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is available at: <http://cpd.org.rs/wp-content/uploads/2017/11/Convention-migrant-workers-bos.pdf>.

³⁰ All data on international legal standards regarding forced labour are available on the website of the International Labour Organization: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>.

³¹ Predlog zakona o potvrđivanju Konvencije Međunarodne organizacije rada o ukidanju nasilja i uznemiravanja broj 190 dostupan na linku: <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/408/2767-16108-23-3-22-1.pdf>

be on the Parliamentary agenda in spring 2022, when it is expected that the Parliament will pass it and turn it into Law.

One of the particularly relevant EU Directives that needs to be further incorporated in Montenegrin legislation is the EU Work Life Balance Directive³². This Directive is part of a long-standing European Union's efforts to ensure a balance between work and family life, but also between the roles of woman and man in family life. The Directive is partially in line with the national legislation, however there are also newly proposed institutes that Montenegrin legislation does not currently have, such as: a period of at least 10 days of paternity leave for all fathers, analogous to sick leave, two months of non-transferable paid parental leave, at least five days of annual leave for carers (providers), as well as the possibility of flexible working conditions for parents and guardians, including teleworking.

WRC prepared and Analysis with recommendations on transposition of the EU Work Life Balance Directive in Montenegrin legislation, primarily the Labor Law and consequently, the Law on Social and Child Protection.

DOMESTIC (NATIONAL) LEGISLATION

WRC's 2019 edition of this report on *Gender-based Discrimination in Labour in Montenegro* analysed the Montenegrin legislative framework relevant to non-discrimination, equality, and (non)discrimination in the field of work. This included the Constitution of Montenegro, the Law on Prohibition of Discrimination, the Law on Gender Equality, and the Labour Law.³³ Since then, substantial changes have affected domestic legislation. This section discusses those changes.

Definitions

The novelties in the new Labour Law refer primarily to the definition of certain terms used in the Law, such as: "pregnant employee", "employee who recently gave birth", and "employee who is breastfeeding."³⁴

The term "**pregnant employee**" refers to a woman who informed her employer in writing about her pregnancy with the submission of appropriate medical documentation. From that moment, the employer would be obliged to apply the provisions for the protection of pregnant women in employment. This definition is in line with the Pregnancy Directive.³⁵

The Labour Law guarantees the following rights to a pregnant employee:

- The right to one day of absence from work during the month, to undertake prenatal examinations;³⁶
- Extension of a fixed-term labour contract in case of exercising the right to temporary incapacity for work due to high-risk pregnancy; a prohibition of designating a pregnant employee redundant during temporary incapacity for work due to high-risk pregnancy; impossibility of deployment to another place of work during pregnancy, except with the consent of the pregnant employee;³⁷

³² Directive 2019/1158 of the European Parliament and of the Council on the balance between business and privacy of parents and guardians repealing Council Directive 2010/18 / EU , entered into force on August 2, 2019.

³³ Women's Rights Center, *Gender-based Discrimination in Labour in Montenegro*, 2019, p. 9-18

³⁴ Labour Law ("Official Gazette of Montenegro", no. 74/2019, 8/2021, 59/2021 i 68/2021), Article 5.

³⁵ Directive 92/85/EC, Article 2a.

³⁶ See Labour Law, Article 122 ("Official Gazette of Montenegro", no. 74/2019, 8/2021, 59/2021 i 68/2021).

³⁷ Ibid, Article 50, para. 3.

- The right to a temporary deployment to other tasks, i.e. the right to absence from work with a wage compensation, if the possibility of deployment to other tasks does not exist;³⁸
- Prohibition of night-time and overtime work for a pregnant employee.³⁹

Where an employee can prove that she was pregnant at the expiration of a fixed-term employment contract, a post-fact notice of pregnancy status may be issued to the employer, who is then obliged to repeal any decision to terminate the labour relationship.⁴⁰

Employers are prohibited from making fixed-term employees redundant while the employee is on leave for any reason related to pregnancy, maternity or parental leave.⁴¹ In such circumstances, the fixed-term contract is extended until the end of such leave. The new Labour Law extends the period for an employee engaged under a fixed-term contract to become a permanent employee, from 24 months to 36 months. However, the conclusion of such contracts must still be justified by objective reasons related to the nature of the work.⁴² Under the previous law, leave related to pregnancy, parental and maternity leave is not included in the 36-month calculation that leads to permanent employment. Therefore, pregnant and postpartum women employed under fixed-term contracts do not receive sufficient protection and legal security.

As with the prior legal solution, the new Labour Law protects employees returning to work after absence due to high-risk pregnancy, maternity and parental leave, adoptive parental and foster parental leave, with a novelty that provide these categories of employees with the right to improvement of working conditions to which they would be entitled during the leave of absence. It is important to point out that in case of a deterioration of working conditions, such employees are not affected.⁴³

The term **employed woman who has recently given birth** refers to an employed mother who informed the employer in writing about the birth and enjoys special protection until the child turns one year old. This special protection, for example, includes a prohibition of termination of the labour contract during maternity leave; the right to wage compensation during the use of maternity leave; the right to a break to breastfeed a child in case of early termination of parental leave; the right to extend a fixed-term labour contract until the expiration of maternity or parental leave; and the right to protection from being declared redundant.⁴⁴

The term **"breastfeeding employee"** refers to an employed woman who has terminated parental leave and returned to work but enjoys the right to special protection within the law, until the child turns one year old, particularly with regard to exercising the right to absence from work for breastfeeding (two hours per day until the child turns one year old).⁴⁵

³⁸ Ibid, Article 124.

³⁹ Ibid, Article 125.

⁴⁰ See the Commentary on the Labour Law, 2020, authored by Dr. Vesna Simović-Zvicer, p. 53, commentary on Article 5 of the Labour Law ("Official Gazette of Montenegro", no. 74/19 and 8/21).

⁴¹ See the Labour Law, Article 123, para. 5 and Article 47, para. 1, item 9.

⁴² Article 37, paragraph 2 of the Labour Law stipulates that a fixed-term contract, continuous or with interruptions, may last for a maximum of 36 months. According to the previous legal solution, a fixed-term labour contract could not last longer than 24 months. It should be emphasised that both labour contracts concluded directly with the employer and the temporary assignment contracts concluded through the agency for temporary assignment of employees, by which contracts the employee was assigned to the same employer, fall under the time period of 36 months.

⁴³ See the Commentary on the Labour Law by dr. Vesna Simović Zvicer (p. 318, commentary on Article 130 of the Labour Law).

⁴⁴ See similar Articles of the Labour Law.

⁴⁵ Ibid, Article 129.

Prohibition of discrimination

The new Labour law (2019) introduced a novelty when it comes to the prohibition of discrimination. Namely, it provides a more precise definition of the term of discrimination, relating to direct and indirect discrimination. Article 7 of the Labour Law prohibits discrimination as follows:

It is prohibited indirect and direct discrimination of jobseekers, as well as employees, on the grounds of race, color, nationality, social or ethnic origin, connection with minority people or minority national community, language, religion or belief, political or other opinion, gender, gender reassignment, gender identity, sexual orientation, health status, disability, age, property status, marital or family status, pregnancy, group membership or assumptions about belonging to a group, political party, trade union or other organization, or some other personal characteristic.

The new Labour Law also prohibits discrimination on the grounds of sex in relation to professional social security systems⁴⁶. These are social security systems that can be provided for in collective agreements, at the branch level or with the employer. This provision was introduced in order to comply with Directive 2000/43/EC on the implementation of the principle of equal treatment between persons, irrespective of racial or ethnic origin,⁴⁷ and its application will begin from the date of Montenegro's accession to the EU. This is due to the fact that in Montenegro only the first, so-called pillar of pension and disability insurance has fully come to life, although the Law on Pension and Disability Insurance provides for the so-called three pillars of insurance; in addition to the above, they include insurance based on capitalization of savings and savings.⁴⁸

Further, the Law defines the prohibition of discrimination in relation to access to all types and levels of professional orientation, vocational training and professional development and retraining, including practical work experience, and explicitly defines the prohibition of discrimination in relation to membership and participation in employees' or employers' organisations. This provision is also the result of alignment with the EU Directive 2000/43/EC on the implementation of equal treatment between persons, irrespective of employment or ethnic origin and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Protection of rights of employees providing care to children

Maternity and parental leave

Maternity and parental leave rights have been amended by the new Labour Law. A mandatory maternity leave of 98 days applies, out of which 28 days must be taken prior to the expected delivery date, and 70 days after childbirth. The 70 days after childbirth may be used by both parents simultaneously where two or more children were born. Similarly, the 70-day period can be exercised by the father (even if the child's mother is unemployed) where the mother died during childbirth, is severely ill, abandoned the child, is deprived of parental rights, or is serving a prison sentence.

⁴⁶ Ibid, Article 11.;

⁴⁷ The text of Directive 2000/43/EC on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>.

⁴⁸ This provision is also in line with Directive 2006/54/EC on the implementation of the principles of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Parental leave is defined as an individual right of both parents regardless of whether one of them is unemployed or whether the parents are in a marital or extramarital union, with a view to enable equal treatment of both parents in terms of exercising the right to parental leave. Parental leave is counted from the date of expiration of the above-mentioned 98-day maternity leave period until the child turns one. However, a parent who started using parental leave can transfer it to the other parent upon expiry of at least 30 days from the date when he/she started exercising the mentioned right. If one of the parents transfers his/her share in parental leave to the other, he/she will not be entitled to continue using the remaining share in the parental leave afterwards.⁴⁹

The mentioned novelties of the Law regarding the use of parental leave are very important for balancing gender roles, including more equal division of responsibilities between men and women and for enabling early emotional connections between fathers and children. There are no publicly available official data in Montenegro on how many fathers used parental leave, so it is not yet possible to monitor the success of the exercise of this right by fathers. However, the right of fathers to use leave was recognised as a possibility, not an obligation. Therefore, Montenegro is obliged to continue to harmonise labour legislation with EU directives. At the end of 2021, Ministry of economic development found threpartite Working group which will work on amendments of the Labour law and its harmonisation with EU directives, including EU Directive 2019/1158 on the balance between business and private life of parents and carers, as well as with the Directive 2019/1152 on transparent and predictable work conditions in the EU.

WRC have prepared recommendations on amendments of the Labour Law in light of its harmonisation with the EU Directive 2019/1158 and informed the Ministry of Economic Development about them. These recommendations should be discussed by the above mentioned Working group.⁵⁰

The new Law, as the previous one, envisaged the protection of employees upon return to work after the use of high-risk pregnancy management leave, maternity and parental leave, as well as the protection of employees who use adoptive and foster leave. According to the Law, these employees shall be entitled to all the rights acquired from employment as before the beginning of their absence, as well as all benefits from any improvement in working conditions to which he/she would have been entitled during his/her leave. For example, if there is a reduction in wages in the company during the period when the employee uses the right to leave (parental, maternity, etc.), the employer should not apply the effects of the reduction to that employee while exercising the right to leave. Or the employer should not make a decision to reassign the employee while exercising the right to leave. During the leave, the employee shall have the right to earnings reimbursed in an amount that cannot be smaller than earnings given in case of temporary inability to work due to high-risk pregnancy, in line with the Law. The employer shall allow the employee to return to the same job or to an equivalent job with at least the same wage upon expiry of the leave. Moreover, at the request of the employee, the employer may, considering the needs of the employee that he/she has stated in a written request, at the expiration of his/her absence, allow a change of working hours and/or patterns of work for the employee, where the work process of the employer allows for such a change.⁵¹

Maternity and parental protection

The Labour Law contains additional provisions related to protection of maternity and parenthood, such as: protection in the event of the birth of a stillborn child; the possibility of

⁴⁹ See Labour Law, chapter 2, Protection of rights of employees providing care to children.

⁵⁰ Women's Rights Center Analysis with recommendations available at: <https://womensrightscenter.org/wp-content/uploads/2022/03/Transponovanje-Direktive-2019-1158.pdf>

⁵¹ Labour Law, Article 130, at: <https://www.gov.me/en/documents/5783ef41-8afc-4cbb-88a0-dcc9ade6f670>.

working part-time for additional childcare; part-time work to care for a child with disabilities; the right to leave for the purpose of adopting a child; the right to parental leave; the right to leave from work for the care of a child up to three years of age without wage compensation, but with entitlement to health insurance, pension and disability insurance, covered by the health insurance, pension and disability insurance funds.⁵²

It is important to emphasise that the new Law guarantees the above rights not only to parents, but also to adoptive parents, foster parents and guardians. Unfortunately, same sex couples do not enjoy these rights yet.

An important novelty in the new Labour Law is the additional protection of temporarily employed pregnant women and women who use the right to temporary incapacity for work based on high-risk pregnancy management leave. Namely, if their fixed-term labour contract ends during pregnancy, maternity, or parental leave, the employer is obliged to extend their contract until the expiration of the right to such leave⁵³, which was not the case with the previous legal provisions. Moreover, according to the previous Law, this right was guaranteed only to the child's mother, but now the father has the right to an extended fixed-term contract till the end of his parental leave, too. However, the same right does not apply to foster and adoptive leave.⁵⁴

However, as with the previous Law, the new Labour Law stipulates that the time spent on high risk pregnancy management leave, maternity and parental leave is not included in the three-year period⁵⁵ required to acquire the right to transform a fixed-term employment contract into a permanent one.⁵⁶ Once again, this means insufficient protection and insecurity for employed pregnant women, mothers and fathers; if they are engaged under fixed-term employment contracts, the Law does not oblige the employer to extend their expired employment contract upon their return from maternity or parental leave, nor to transform it into a permanent employment contract. An additional new provision for the protection of temporary employees stipulates that the 36-month period shall also include the period during which the employee was referred to the employer through the employment referral agency.⁵⁷ Also, the employer may not conclude one or several labour contracts with the same employee if their duration exceeds 36 months, continuously or with interruptions.⁵⁸

Absence from work, vacations and leaves

When it comes to the right to leave from work, an important novelty in the new Labour Law is the right of one of the adoptive and foster parents of the child under age eight to be entitled to leave from work for the purpose of caring for the child for one year continuously, with wage compensation (100% of the base).⁵⁹

In relation to the previous Law, the right to extend the internship also exists in the case of leave from work due to maternity, parental, adoptive and foster leave.

A novelty in the provisions related to the use of annual leave is the obligation of the employer to allow an employee to use annual leave if the employee has not used or has terminated the use of annual leave due to temporary inability to work under the regulations on health insurance, absence from work to care for a child and/or special care of the child. The employee shall have the right to use, or continue using, annual leave, in accordance with an agreement reached with the employer, depending on the needs of the work process, and,

⁵² Ibid, Article 138.

⁵³ Ibid, Article 123 para. 5.

⁵⁴ Ibid, Article 123 para. 5 and Article 47 st. 1 point. 9.

⁵⁵ Article 37, paragraph 2 of the Labour Law stipulates that a fixed-term employment contract, continuously or intermittently, may last for a maximum of 36 months.

⁵⁶ Labour Law, Article 37, paragraph 5.

⁵⁷ Ibid, Article 37, para. 4.

⁵⁸ Ibid, para. 2,

⁵⁹ Labour Law, Article 135.

at the latest, until the expiration of 15 months after the end of the year in which the right to annual leave has been acquired.⁶⁰ The same obligation for the employer exists when the employee has not used, or has interrupted the use of annual leave due to maternity leave, parental leave, adoption or foster care leave, no later than 15 months since the day he/she returned to work.⁶¹

The new Law reaffirms the principle of annual leave being a right that an employee cannot renounce and that cannot be denied, which is in line with Directive 2003/83/EC on organizing work time. Thus, Article 86 of the Labour Law specifies that the right to annual leave cannot be replaced by financial compensation except in the case of termination of employment. If the employer does not enable the employee to use the annual leave in accordance with the Law, the employee can report this to the Labour Inspection. Employees who work six days a week are entitled to annual leave of at least 24 working days. This is a very important change to the Law, especially for employed women who tend to be over-represented in sectors where six-day work weeks are common⁶² (e.g., 53% in wholesale, retail, 72.5% in health, 63.8% on other social and personal services⁶³).

When it comes to absence from work due to health reasons, a novelty in the new Law is the employee's obligation to submit a certificate from a medical doctor, (in person or through another person) to the employer within three days from the day when the temporary incapacity for work arises. This obligation does not exclude the duty of the employee to submit a report on temporary inability for work to the employer within five days of its issuance.⁶⁴ An employer can terminate the contract with the employee who violates duties at work.

A significant novelty in the Labour Law includes a more precise definition of the right to weekly rest. It is specified that a weekly rest of at least 24 hours is supplemented by a recess of at least 12 hours without interruption in two successive working days (daily rest), as a rule on Sundays and the previous or following day.⁶⁵ This is a very important protection of the rights of employees to a day off and to limited working hours, as an element of decent work.

Law on Pension and Disability Insurance

Amendments to the Law on Pension and Disability Insurance entered into force on 12 August 2020. These amendments decreased the age for entitlement to pension to 66 for men and 64 for women.⁶⁶ It is important to emphasise that lowering the age limit for women from 67 to 64 does not mean that an employed woman must leave the labour market at age 64. On the contrary, if she wishes, she can continue working until she reaches age 66 as is the age limit for men (and at least 15 years of insurance); then her employment shall be terminated in accordance with the Labour Law.⁶⁷ In addition, novelties in the Pension and Disability Law introduced an exclusion of one-fourth of every worker's least favourable period of insurance service in determining the pension amount. Another ground for pension entitlement is 40 years of pensionable service. A person with 40 years of pensionable service may receive pensions starting at age 61. Meanwhile, the age limit for acquiring the entitlement

⁶⁰ Ibid, Article 13.

⁶¹ Ibid, Article 85, para. 4 and 5.

⁶² Ibid, Article 85, para. 4.

⁶³ Monstat, Labour Force Survey, 2020.

⁶⁴ Labour Law, Article 90, para. 3 and 4.

⁶⁵ Ibid, Articles 75 and 76, para 2.

⁶⁶ Law Amending the Law on Pension and Disability Insurance ("Official Gazette of Montenegro", no. 80/20).

⁶⁷ Labour Law, Article 218c. Note: this provision is valid until 1 January 2022, when the employment will terminate by force of law at the age of 66 and at least 15 years of insurance experience. Reducing the age limit for termination of employment by force of law is an amendment adopted by members of the Parliament of Montenegro without prior consultation with social partners (see Article 164 paragraph 1 item 1 and Article 218b), which is why it has been criticised in public, primarily by trade unions and the non-governmental sector.

to early retirement shall be increased from 62 to 63 during a transition period from 2020 to 2025.

Since the Parliament of Montenegro passed the Law on Life Partnership of Persons of the Same Sex⁶⁸ on 1 July 2020, the mentioned amendments to the Law on Pension and Disability Insurance stipulate that the right to a pension can be exercised by a life partner of a deceased insured person who has entered into a life partnership.⁶⁹

Amendments to the Law on Pension and Disability Insurance also corrected the unjust treatment of extramarital partners. Thus, Article 43b stipulates that the right to a family pension also may be exercised by the extramarital partner of the deceased insured person, in accordance with the law governing family relations (if the extramarital union lasted for at least the last three years before the death of the insured or beneficiary, or if the duration of the extramarital union from its establishment until the death of the insured was shorter than three years and a joint child was born in that extramarital union). Since the women still tend to be the main caregivers for children and the elderly and often face lack of income and poverty in old age due to unemployment and absence from the labour market, this provision might positively affect the economic position of women who lived in extramarital union. The same right is stipulated for a person who entered into a life partnership with a person of the same sex, in accordance with the law governing the life partnership of persons of the same sex.⁷⁰

NATIONAL STRATEGIC DOCUMENTS AND OFFICIAL DATA

The Government of Montenegro at its 34th Session held on 30 July 2021 adopted the new National Strategy for Gender Equality 2021-2025 with the Action Plan for 2021-2022 and the Final Report on the implementation of the Action Plan for achieving gender equality 2017-2021.⁷¹ As stated in the Strategy, the evaluation of previous strategies, as well as a detailed analysis of the situation in certain areas, showed that the level of gender equality has remained unsatisfactory. It was further pointed out that despite the existence of legal norms, in practice, institutions are not yet able to provide effective and efficient protection against discrimination against women and persons of different gender identities, especially those belonging to vulnerable social groups. The low level of gender equality in Montenegro has been recognised as a key problem. Through Operational Objective 3, Measure 3.3, this Strategy aims to prevent discrimination based on sex and gender, as well as to prevent sexual harassment at work. Measure 3.2 seeks to empower women and persons of different genders and gender identities, as well as marginalised and vulnerable persons, to participate in economic life. These goals are complimentary with the *National Strategy for Sustainable Development of Montenegro until 2030* (NSSD), as an "umbrella, horizontal and long-term development strategy of Montenegro, which refers not only to the environment and economy, but also to irreplaceable human resources and valuable social capital."⁷² The NSSD requires that the state provides equal access to natural and social resources and equal opportunities to enjoy the benefits of development for both men and women. Beside other goals, it covers economic growth and labour productivity, poverty reduction, strengthening human capital through health and education, equal access to finances, natural and social resources for men and women, including marginalised and vulnerable social groups. It includes measures to

⁶⁸ The Law on Life Partnership of Persons of the Same Sex was published in the Official Gazette of Montenegro, no. 67/2020. The law entered into force on 15.07.2020, and its application began on 15.07.2021.

⁶⁹ Law on Pension and Disability Insurance, Article 43b.

⁷⁰ Law on Pension and Disability Insurance, Article 43a

⁷¹ Available at: <https://www.gov.me/dokumenta/d6af2ee6-9e36-406d-911a-fc700784c6d1>.

⁷² The National Strategy for Sustainable Development of Montenegro until 2030 was adopted in 2016, available at: <https://mrt.gov.me/biblioteka/strategije>.

encourage women to have equal access to land and other property, financial services, heritage and natural resources.

The other relevant strategic document is *Strategy of the Development of Micro, Small and Medium Enterprises (2018)*⁷³ in which one of the goals is dedicated partly to the promotion of women's entrepreneurship. The priorities within this goal are defined as – improving institutional framework and enabling access to financing, providing adequate trainings and promotion of female entrepreneurship. According to the 2021 implementation report, % of female business owners have increased from 21.8% (2018) to 22.8% (2020), number of municipalities that have credit lines for female entrepreneurs have first increased than decreased (2018 - 6, 2019 - 16, 2020 - 10) and the number of credits has decreased (2018 – 36, 2020 – 5).⁷⁴

There is also the *Strategy for the development of women's entrepreneurship (2015-2020)*⁷⁵ which was followed by *Strategy for the development of women's entrepreneurship (2021-2024)*.⁷⁶ The goal of these strategies was to increase participation of women in entrepreneurship in Montenegro by addressing the obstacles including structural and long-term barriers, empowerment and fighting discrimination and harassment. Having in mind the structure of Montenegrin economy and heavy reliance on entrepreneurship and micro/small enterprises, these strategies address gender inequality in a very important domain of life.

The other relevant strategic documents include *the Strategy for life-long entrepreneurship learning (2020-2024)*,⁷⁷ *the Strategy for Social Inclusion of Roma and Egyptians in Montenegro*, *The Strategy for improvement of the quality of life for LGBTI persons in Montenegro (2019-2023)*⁷⁸ and *the Strategy for protection of persons with disability from discrimination and promotion of equality (2017-2021)*.⁷⁹ The latter three are especially important since they address discrimination on double grounds (sex and sexual orientation, or sex and ethnic origin or sex and disability) and include activities and measures to reduce inequalities with this regard.

The new methodology for drafting strategic documents in Montenegro which was passed by the General Secretariate of the Government sets very precise rules for including

⁷³ Vlada Crne Gore, *Strategija razvoja mikro, malih i srednjih preduzeća (Strategy if the Development of Micro, Small and Medium Enterprises, 2018*, available at: <https://www.gov.me/dokumenta/1a5fab12-ec7a-4f28-b1e9-83c9d0dad79>

⁷⁴ Ministarstvo ekonomskog razvoja, *Izveštaj o realizaciji Strategije razvoja mikro, malih i srednjih preduzeća u Crnoj Gori za 2020. godinu (Report on implementation of the Strategy of the Development of Micro, Small and Medium Enterprises in Montenegro for 2020)*, 2020, p. 10, available at: <https://wapi.gov.me/download-preview/91ed95fb-2ff6-4822-8e86-d11b9df0b210?version=1.0>

⁷⁵ Vlada Crne Gore, *Strategija razvoja ženskog preduzetništva 2015-2020 (Strategy for the development of women's entrepreneurship)*, available at: <https://www.gov.me/dokumenta/a0ee1601-01cd-4084-9498-75ae347fb3d8>

⁷⁶ Vlada Crne Gore, *Strategija razvoja ženskog preduzetništva 2021-2024 (Strategy for the development of women's entrepreneurship)*, available at: <https://javnepolitike.me/politika/rad-i-zaposljavanje/>

⁷⁷ Vlada Crne Gore, *Strategija cjeloživotnog preduzetničkog učenja (The Strategy for life-long entrepreneurship learning) 2020-2024*, available at: <https://www.gov.me/dokumenta/59a998e8-af01-4e54-a205-fc81584163f8>

⁷⁸ Vlada Crne Gore, *Strategija za zaštitu lica sa invaliditetom od diskriminacije i promociju jednakosti za period 2017-2021 (The Strategy for the protection of the persons with disability from discrimination and promotion of equality for 2017-2021)*, available at: <https://javnepolitike.me/politika/rad-i-zaposljavanje/>

⁷⁹ Vlada Crne Gore, *Strategija za unapređenje kvaliteta života LGBTI osoba u Crnoj Gori za period 2019-2023 (The Strategy for improvement of the quality of life for LGBTI persons in Montenegro)*, available at: <https://www.gov.me/dokumenta/b78cc299-7d34-4338-af1e-e6effc866986>

quantifiable indicators for measuring progress.⁸⁰ However, since the strategic documents prepared according to this new methodology are still being implemented, the effects will be known after their completion.

Interestingly, strategic document the *Directions of the development of Montenegro 2018-2021*⁸¹ does not include any reference to gender equality at all.

INSTITUTIONAL MECHANISMS FOR PROTECTION FROM DISCRIMINATION IN WORK AND EMPLOYMENT

The procedures and legal remedies were exhaustively listed in WRC's 2018 publication. Therefore, this section summarises only key points and changes concerning the procedures for the protection of these rights as defined by the new Labour Law.

As with the previous law, the new Labour Law defines that the rights of employees at work and on the basis of work are decided by the employer. Moreover, an employee who believes that his/her right to work and on the basis of work has been violated may submit a request to the employer to ensure the exercise of this right. The employer is obliged to deliver a written notice to the employee upon receiving the submitted request, within 15 days at the latest. Irrespective of this procedure, the employee may apply to the Labour Inspectorate for protection of rights (Article 139).

The novelty regarding the protection of rights at work and on the basis of work is reflected in the content of Article 140 of the Labour Law, which stipulates that an employee who believes that his/her right to work and on the basis of work has been violated, before initiating proceedings at the competent court, is obliged to file a motion for amicable dispute resolution before the Agency for Amicable Labour Dispute Resolution or with the Center for alternative Dispute Resolution. The employer is obliged to accept the procedure for amicable labour dispute resolution. During the procedure before the Agency, the deadlines to instigate the proceeding before the competent court shall not run. If the labour dispute is not resolved before the Agency, the employee may instigate the proceedings before the competent court.⁸²

The possibility to initiate proceedings before the court without attempt of peaceful resolution is possible in the following cases: the termination of the contract (Article 140, 7) as well as when a person faced prohibited, discriminatory behaviour as envisaged by the Labour Law (Articles 7-15) while seeking employment (Article 16, 2).

If an employee is faced with prohibited behaviour envisaged by articles 7-15 of the Labour Law (e.g., discrimination, sexual harassment, and/or mobbing) she/he is should initiate the procedure before the Agency for Amicable Labour Dispute Resolution or with the Centre for Alternative Dispute Resolution (Article 16, 1). The same is true in case of termination of contract (Article 16, 3).

Notably, the Labour Law does not recognise the role of the Labour Inspectorate to protect employees from discrimination, though the Law on Prohibition of Discrimination stipulates that the inspectorate is to perform controls related to discrimination in labour and employment, occupational safety, health care, education, construction, transport, tourism and in other areas. Failure to recognise the role of the Inspectorate in protection from discrimination calls into question the application of a very important provision of the Law on

⁸⁰ Vlada Crne Gore, *Metodologija razvijanja politika, izrade i praćenja sprovođenja strateških dokumenata (Methodology for development of policies and monitoring implementation of strategic documents)*, 2018

⁸¹ Vlada Crne Gore, *Pravci razvoja Crne Gore 2018-2021 (Directions of development of Montenegro 2018-2021)*, 2017, available at: <https://www.gov.me/dokumenta/1a5fab12-ec7a-4f28-b1e9-83c9d0dadb79>

⁸² Labour Law, Article 140.

Prohibition of Discrimination (Article 32a). This provision authorises labour inspectors, when, during a control, they find that the law or other regulation is violated, to temporarily postpone the enforcement of the decision, other act or action of the subject of control, until the final court decision, on the request of a person who believes she/he has faced discrimination and who has initiated the proceeding for protection from discrimination before the competent court. The inspector is obliged to decide on the request within eight days of the date of filing the request. This conflict will need to be resolved by amending one of these laws as soon as possible.

The Labour Law passes the burden of proof to the employer (the defendant, i.e. the legal or natural person against whom the procedure is conducted) in cases when the employee presents before the court or other competent authority the facts from which it can be assumed that there has been direct or indirect discrimination.⁸³ Paragraph 3 of the mentioned article further stipulates that shall be for the employer to prove that such address or report has not put the employee at a disadvantage compared with other employees, or that her/his rights to employment have not been breached. Finally, in case of a dispute due to termination of employment, the burden of proof in terms of justification and legality of reasons for dismissal is on the employer (Article 180, para. 1) During court proceedings regarding termination of the labour contract, at the request of the employee, and if it assesses that the termination of the labour contract is obviously illegal, the competent court may decide to reinstate the employee temporarily, until the dispute is resolved. If the proceedings show that the legal or justified reasons for termination of the labour contract did not exist, whether the employer prescribed them himself/herself in his/her own act or defined them in the labour contract, the employee shall have the right to be reinstated and to the compensation of material and non-material damage through the legally prescribed procedure. If the proceedings show that the employee's labour contract was terminated in an unlawful or unjustified manner, the employee shall be entitled to the compensation of material damage equal to the amount of the wage lost and other income he/she would earn if he/she had been working, in line with the law, the collective agreement and the labour contract, and the payment of contributions for mandatory social insurance. Compensation of damage shall be reduced by the amount of income earned by the employee on the basis of the labour contract upon termination of employment. If the proceedings show that the dismissal resulted in the violation of rights of a person, honour, reputation and dignity, the employee shall be entitled to compensation of immaterial damage through the legally prescribed procedure.⁸⁴

The protection mechanisms prescribed by the Law on Prohibition of Discrimination, as well as the instruments available to the Protector of Human Rights and Freedoms regarding the protection of discriminated persons are described in detail in the WRC 2019 Report as well as in Chapter Institutional response to discrimination of this report.⁸⁵

Additional protection is stipulated by the Law on Gender Equality that imposes a misdemeanour fine in an amount ranging from €1,000 to €10,000 on a legal person if brings in disadvantaged position a woman because of pregnancy or maternity, as well as other person because of changing sex compared to other persons, in occasion of employment, self-employment, the exercise of rights arising from social security and other rights. For the same offense, the responsible person in the legal entity, state body, state administration and local self-government will be fined in an amount of €150 to €2,000.⁸⁶

Finally, it is important to mention the institute of constitutional complaint for violation of human rights and freedoms guaranteed by the Constitution. This instrument may be used

⁸³ Article 142, paragraph 2 of the Labour Law.

⁸⁴ Labour Law, Article 180, para. 2-8.

⁸⁵ WRC, *Gender-Based Discrimination in Labour and Employment in Montenegro*, Chapter: Procedures and Remedies, p. 14 and p. 15.

⁸⁶ Law on Gender Equality, Article 33 ("Official Gazette", no. [46/2007](#), [40/2011](#) and [35/2015](#)).

after the exhaustion of all effective remedies, guaranteed by the Constitution of Montenegro.⁸⁷ The procedure for a constitutional complaint is regulated by the Law on the Constitutional Court, which stipulates, among other things, that any natural and legal person, organisation, settlement, group of persons and other forms of organisation that do not have the status of a legal person may file a constitutional complaint.⁸⁸

Conclusion

Since the last report the entire world faced a health crisis caused by the spread of the novel coronavirus (COVID-19) which reflected heavily on different domains of human life, work being one of them. Even though the Government of Montenegro employed number of measures and policies to reduce the impact of the pandemic on the health, social and economic aspects of the society, the preexisting weaknesses of these systems were strengthened, thus producing new and deepening existing inequalities. This is especially true when it comes to the labour market. Apart from losing jobs, women were especially hit by the increase of household related unpaid work (caring for children when kindergartens and schools are not working, e.g.). The reports also indicate that the pandemic increased domestic violence.

When it comes to international legal framework, Montenegro has finalised the transposition of the EU *acquis* in certain areas, while in other areas, transposition is either ongoing or yet to be started. Montenegrin Government has adopted Bill on Ratification of the International Labour Organization Convention No. 190 on Violence and Harassment in the Field of Work which is now sent to the Parliament for the final adoption.

When it comes to the domestic legal system, the 2019 WRC's report enlisted recommendations for improving the legal framework governing discrimination against women in the field of labour and employment. Several recommendations were addressed in the text of the new Labour Law,⁸⁹ including:

- Discrimination based on gender, gender reassignment, gender identity and sexual orientation was specified;⁹⁰
- The employee's fixed-term employment contract that expires during pregnancy, the use of temporary incapacity for work based on high-risk pregnancy, maternity or parental leave, will be extended until the expiration of the right to leave.⁹¹ Until the enactment of the new Law, the obligation to extend a fixed-term employment contract was applied exclusively to women who had started to use their right to maternity leave before the contract expired;
- The principle of equal pay applies to all employees, regardless of their sex;⁹²
- Comparison of equality of earnings is not only in relation to sex; an employee may initiate a dispute for the protection of his/her rights even if he/she earns less than a colleague who performs the work of the same value;⁹³ and
- It is prescribed that both parents have the right to parental leave in equal parts (in practice this would mean about 4.5 months per parent), and the possibility of transferring part of the parental leave to the other parent.⁹⁴ See the later section of

⁸⁷ Article 149 of the Constitution.

⁸⁸ Law on Constitutional Court, Article 68 ("Official Gazette", no. 11/2015 and 55/2019 – Decision of the CC).

⁸⁹ The Labour Law ("Official Gazette of Montenegro", no. 74/2019, 8/2021, 59/2021 and 68/2021).

⁹⁰ Article 5 of the Labour Law

⁹¹ Article 123, paragraph 5 of the Labour Law

⁹² Article 99 of the Labour Law

⁹³ See the Commentary on the Labour Law, by Dr. Vesne Simovic Zvicer (Article 99 of the Labour Law, p. 258 of the Comment).

⁹⁴ Article 127 of the Labour Law

this report on "Maternity and paternity leave" for further information about this provision.

However, number of WRC recommendations from the 2019 report have not been implemented with the adoption of the new Labour Law included:

- No misdemeanour liability, that is, no fine is predicted for an employer who violates the principle of equal pay for equal work; nor is a violation of this principle explicitly cited as an example of gender-based discrimination. Here, however, one should consider Montenegrin case law which indicates that the violation of this principle is to be considered discrimination when "a less favorable treatment has been committed against a person or a group of persons, with regard to their personal characteristics, and in relation to the treatment of another person, ie a group of persons who do not have these personal characteristics, in an analogous situation (the so-called discrimination test);"⁹⁵
- The time spent on pregnancy and maternity leaves was not included in the total duration of fixed-term contracts, allowing for their transformation into permanent employment contracts;

Apart from the Labour Law recommendations, the WRC prepared some recommendations regarding the amending the Law on Prohibition of Discrimination. The process is ongoing (the draft law was sent to the EC for evaluation), but the draft proposal is still not available. Hence, it is not possible to predict whether it included WRC recommendations to amend the Law on Prohibition of Discrimination to introduce the definition and scope of discrimination based on sex, to recognise discrimination based on sex as a specific form of discrimination and to envisage appropriate corresponding fines. According to the midterm work program of the Government of Montenegro, the revision of this legal provision was planned for second quarter of 2022.

The new Labour Law contains some new provisions aimed at reconciling professional and family obligations of employees, and it has been significantly improved compared to the previous one. However, the draft Law needs to be further amended in line with the EU directive 2019/1158 on Work-Life Balance for parents and carers⁹⁶ in order to improve the position of women in the labour market and to ensure job security. Further implementation of the Law on Prohibition of Discrimination with EU Acquis is also necessary. Namely, the EC's 2020 Country Report on Montenegro states that the legislative framework on gender-based discrimination "has a limited impact, due to poor implementation of existing measures and insufficient prioritization of gender equality in overall state and public accountability mechanisms". In such circumstances, the implementation of the new Labour Law remains challenging.

Moreover, it is necessary that gender equality as a principle be integrated and horizontally applied to all laws, policies and measures, as stipulated by the Law on Gender Equality. Hence, it is necessary to conduct mandatory ex ante gender impact assessments to inform all measures and define goals that contribute to achieving gender equality in all spheres, including labour and employment.

⁹⁵ The Montenegro Supreme Court Judgement Rev. 761/19, since 17/12/2019, available at: <https://sudovi.me/vrhs/odluka/371313>.

⁹⁶ The EU Directive 2019/1158, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>.

Finally, all policy impact assessment reports need to assess in what way the policies and measures affect women and men separately and to enumerate the positive and negative and direct and indirect impacts.

PEOPLE'S AWARENESS OF DISCRIMINATION

This chapter seeks to understand people's knowledge about, perceptions of and experiences with gender-based discrimination in labour. It then considers how knowledge levels may affect reporting the discrimination. Also, it draws from information triangulated from different sources, including the online survey, interviews with representatives of different institutions and official statistics provided by institutions. The detailed description of data collection for this part of the report is provided in the Methodology section of this report.

Awareness about discrimination

*"I believe that people are not aware of this problem, not even women." -
Judge, High Court*

Most of the people participating in the survey were aware of the fact that gender-based discrimination is illegal. When asked, 91% of the survey respondents agreed with this statement. In 2018, when asked the same thing, 96% of the respondents said that they believe that gender-based discrimination is illegal. The direct comparison is not possible, but the data indicates that the % of people that understand discrimination as illegal activity remains very high.

"Knowledge has increased. Civil society sector and women's organisations contributed to this. LGBT organisations partly. We have just recently started talking about discrimination against LGBT persons as gender-based. However, the state hasn't [recognised these issues] yet." - CSO activist

However, believing that gender-based discrimination is illegal and being able to recognise it are two very different things. The representatives of the different institutions who were interviewed claimed that, in most cases, people do not recognise discrimination when it affects them. In many cases, they said, persons who suffered/experienced discrimination believe that discriminatory relations are something "normal" that they should endure. Moreover, the interviewed judges who had experience with such cases claimed that people often do not want to be recognised as "disobedient" in their communities. That is why they are willing to suffer discrimination, in order to protect their place of employment.

"Once the problem is recognised, the treatment is perfectly fine. But, there are many instances when the problem is not recognised." - Prosecutor

When survey respondents were asked if they had any experience with gender-based discrimination related to labour personally 44% of the women answered positively. The

sample of men who completed the full questionnaire was too small to report in percentages, however, out of 25 men who completed the survey 11 stated that they have experienced gender-based discrimination related to labour.

The survey findings suggested that gender-based discrimination tends to happen almost as often in the public sector, as in private. Approximately half of the respondents who stated that they had experienced gender-based discrimination (51%) said that they were working in the private sector, while 44% were working in the public administration (including ministries, municipalities, health institutions, public schools, universities, etc.).

Reporting discrimination

Among the surveyed women who said they had experienced gender-based discrimination at work, 80% said that they did not report it to any institution. Among those who said they did contact someone: 9% contacted the Labour Inspectorate; 4% non-governmental organizations; and 4% the Agency for Peaceful Settlement of Labour Disputes. Seven women (4%) said that they had contacted the Ombudsperson, and the same number said that they had contacted courts.

Interviewed representatives of institutions had contradictory opinions on whether women are empowered enough to report discrimination. Some of them believed that the situation is alarming: that discrimination happens all the time and that the women are not protected. Others noticed that there has been an increase in awareness due to education efforts, primarily by CSOs. However, this has not offered enough for effective protection.

Besides the stigma that being "the one that complains" carries, people often do not understand the procedures and their rights. According to the interviewed representatives of different institutions, people are afraid of the "unknown". Recurrently mentioned reason for low reporting of discrimination was that people are not educated enough about their rights and about the procedures for seeking protection of their rights. Sometimes, these rights have not been recognised even by those who have a responsibility to protect such rights.

"The discouragement and insensitivity of bodies that should provide support and the insufficient number of court rulings that were positively resolved in favour of persons who were discriminated against demotivate employees to enter these proceedings at all, despite the fact that we probably all educated them somewhere to recognise discrimination, to turn for help. However, they give up precisely for these reasons because they know that it will take a long time and that it will further exhaust them mentally and, of course, financially." - Labour union representative

There are many other reasons why people do not report gender-based discrimination at work, according to representatives of different institutions that had experiences with cases of gender-based discrimination at work. Many of them spoke about a certain "dependency" of the person who suffers from discrimination. Since the person affected needs work, she/he is often prepared to suffer to keep it. People are afraid that their salaries would be reduced or that they would be transferred to a lower or worse position. They are afraid that if they complained about discrimination, it would be harder to find other employment.

"The voice is heard but it is difficult to find another job [after reporting discrimination]. You tried to exercise some of your rights, discrimination

against you was visible. I don't think enough information is coming right from where the events are happening. Due to the inequality of workers in relation to employers, workers agree to suffer due to insufficient opportunities." - Prosecutor

According to representatives of labour unions, in their experience, people are also afraid of retaliation. Combined with perceived low chances of winning and stigma that follows the submission of complaints, people fear retaliation and thus do not stand up for their rights.

On the other hand, they are afraid of retaliation from the employer when they start some such actions, so they probably believe that they will be additionally discriminated against, that is, put in an additional unfavourable position in relation to other employees because they dared to initiate procedures." - Labour union representative

Another reoccurring theme was lack of trust in institutions. Since few cases have been resolved in positive ways for persons who have suffered discrimination, people do not have positive examples to follow. Lack of such experiences has had a discouraging effect on people faced with discrimination.

"Because we have situations where institutions, when we come before them, whether as an individual or a trade union organisation or headquarters, simply do not have an adequate response. And this discourages [people from reporting discrimination]." - Labour union representative

Labour union representatives also mentioned the costs of judicial process, which are too high for many persons who suffered/experienced discrimination. Also, given the lack of labour courts or specialised departments that would deal with these cases, disputes sometimes lasted two or three years. Even though labour disputes legally should be treated as "urgent", in reality they tended to last a long time, according to union representatives.

In cases of discrimination involving transgender people, often the persons who suffered/experienced discrimination do not want other people to know. Montenegro is a small country where privacy and anonymity is not protected. The same is true for cases of sexual harassment. Fear of facing shame and stigma from their community prevents people from seeking protection or justice.

"[People] may not know they have the right to react in such situations. Secondly, related to sexual harassment, there is probably a sense of smallness and shame: how [people in] the environment will react [in] a patriarchal society." - Prosecutor

Finally, representatives of institutions pointed out that discrimination cases are extremely hard to prove. Interviewed judges shared information about instances where the

witnesses were unwilling to come forward or where their testimonies were brief and very uninformative. People who suffer from discrimination do not feel supported and empowered enough to go through lengthy and costly procedures.

When asked to which institution such discrimination should be reported, most people identified the Labour Inspectorate: 46% of women and 54% of men (see Figure 1). The second most identified institution was the Ombudsperson Institution (32% of women, 39% of men). The third most identified institution for reporting gender-based discrimination was the employer (27% of women and 22% of men). The order is the same as it was in 2018 when most women and men also said that the discrimination should be reported first to Labour Inspectorate, then to Ombudsperson Institution and then to the employer.

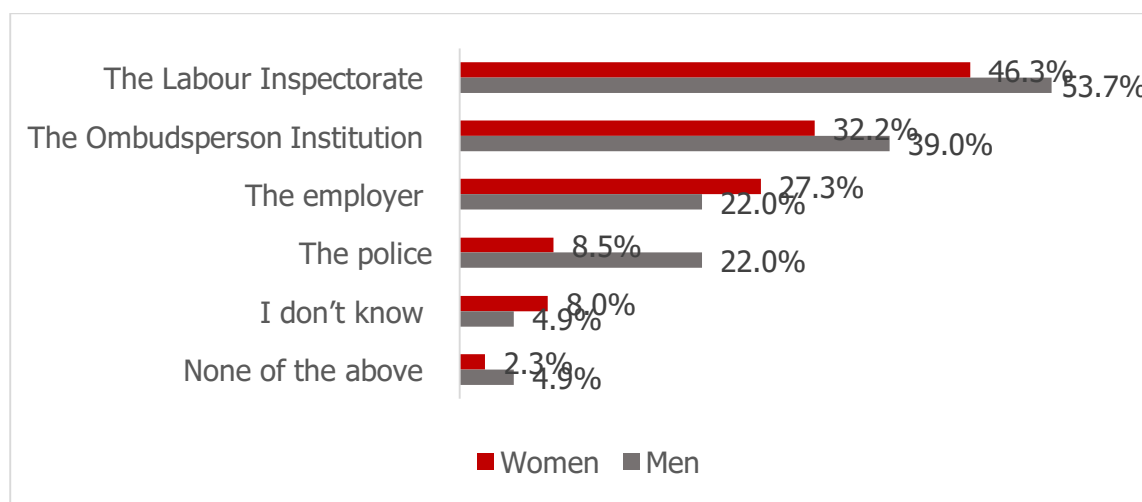


Figure 1: If it happens, this type of discrimination at work should be reported to... (multiple answers possible)

However, the information provided by the institutions shows that even though people believe that discrimination should be reported to the Labour Inspectorate, most people do not actually report it there. Data show that more cases have been reported to the Ombudsperson Institution and tried before courts, rather than reported to the Labour Inspectorate, as discussed in the next chapter.

Conclusion

Even though people agree that gender-based discrimination related to labour is illegal, the evidence shows that they are often not aware of it and not able to recognise it. Sometimes, not recognising it is connected to the fear and a prejudice that a person should suffer anything in order to keep his/her job.

Even though the interviewed representatives of the institutions recognise positive changes in general (people are more aware and more ready to report), especially long term, the situation is still far from satisfactory. Reporting discrimination still seems to involve social stigma for people who report it. Therefore, people are willing to suffer to protect their current and future employment, as they do not want to be singled out as a person who complains. People are afraid of retaliation from their employers, which also creates a hostile context for people to seek protection when they experience discrimination.

The procedures are lengthy and costly, and discrimination can be difficult to prove, which all contribute to low levels of reporting discrimination.

The lack of experiences with cases in which the complaint was resolved positively for the victim contributes to increased distrust in institutions, which is another reason people tend not to report discrimination.

More people seem to recognise the Labour Inspectorate and Ombudsperson Institution as institutions where gender-based discrimination should be reported. However, official statistics suggest that in practice people turn to the Ombudsperson Institution more often.

PREVALENCE AND EXPERIENCES WITH DISCRIMINATION

In this chapter the data collected about the experience different institutions had with cases of discrimination related to labour is presented. First, we present the data which was obtained via official requests in order to show the prevalence of such cases before Montenegrin institutions since 2018. After that we present the information which was collected from the representatives of these institutions via interviews about what was their experience in these cases, which were the main challenges and other important issues they have noticed.

Institutional Data on cases of discrimination

In order to assess the prevalence of reported cases of gender-based discrimination related to labour, the project team contacted all relevant institutions with the request to provide information about the number of cases before them in 2018, 2019 and 2020. The similar request was made in 2018 when the first report was prepared but with less success. It could be noted that even the statistics is still quite basic, it includes more information than it did three years ago.

"Unfortunately, no, we do not keep records of cases in general." – Labour union representative

The Labour Inspectorate, Judicial council on behalf of the courts and Ombudsperson Institution provided their statistics, while the police and prosecution did not. The respondents claim that police statistics is lacking data on cases involving discrimination, because this is not one of the disaggregation they keep track on. However, the police officials stated that they believe that statistics should be improved (not only police's but in general) if we want to track the problems, and work on resolving them.

"It is certainly a problem if some institutions do not collect data. Wherever there are statistics, it is easy to see what the problem is... Then we easily spot the problem. We have no evidence when it comes to discrimination. We have proof of the reports submitted. Also, no special records are kept for men and women." - Police representative

The police representatives explained that their evidence system doesn't include possibility to create reports based on discrimination related to labour as ground. The only way to do it would be to go over each case manually and count them.

"We have one huge problem in the entire organisation of the prosecution. We have this system, IBM Case Manager... I don't think it works well. Having an adequate way of keeping records and including different parameters according to which one can produce statistical reports is essential for our work. It must be the priority in the forthcoming period when it comes to prosecution." - Prosecutor

Union representatives stated that they do not have such statistics. This section discusses the data available from each of these respective institutions and trends in reporting.

In total, from 2018 to 2020, the Labour Inspectorate had 18 work-related cases of discrimination. The Inspectorate did not have any information as to how many of these cases involved gender-based discrimination, as they do not disaggregate their data based on this ground.

During the same period, five cases of work-related discrimination were taken before basic courts and none before higher courts in Montenegro. Courts similarly do not maintain sex or gender-disaggregated data, or the information as to whether sex/gender was a basis for discrimination.

Meanwhile, 64 cases of work-related discrimination were reported to the Ombudsperson Institution, of which at least 22 involved labour related discrimination on the basis of sex or gender.

Labour Inspectorate

Of the 1,405 reports submitted to the Labour Inspectorate in 2018, five related to claims of discrimination. The Labour Inspectorate found no evidence of discrimination in any of these cases, nor were they labelled as gender-based. However, there are cases that may have contained this element, such as discrimination in not extending fixed-term employment contracts when the person who complained was a woman.

No.	Basis for complaint	Sex of the person who complained	Outcome
1	Discrimination in salary calculation	Male	No disciplinary measures
2	Discrimination in reducing salary	Male	No disciplinary measures
3	Discrimination in not extending fixed-term employment contract	Female	No disciplinary measures
4	Discrimination in rearrangement of employees in sectors	Female	No disciplinary measures
5	Workplace disturbance	Male	No disciplinary measures

In 2019, of 1,573 complaints, eight claimed discriminations. None officially involved elements of gender-based discrimination. In two cases, the basis for the discrimination claim was ethnicity, and the plaintiffs belong to Roma and Egyptian community.

No.	Basis for complaint	Sex of the person who complained	Outcome
1	Discrimination in selection of candidates	Female	No disciplinary measures
2	Discrimination in selection of candidates (Roma person not selected)	Male	No disciplinary measures
3	Discrimination in selection of candidates (Roma person not selected)	Male	No disciplinary measures
4	Discrimination in selection of candidates (Roma person not selected)	Male	No disciplinary measures
5	-	Female	No disciplinary measures
6	Annex of the contract	Male	No disciplinary measures
7	Manager's behaviours towards employees	Collective	No disciplinary measures
8	Difference in salaries between workers	Collective	No disciplinary measures

In 2020, the Labour Inspectorate received 1,569 complaints. Of these, four involved claims of discrimination at work.

No.	Basis for complaint	Sex of the person who complained	Outcome
1	Worker was not kept by a new employee	Male	No disciplinary measures

2	Ethnicity based discrimination in hiring process	Female	No disciplinary measures
3	Discrimination in selection of the candidates	Male	No disciplinary measures
4	Discrimination in selection of the candidates (Roma person not selected)	Male	No disciplinary measures
5	Issuing work orders beyond contract obligations	Female	No disciplinary measures

The Labour Inspectorate's official response stated that all complainants were informed about how they can protect themselves from discrimination and that they can turn to the Ombudsperson Institution or initiate a procedure before the court.

Courts

The basic courts' information system - PRIS, does not enable courts to produce statistics based on the criterium, such as discrimination at work. Thus, it cannot produce statistics based on a narrower criterium, such as gender-based discrimination related to labour. To count the cases, court clerks would have to examine, one by one, the grounds for each complaint.

No specific official statistics exist related to gender-based discrimination cases that are brought to court. In response to a request for official information, courts said that in order to produce such statistics they would need to review the court registers, opening each case related to labour disputes, and separating those cases that involved a lawsuit with a gender aspect. Considering that courts receive a large number of civil cases annually, many involving labour disputes, according to the official response, it was practically impossible to provide the requested information. Moreover, many courts stated that they don't have electronic data processing related to discrimination cases, and that the electronic system doesn't recognize cases of discrimination in the workplace. All of these reasons were stated as to why the courts could not provide the data requested.

"Statistics, as they are, serve no one." – Higher Court Judge

However, we have managed to obtain information from the Judicial Council in Montenegro. According to them five cases of discrimination at work appeared before courts between 2018 and 2020: two in 2018, two in 2019 and one in 2020. The cases from 2018 remain in progress, while those from 2019 have been interrupted. The case in 2020 was withdrawn. No information exists as to whether any of these cases involved gender-based discrimination.

"Producing statistics means that I look at my register and see if there was any such case. There is no special evidence. Unreliability is the main problem; the only good thing is that there are relatively few such cases so they are easily identified." - Higher Court Representative

Ombudsperson Institution

The Ombudsperson Institution provided information on reported cases of discrimination based on sex or gender during the period from 2018 to 2020. In total, the

Ombudsperson received 29 cases in 2018, 26 in 2019 and 9 in 2020. Table below summarises these cases. An examination of the grounds of the cases suggests that at least eight cases in 2018, seven in 2019 and seven in 2020 could be classified as gender-based discrimination related to work.

Grounds	# of Cases	GBD related to work
2018		
Based on sex, change of sex, gender identity, in the field of work and employment	4	X
Based on marital and family status in the field of work and employment	3	X
Based on sex and related to procedures before government	2	
Based on sex with regards to pension and insurance rights	1	X
Based on sex with regards to social protection rights	6	
Based on sex, change of sex, gender identity in the field of health protection	1	
Based on sex with regards to access to goods and services	1	
Gender-based violence	11	
TOTAL	29	
2019		
Based on sex in the field of work and employment	6	X
Based on marital and family status in the field of work and employment	1	X
Based on marital and family status in procedures before government	1	
Based on marital and family status in the field of social protection	3	
Based on marital and family status in the field of family violence	1	
In education	1	
Gender based violence	13	
TOTAL	26	
2020		
Based on sex in the field of work and employment	6	X
Based on sex, change of sex in procedures in judiciary	1	
Based on marital and family status in the field of work and employment	1	X
Based on sex, change of sex in procedures in judiciary	1	
TOTAL	9	

Conclusion

Even though it was possible to obtain more data, which was disaggregated by certain grounds now than it was in 2018 when the first report was prepared, the lack of data is still a significant problem. The data is available only for the Labour Inspectorate, Ombudsperson Institution and the courts (indirectly via Judicial Council). It is still not available for police and prosecution. The data that is available allows for certain disaggregation but gender-based discrimination related to work is not one of them.

When it comes to the prevalence of the cases before different institutions, the clear trend cannot be identified. In general, number of cases before different institutions remains very low. However, the fact that the institutions do not track cases of gender-based discrimination related to labour before them creates additional reason for concern.

The Labour Inspectorate has not had any cases of gender-based discrimination related to labour since 2018. In the 18 cases of work-related discrimination reported to the Inspectorate during this period, no disciplinary measures were issued against employers.

Also, none of the five cases of discrimination at work before courts in 2018-2020 reportedly supposedly contained elements of gender-based discrimination.

The Ombudsperson Institution received reports of 22 cases that might include elements of gender-based discrimination connected to labour during this period.

An Overview of Gender-based Discrimination

In the following chapter we will present the data we collected about the gender-based discrimination related to labour. The main source of data is the online survey, but where possible the findings were corroborated with the information that we collected via interviews with the representatives of the relevant institutions. The goal is to see if there are some “regularities” when it comes to different aspects of gender-based discrimination related to labour. These regularities might include most common gender of the person who suffers discrimination and the perpetrator of discriminatory act, the different forms and types of discrimination.

In the chapter about people’s awareness about the discrimination we have reported that 44% of surveyed women says that had experienced gender-based discrimination related to labour. The sample of men who completed the full questionnaire was small, but 11 of the 25 men who completed the survey stated that they have experienced gender-based discrimination related to labour. In this chapter we explored the survey data in order to see who are most often the persons who experience discrimination and alleged perpetrators.

"The situation is catastrophic! Women are not empowered to fight for their basic work-related rights. We all know that employers ask women if they are married, and if they have children, and if they plan pregnancy... [Employers] make [women] sign blank dismissal forms so that they can fire them if they become pregnant during their employment. This happens even in the situation where the state refunds part of the costs of maternity leave to the employers. The legal framework is not adequate and is not protecting these cases. Let's not even talk about the fact that women are less paid." - CSO activist

Gender of the persons who experience discrimination

The online survey did not and could not yield statistically significant differences among women and men respondents as to whether they had ever experienced gender-based discrimination related to labour, given the small number of male respondents in the sample. However, the very fact that respondents said that they had experienced gender-based discrimination suggests that it had affected both women and men, and particularly women respondents, who may have self-selected themselves to respond to the survey *because* they had suffered such discrimination. The interviewed representatives of different institutions disclosed that in most cases women suffer gender-based discrimination related to labour.

Until recently, discrimination against LGBT persons was not even considered a form of gender-based discrimination. However, due to the work of activist organisations, this seems to be changing. According to the CSO representatives whom we have interviewed persons who identify as transgender, or neither as male or female also often suffer discrimination in different fields including labour.

Since official statistics do not register gender-based discrimination related to labour as a category, it is not possible to produce official reports on the gender of the persons who suffered/experienced discrimination.

Gender of the Alleged Perpetrator

Most women who reported experiencing some sort of discrimination related to labour stated that the alleged perpetrator was a man. Among the surveyed women who said that they were persons who suffered/experienced discrimination of sexual harassment at work, 90% stated that the perpetrator was a man and 7% had experiences with both men and women as perpetrators. Only 3% of the victimized women said that the perpetrator was a woman.

The sample of men subjected to sexual harassment related to labour is comparatively smaller. However, six out of 15 survey participants who indicated to have experienced gender-based discrimination at work identified both women and men perpetrators, while four participants had experiences with men as perpetrators and six with women perpetrators.

When it comes to women, most commonly the perpetrators of the discriminatory actions according to collected data are men. The conclusion cannot be so firmly drawn in cases when the persons who suffer discrimination are men because the sample was not sufficient. The existing evidence suggests that men and women can be found in this role almost equally.

Types of Discrimination Based on Specific, Protected Grounds

In this chapter we have explored different grounds that multiply vulnerability to discrimination, including discrimination related to labour. Evidence suggests that gender-based discrimination against persons with different abilities, against LGBTQIA+ persons and against minority ethnic groups occurs more often. Another usual ground for discrimination, especially when it comes to women is age.

Gender-based Discrimination against Persons with Different Abilities

According to the 2020 yearly report prepared by the Employment agency of Montenegro there were 10.970 people with different abilities registered as seeking employment. Among them, there were 60.5% of women.⁹⁷ According to the Law on professional rehabilitation and employment of persons with disabilities,⁹⁸ an employer who employs a person with a disability has right to receive assistance from the state in order to adjust the workplace to the needs of the employed person, to co-finance personal assistant and to subsidize part of the persons' salary. According to above mentioned report, in 2020 1718 employers applied for some of these subventions. In 806 cases, the request was filed for a male employed person with disability, and in 912 for female person with disability.⁹⁹

This data shows that even before pandemic, finding employment has been difficult for people with different abilities as employers have not been opened to giving them opportunities to work. COVID-19 pandemic made things significantly worse as many people with different abilities faced different difficulties and even discrimination because they did not have regular access to healthcare services that they needed.¹⁰⁰ The Employment Agency in Montenegro initiated some active employment measures to stimulate employers to employ persons with different abilities. However, data on the effectiveness of these measures was unavailable.

"As far as persons with disabilities are concerned, unfortunately we need to have someone in the family who has certain problems of that kind, or for a certain problem to happen to us, so that we understand better. Fortunately, through my work in the Union, I had the opportunity to become acquainted with the problems of people with poor eyesight, or no

⁹⁷ Zavod za zapošljavanje Crne Gore, *Izveštaj o radu za 2020. godinu (Yearly report for 2020)*, available at <https://www.zzzcg.me/wp-content/uploads/2021/03/Godisnji-izvjestaj-o-radu-2020-18.02.2020-ISPRAVKA-NIVO-KVALIFIKACIJE.pdf>, p. 11

⁹⁸ Zakon o profesionalnoj rehabilitaciji i zapošljavanju lica sa invaliditetom, ("Službeni list CG", br.49/2008, 73/2010, 39/2011 i 55/2016)

⁹⁹ Zavod za zapošljavanje Crne Gore, *Izveštaj o radu za 2020. godinu (Yearly report for 2020)*, available at <https://www.zzzcg.me/wp-content/uploads/2021/03/Godisnji-izvjestaj-o-radu-2020-18.02.2020-ISPRAVKA-NIVO-KVALIFIKACIJE.pdf>, p. 40

¹⁰⁰ UNDP, *Rapid Social Assessment of the COVID-19 outbreak in Montenegro*, April, 2020, available at: <https://montenegro.un.org/en/51275-report-rapid-social-impact-assessment-covid-19-outbreak-montenegro-april-2020-summary>, accessed on 3 August 2021.

vision[...]. Discrimination exists. Have there been positive changes? Yes, and it is great that we have such people who belong to all these vulnerable communities, which are present in the public sphere. We have them as representatives of institutions. We have them in the economy. We have them in the CSO sector. They are speaking publicly more and more, so they are visible. – Labour Union representative

In recent years, due to the activities of CSOs that work on the protection of the rights of people with different abilities, they have joined different institutions, commissions and are generally more present in decision-making processes that could affect their lives. However, according to the interviewed representatives of CSOs, the achieved results are not sufficient to enable people with different abilities equal access to work. This opinion is corroborated by our online survey, in which more people who said that they have different abilities compared to general population reported facing discrimination. However, the difference is not statistically significant.

Finding employment has been difficult even before COVID-19 pandemic, in spite of Governmental efforts to stimulate employers to offer more job opportunities to people with different abilities. The pandemic additionally aggravated the situation.

Gender-based Discrimination against LGBTQIA+ Persons

In this sub-chapter we will briefly discuss situation with regards to gender-based discrimination against LGBTQIA+ persons directly or indirectly related to labour.

First of all, when it comes to legal framework both, the representatives of civil society and the judiciary agreed that the legal framework is incomplete when it comes to gender. For example, it does not recognise transgender persons at all.

Activists from CSOs pointed out that the implementation of the existing legal framework has been inadequate and that the sanctions for violating the human rights of LGBTQIA+ persons are often weak and inadequate.

One of the major improvements was passing the Law on same sex life-long partnerships¹⁰¹ which was enacted in 2020, but this law still needs number of bylaws to be passed in order to be fully implemented.

"What would exist, if [the existing legal framework was] applied consistently, would be some results. Sanctions for established acts are too low. When filing charges, no cases are created based on the correct criteria, and then we get the mildest possible punishment. The legislative framework itself is subject to change, but it has been suggested that existing mechanisms be applied consistently." - CSO activist

Activists stated that "patriarchal" society has been used often as an excuse not to implement certain norms that would give adequate and full rights to LGBTQIA+ persons. Representatives of institutions also had experiences with discrimination against LGBTQIA+ persons which they shared during interviews. The activists notice difference in attitudes between people who have participated in trainings on this topic and those who have not. When a person who belongs to LGBTQIA+ community comes to CSOs about the discrimination

¹⁰¹ Zakon o životnom partnerstvu lica istog pola, (Službeni list 067/20)

related to labour, they refer them labour union or to Center for Women's Rights legal services. In several occasions they said they called the Labour Inspectorate.

"In one article of this Law [on Gender Equality], it is said, equality of women, men, and persons with different gender identities. However, in every subsequent article, only equality of women and men is mentioned. This grey area related to gender identity enables discrimination in practice." - CSO Activist

According to representatives of different institutions, the state has organised teams that work on detecting discrimination against LGBTQIA+ persons. These teams include the prosecution, police and other relevant state bodies.

"The biggest problem is how to affirmatively treat the trans community? When people have participated in trainings, they tend to treat them okay. But when they have not, there are a number of problems starting from how to address a person. People tend to address people based on what they perceive as gender. The minutes are always made in line with persons' sex, not gender. For a person that has already been discriminated against, this experience is re-traumatising." - CSO representative

The situation with regards to LGBTQIA+ community is slowly improving, however, the implementation of the legislation regarding this community is still significant problem. The main source of information for this report were CSO activists who claim that members of LGBTQIA+ community face labour related discrimination. Unfortunately, more empirical data about it is unavailable. As one of the positive developments, the activists mention multi-sector teams that are being organised in cases of discrimination.

Gender-based Discrimination against Minority Ethnic Groups

This sub-chapter presents information that we have collected regarding discrimination against minority ethnic groups related to labour that we have collected.

Ethnicity has remained one of the grounds for discrimination in general, including discrimination related to labour. Among the persons of different ethnicities living and working in Montenegro, respondents tended to agree that Roma people face the most discrimination. They often work in positions that no one else wants, and employers tend not to consider employing them in better, higher earning positions.¹⁰² As the result of their life circumstances, they often lack education, especially quality education, and sometimes have problems with the language.¹⁰³ With older Roma people, literacy also has been a problem. Child marriages has affected young, Roma women's ability to stay in school.¹⁰⁴ Low levels of education can

¹⁰² Vlada Crne Gore, *Strategija socijalne inkluzije Roma i Egipćana, (Strategy for social inclusion of Roma and Egyptians)*, 2021-2025. p. 47

¹⁰³ Vlada Crne Gore, *Strategija socijalne inkluzije Roma i Egipćana, (Strategy for social inclusion of Roma and Egyptians)*, 2021-2025. p. 21

¹⁰⁴ Vlada Crne Gore, *Strategija socijalne inkluzije Roma i Egipćana, (Strategy for social inclusion of Roma and Egyptians)*, 2021-2025. p. 65

affect their chances of securing employment and achieving economic independence. All these challenges Roma and Egyptian community faces contributes to discrimination. Different surveys show that ethnic distance among the general population is the biggest towards Roma and Egyptian community.¹⁰⁵ Other reports indicate that Roma and Egyptian people feel discriminated and unprotected in their workplace because of their bosses who punish them without valid reason, because they do not have protection and insurance and because they are forced to work in informal economy.¹⁰⁶

"Roma people. They literarily do not know how to approach the court; much less do they know their rights and how to protect them. These people are probably the most discriminated against. They are not educated. They are poor." – High Court Judge

Even in our research one could find traces of discriminatory attitudes towards this community. Namely, several interviewees described this community as being poor and uneducated which indicates strong bias.

Apart from general opinion about the situation this community faces, most of the participants in the interviews didn't have specific cases involving members of this community and gender-based discrimination related to labour before them. The exception were representatives of the labour union who shared their experience of Roma and Egyptian people coming to them and looking for help. According to them, they underwent discrimination based on their ethnicity and sometimes also gender, but they had difficulties filing complaints and protecting their rights. The labour unions had to intervene which led to legal consequences toward the responsible people.

"We did not have any specific procedures, but in the conversations that we have with our membership and organisations from the domain of utility companies, I am talking primarily about "Čistoća", there are mostly, [...] members of the Roma population, including Roma women, [working there]. In the experiences of what we hear from them about what they went through, and so on, there were certainly elements [of discrimination] both on the basis of gender and on the basis of ethnicity [sic] and education and everything else. However, it is a more complex situation in which they did not initiate specific actions in courts. Somewhere with additional sensitivity, we helped our colleagues to overcome problems in dealing with the employer, which, among other things, concerned the attitude of the heads of sectors towards them. So, in some situations, we led to the dismissal of some people, which we consider a significant success. - Labor Union representative

The reports about situation among Roma and Egyptian community in Montenegro indicate very difficult living condition, including often poverty, poor living conditions,

¹⁰⁵ CEDEM, *Međuetnički odnosi i etnička distanca u Crnoj Gori (Interethnic relations and ethnic distance in Montenegro)*, 2019

¹⁰⁶ Vlada Crne Gore, *Strategija socijalne inkluzije Roma i Egipćana, (Strategy for social inclusion of Roma and Egyptians)*, 2021-2025. p. 52

educational possibilities, child marriages. Beside all these, members of this community often face discrimination caused by prejudices and ethnic distance. Participants in our interviews confirmed being involved in such cases and helping persons who suffered from discrimination protect their rights.

Gender-based Discrimination at Work against Older People

Apart from the three aforementioned grounds for discrimination, survey respondents also mentioned experiencing age-related discrimination. According to our respondents, ageism often creates more problems for women than for men. Older women who lose jobs are in a very difficult position. Often, they do not have the necessary skills that new jobs require (e.g., computer fluency and foreign languages) and employers do not consider them.

"There was this woman... She was 55 and couldn't find employment. Everyone kept telling her that she was old and that she is unemployable."
– High Court Judge

Several respondents from different institutions mentioned old age as a ground for discrimination in hiring women. Older women who lose their jobs have difficult time finding new employment which leads to them not being able earn their pensions.

Different Forms of Gender-based Discrimination

Gender-based discrimination related to labour can occur in different forms, and can be related to hiring, promotion, contracts, salaries, and in working conditions. Gender-based discrimination can involve sexual harassment or violations of maternity or paternity leave. In the past two years, the COVID-19 pandemic has contributed to deteriorating working conditions, and many people have faced reductions in jobs and pay. In some instances, COVID-19 seems to have contributed to indirect and in some instances direct gender-based discrimination. This section discusses the prevalence of various forms of gender-based discrimination in labour.

Discrimination in Hiring

Among the persons surveyed, 76% of women who had at least one job interview in the past three years, thought that they had faced discrimination during the hiring process. The most frequently encountered form of discrimination in hiring, according to survey participants, was political preference, followed by age-based and gender-based discrimination. Of those who had at least one interview in the last three years 32% of women said that they believed that they were discriminated against because they are women, while 25% (every fourth woman) experienced discrimination in hiring based on their parental status, that is if they had or were planning to have children.

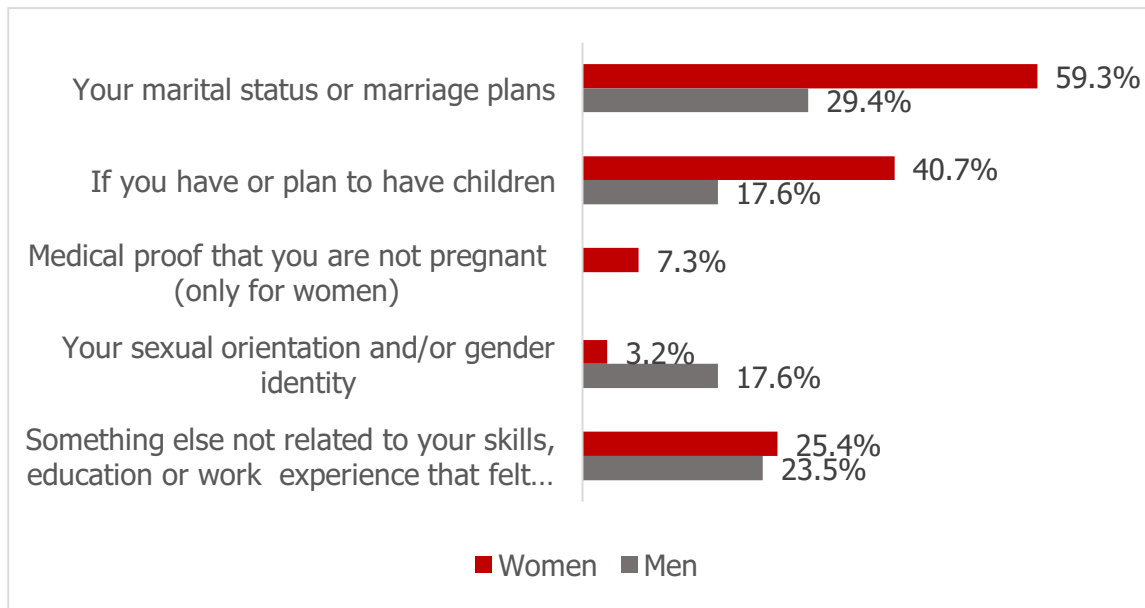


Figure 2: Since 2018, in a job interview have you ever been asked questions concerning...

Additionally, 66% of the surveyed women and 47% of surveyed men who had at least one job interview in the last three years said that they had experienced questions during job interviews that might imply discrimination. For example, 59% of surveyed women and 29% of men indicated that they were asked about their marital status during a job interview. Meanwhile, 41% of women and 18% of men were asked if they have children. Alarming, 7% of the women who had at least one job interview were asked for medical proof that they were not pregnant before employers would consider them for a job opening. The difference between women and men respondents was not statistically significant, but this could be due to the small sample of men.

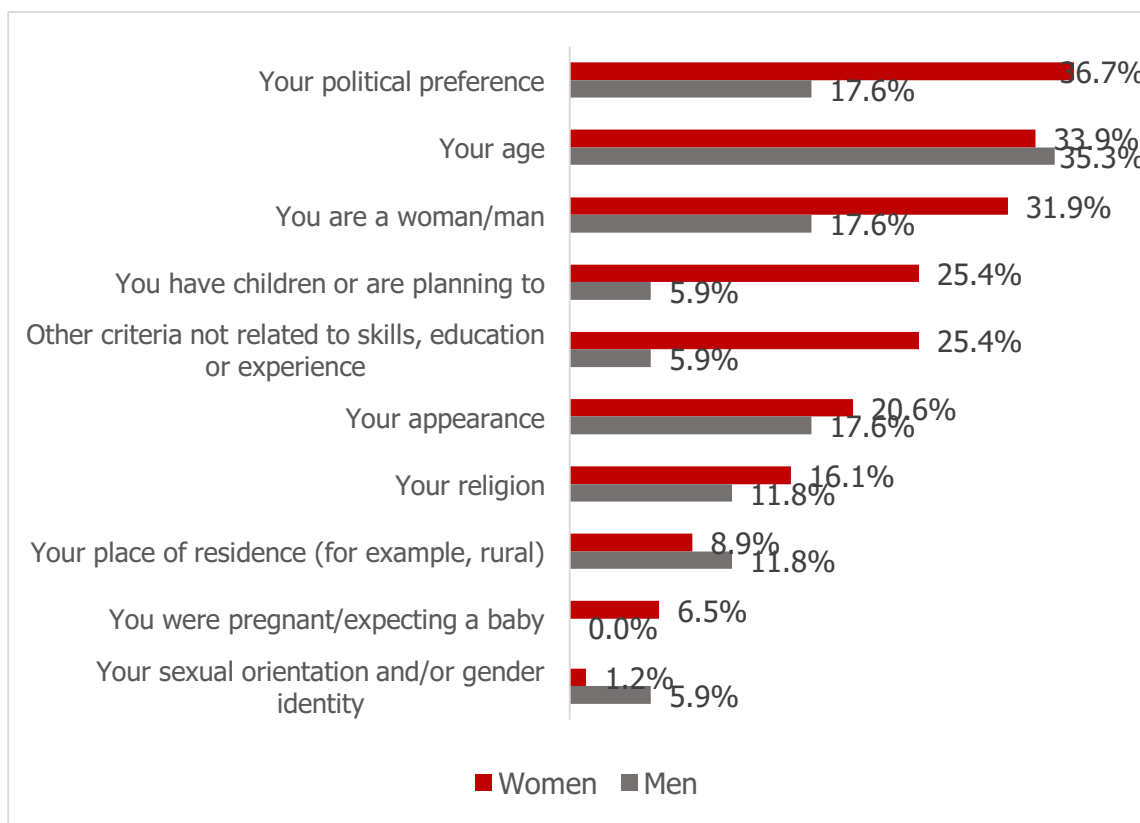


Figure 3: if you had at least one job interview in the past two years and you think you were discriminated in hiring, what do you think the grounds was?

While not representative of the entire population, findings clearly suggest that gender-based discrimination in hiring clearly has continued in Montenegro, particularly affecting women.

Discrimination in Promotion

In the online survey, 27% of women who were currently employed or had been employed in the last ten years indicated that they have been discriminated against in promotion. One of the most common reasons for not being promoted, according to survey respondents, was having a family; 9% of employed women and 6% of employed men said that they had experienced discrimination in promotion because they had or were planning to have children.

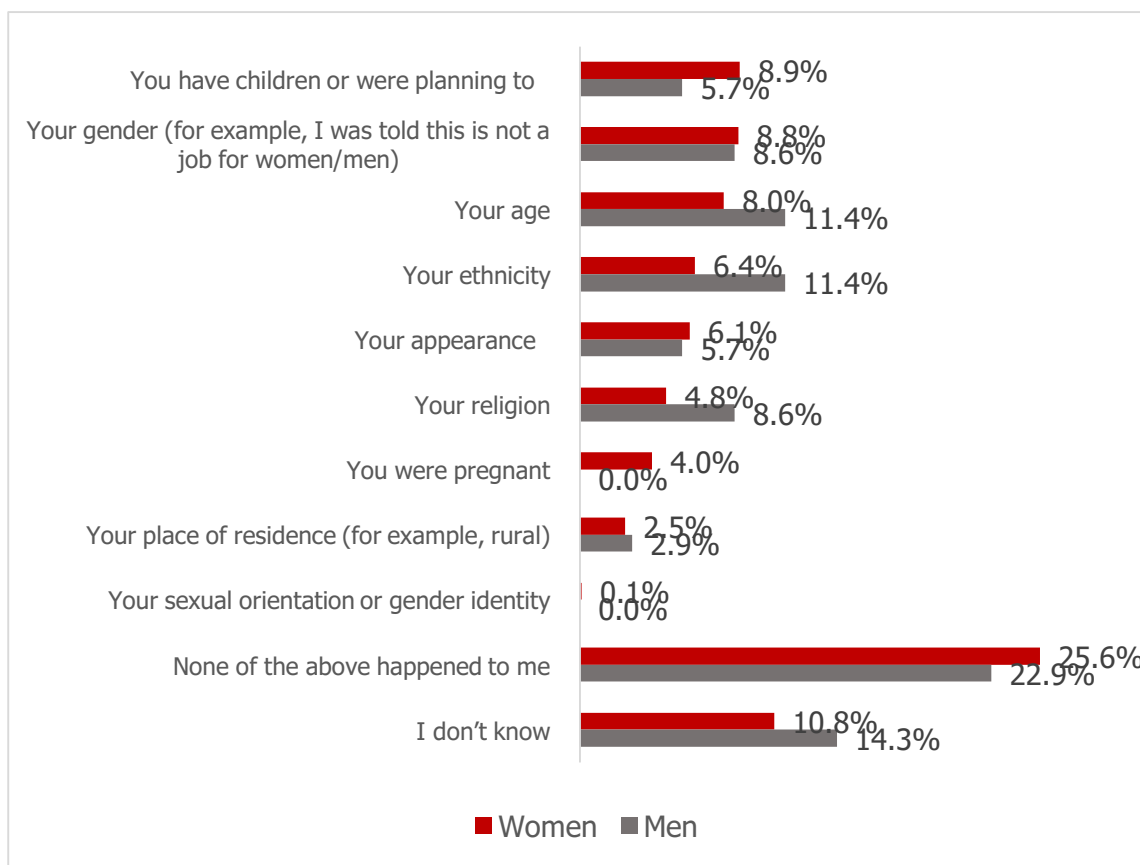


Figure 4: Has it ever happened to you that your employer didn't consider you for a promotion because... (please check all that apply)

The second most common reason for not being promoted according to the survey respondents was gender. Almost one in ten female respondents claims that they were not promoted because of this reason. Other reasons often mentioned were age and ethnicity.

Contracts and Pay

Information on the gender pay gap has remained outdated so we don't have official data on differences in women's and men's earnings in Montenegro. The most recent information available about the women and men's earnings is from 2017; according to the publication, *Gender Gap in the Western Balkan Countries: Evidence from Serbia, Montenegro and Macedonia*, both the unadjusted and adjusted wage gap in Montenegro was 16.1%.¹⁰⁷ The explanation offered for the difference was the "higher frequency of women in low paid occupations and sectors, some of which are traditionally "female", and that female workers are often pushed into these jobs despite their higher level of education". However, this figure is unofficial as it is not based on official statistics. Nevertheless, a similar figure was mentioned in the Committee on the Elimination of Discrimination against Women (CEDAW) 2017 report.¹⁰⁸ Notably, a difference in earnings does not necessarily indicate direct discrimination against women, which would require the use of comparators in the same job level and posting. However, it does suggest that inequality among women and men exists generally with regard to salaries.

¹⁰⁷ FREN, *Gender Gap in the Western Balkan Countries: Evidence from Serbia, Montenegro and Macedonia: Policy Brief*, at: https://www.fren.org.rs/sites/default/files/projects/attachments/Policy%20briefs_GPG.pdf.

¹⁰⁸ Committee on the Elimination of Discrimination Against Women, *Key Considerations on the Second Periodic Report Submitted by Montenegro*, 2017, p. 9.

In Montenegro, working without a contract or with a fixed-term contract is common.¹⁰⁹ Workers who are not protected by contracts may be at greater risk of discrimination, harassment and other violations of workers' rights. Since their jobs are not protected, they cannot complain and seek protection, which makes them among the most vulnerable persons who suffered/experienced discrimination. Often, workers without contracts work in bad conditions, without breaks or annual leave.¹¹⁰ They cannot use protection mechanisms provided for by the Labour Law. For example, according to the Law, an employer cannot fire a woman who gets pregnant. However, if she does not have a contract to protect her, she can be dismissed easily. Persons who have fixed-term contracts have tended to face similar risks. Once their contract expires, employers can choose not to continue it without any explanation. The new Labour law improves the situation somewhat by stating that if their fixed-term labour contract ends during pregnancy, maternity, or parental leave, the employer is obliged to extend their contract until the expiration of the right to such leave. However, the days spent on leave are not counted in the time needed for fixed-term contract to be transformed into non-fixed.

In the online survey, 25% of the participants who have working experience in the last three years have been asked to work regularly without a contract. The probability of working without a contract was significantly higher for men respondents, but again, the small sample size makes it difficult to generalise this finding more broadly, such as with regard to the general population. Additionally, among the surveyed persons currently employed, 12% did not have an employment contract (12% among surveyed women and 14% among surveyed men). Among those who were working at some period in the last three years, 24% stated that they had been asked to sign an employment contract without being allowed to read and understand the terms the contract, at least once (24% among surveyed women and 31% among surveyed men). Among the participants that had had employment contracts since 2018, 58% had indefinite contracts (58% of women and 55% of men), but 21% had an employment contract with a duration of six months or less (21% of women and 21% of men). Concerningly, 4% of respondents had never had a written contract (4% of women and 3% of men).

Assessing perceptions, employed participants were asked who they thought tended to have longer contracts in their workplace: women, men or it is the same for both. More than half of the respondent (55%) stated that it is the same for both and 22% did not know. Among all survey participants, 9% think that men have longer contracts while 6% think that women have longer contracts.

More than half (59%) of the employed survey respondents had worked overtime: 51% stated that they usually worked 41 to 60 hours per week and 8% worked more than 61 hours per week.

Among the employed respondents in the sample, 38% worked between 21 and 40 hours per week and only 3% between 1 and 20 hours per week. Most of the workers in the sample (61%) said that they have not received compensation for their overtime work. Only 17% said that they were paid for the extra time worked and 6% received time off as a compensation. Meanwhile 16% said that they never work overtime. This suggests that violations of workers' right to compensation for overtime work remain widespread in Montenegro.

When it comes to income, 21% of ever-employed respondents indicated that their employer does not declare to the state authorities their actual, real salary, and 16% did not know. Among female respondents 21% stated that their employer doesn't declare the full

¹⁰⁹ See: UNDP, *Nacionalni izvještaj o razvoju po mjeri čovjeka: Neformalni rad od izazova do rješenja* (National report on human development: Informal work from challenge to solution), 2016

¹¹⁰ UNDP, *Rapid Social Assessment of the COVID-19 outbreak in Montenegro*, April, 2020, available at: <https://montenegro.un.org/en/51275-report-rapid-social-impact-assessment-covid-19-outbreak-montenegro-april-2020-summary>, accessed on 3 August 2021.

salary while was said by 14% of men. Additionally, 9% of the employed respondents said that they had been asked to return part of the salaries to employers.

The official information about gender pay gap in Montenegro is very outdated. Additional problem – working with fixed contracts and without contracts is being confirmed with our survey, as well as working extra hours without pay. However, our survey did not find any statistically significant differences among men and women with this regard.

Poor Working Conditions and Equal Treatment

More than half (51%) of the employed survey respondents, or those who had been employed in the last three years, perceived that their health or safety has been at risk because of their work. This claim was more present among men (65%) than women (50%) respondents.

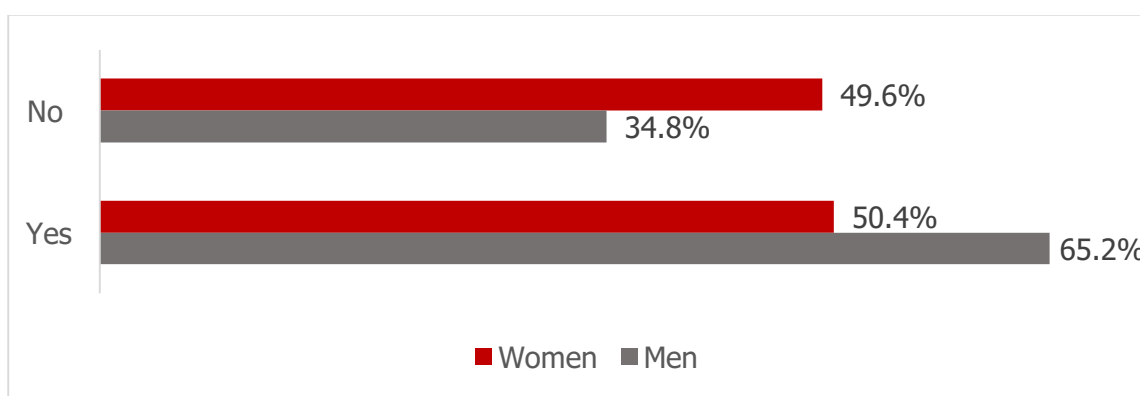


Figure 5: Do you think your health or safety is at risk because of your work?

Additionally, 48% of the male and 43% of female respondents reported being denied the right to take time off in certain situations when they had such a right, such as when they were sick (especially with COVID-19), when they had personal reasons to stay home, during national holidays or for annual leave. Most respondents who were denied such rights claimed that they could not use their vacation time or time during national holidays. Notably, these rights are protected by the Labour Law.

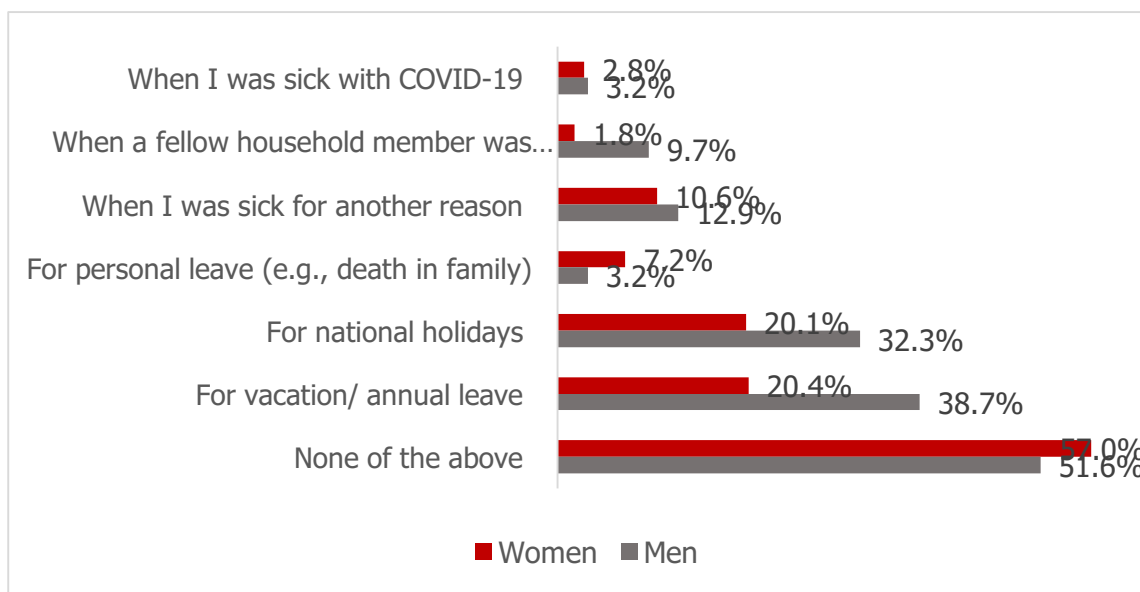


Figure 6: Since 2018, have you ever been denied the right to take off work for any of the following reasons (please select all that apply)?

From those who are employed or had been working, 57% of women and 52% of men did not experience any violations of their rights to take off work when needed (the difference is however not statistically significant). Even so, a significant portion of the employed persons in the sample have experienced restrictions or violations of their rights to take annual leave or days off for national holidays.

The survey didn't find statistically significant differences among men and women when it comes to working conditions. It did, however, confirm significant portion of workers of both genders being deprived of their legally guaranteed rights on proper working conditions.

Violations of Pregnancy and Maternity Leave Rights

In order to assess violations of pregnancy and maternity leave rights, a sample subset was created, which included 20% of surveyed women who said that they were pregnant at least once while employed. Approximately one in five ever-pregnant and employed women (21%) stated they were denied the right to paid maternity leave, meaning that they were neither paid by their employers nor received government benefits during their maternity leave.

After their maternity leave, 60% of the women returned to their previous place of employment, and 18% indicated that they were pressured to return to work earlier than planned. After their maternity leave, 27% did not return to their place of employment.

When asked specifically about the "before and after treatment", 17% thought that they had fewer responsibilities than before they went on leave, and 13% thought that they had more responsibilities when they returned. Moreover, 19% said that they had lower pay after they took the leave.

Survey data, although based on small number of respondents, indicated number of violations with regards to the maternity leave rights. Women still get denied paid maternity leave and get "punished" for taking it by being pressured to come to work earlier, being moved to other positions or being less paid.

Violations of Paternity Leave Rights

Among the employed men in the sample, nearly half, 12 of 26 participants (46%), thought that their employer would give them paid paternity leave if they asked. Six of 26 (23%) had a new-born child while being employed. Among them, five said that their employer allowed them to take between two and seven days off. One respondent answered that his employer didn't allow any days off for this purpose.

Most men participants who answered the question on paternity leave (20 of 26, or 77%), agreed that men should have more paid time off for paternity leave. This suggests that support exists within the general population for amending the Labour Law to provide for more, paid paternity leave for fathers, in line with the intentions of the EU Work-Life Balance Directive.

Sexual Harassment at Work

Among the surveyed women, 41% stated that they had suffered sexual harassment at work. Fifteen of the 27 men who answered the questions also said that they were subjected to some forms of sexual harassment. The sample is too small to draw conclusions regarding the overall prevalence of sexual harassment in Montenegro, by gender. Nevertheless, it does indicate, qualitatively, that sexual harassment as a severe form of gender-based discrimination at work has remained very present in Montenegro.

Regarding specific forms of sexual harassment at work, 38% of women have been subjected to sexual gestures, jokes, or sounds; 17% have received emails or text messages of a sexual nature from a colleague or superior; 15% have been subjected to touching, such as of their bottom or breasts; 12% had received a proposal for sex from a colleague or superior; and 3% were forced to have sex by colleague or superior.

Among the 27 men who answered these questions, 12 said they were subjected to sexual gestures, jokes, or sounds; four had received emails or text messages of a sexual nature from a colleague or superior; three have been subjected to touching; and six said they received a proposal for sex from a colleague or superior.

Among the women who said that they had suffered sexual harassment at work, 90% stated that the perpetrator was a man and 7% had a negative experience with both men and women as perpetrators. Only 3% of the victimized women said that the perpetrator was a woman. The sample of men subjected to sexual harassment at work was comparatively smaller; six of 15 participants who had suffered harassment said they had been a victim to both women and men perpetrators, while four participants had men as perpetrators and six had women as perpetrators.

When asked about the working position of perpetrators, 72% of women who suffered/experienced discrimination stated that persons working in higher positions than them had victimised them, while 38% were sexually harassed by a person in an equal position and 14% said that the perpetrator was employed in a lower position than them. Among men, 10 were sexually harassed by perpetrators in higher positions than them, six were sexually harassed by perpetrators in an equal position, and two by perpetrators in a lower position. These findings are in line with broader research on sexual harassment which has found that persons in positions of power are more likely to perpetrate sexual harassment.

Women who suffered sexual harassment at work seldom reported their experiences (only 15%). Of them, 53% told a friend or acquaintance, 41% shared the experience with a colleague and 31% with a family member. A smaller percentage reported the experience more formally; 9% told their manager, 8% used an official reporting mechanism at their workplace and 0.5% reported the case to police.

Of the men who had suffered sexual harassment at work, two had not reported their experience, five told a friend or acquaintance, seven shared their experience with a colleague, four told a family member, one told his manager, three used an official reporting mechanism at their workplace and one reported the case to police.

While the sample was too small to draw inferences regarding the general population, the reasons for not reporting harassment that were most frequently shared by women respondents was shame or fear and concern that they would lose their job.

The data shows very similar situation as it was in 2019 according to WRC's report although the direct comparison cannot be made.

Consequences of COVID-19 on work and labour rights

The COVID-19 pandemic significantly impacted the labour market in Montenegro. Because of the public safety and Government mandated measures, many businesses had to close or reduce their operations. This contributed to reductions in employees' salaries and/or in the number of employees.¹¹¹ The Montenegrin economy, which is primarily service-based, was especially affected. Although the Government provided relief and assistance mechanisms, for many businesses, the COVID-19 pandemic was a significant challenge. For those employers able to keep their workers, adjusting to the new circumstances of online work posed additional difficulties. Working from home, while home-schooling children, made work-life balance extremely demanding, particularly for women who have tended to assume added care responsibilities during the pandemic.¹¹²

These observations were confirmed by the data in our online survey. Among the employed respondents, 45% reported that their workplace was closed due to isolation or other measures related to COVID-19. Nearly one-third (30%) reported that their workplace was closed for more than a month. During the closure period, 35% were not paid their actual salary; 8% were not paid at all and 27% were paid at a reduced salary.

Among the online survey respondents, 23% said that their salary was decreased as a result of COVID-19 (24% of female and 20% of male respondents). Additionally, 8% said they lost their jobs because of COVID-19 (46 women and 1 man). Nearly one-third (33%) of the women who lost their jobs said that it was because their employment contract was not renewed, and 17% said they were fired or pressured to quit by their bosses because they had to care for their children. Meanwhile, 4% felt they were fired simply because they were women.

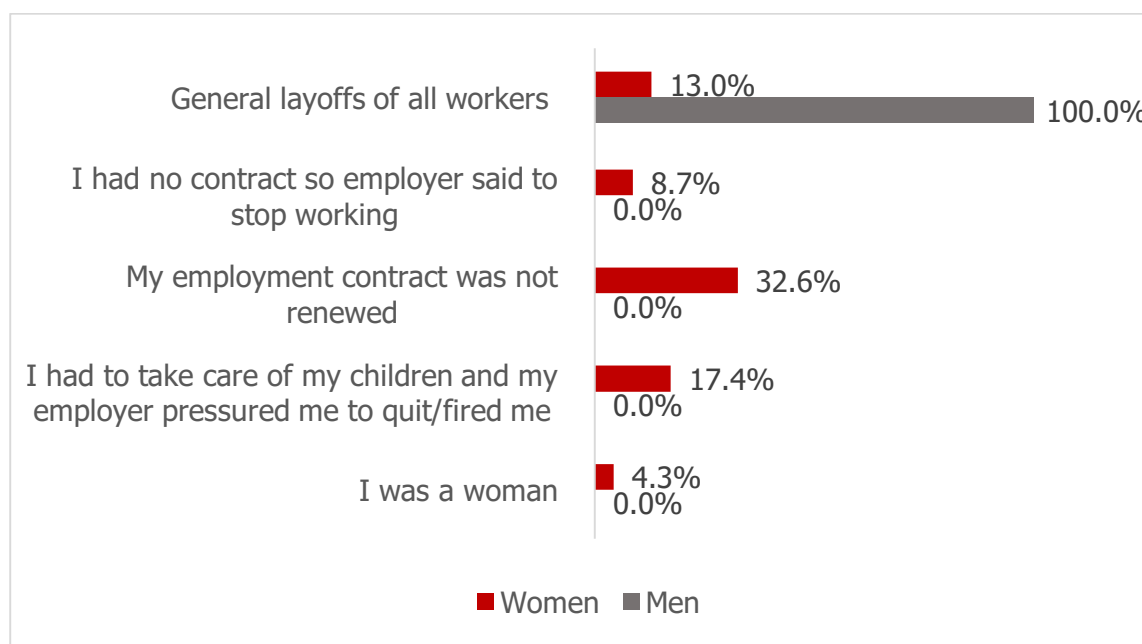


Figure 7: Reasons for layoffs during pandemic

¹¹¹ UNDP, *Rapid Social Assessment of the COVID-19 outbreak in Montenegro*, April, 2020, available at: <https://montenegro.un.org/en/51275-report-rapid-social-impact-assessment-covid-19-outbreak-montenegro-april-2020-summary>, accessed on 3 August 2021.

¹¹² For more information about the issue, see: UNDP, *Rapid Social Assessment of the COVID-19 outbreak in Montenegro*, April, 2020, available at: <https://montenegro.un.org/en/51275-report-rapid-social-impact-assessment-covid-19-outbreak-montenegro-april-2020-summary>, accessed on 3 August 2021.

The survey confirms the claims we made in the legal analysis in this report that during the epidemic the two most frequently used Labour Law provisions, were: a) termination of work without the fault of the employee; and b) work outside the employer's premises.

Since the COVID-19 outbreak, 58% of respondents reported that they were allowed to work from home. For 43% of respondents, their employer always provided masks, gloves, hand sanitizer and other protection measures against COVID-19; and 39% said that their employers sometimes provided protection supplies.

During the COVID-19 pandemic, the most commonly reported challenges to balancing personal and work life have been stress and care responsibilities. Respondents also reported difficulties related to working from home (e.g. living and working in a small space with others and difficulties concentrating). When schools and kindergartens closed, securing childcare became very challenging for families; 37% of the surveyed women said that they experienced challenges related to caring for children, particularly during the closure of schools and kindergartens, and in balancing their work and personal lives. Among respondents, 51% of women said that they faced challenges related to stress, compared to 43% of men.

We have discussed the legal framework that exists in cases of working at home in Montenegro. Due to the recommendations of the competent authorities, working at home was widely applied as a sort of response to the pandemic. It also demonstrated that there should be precise and comprehensive regulation of this type of work engagement in Montenegrin legislation.

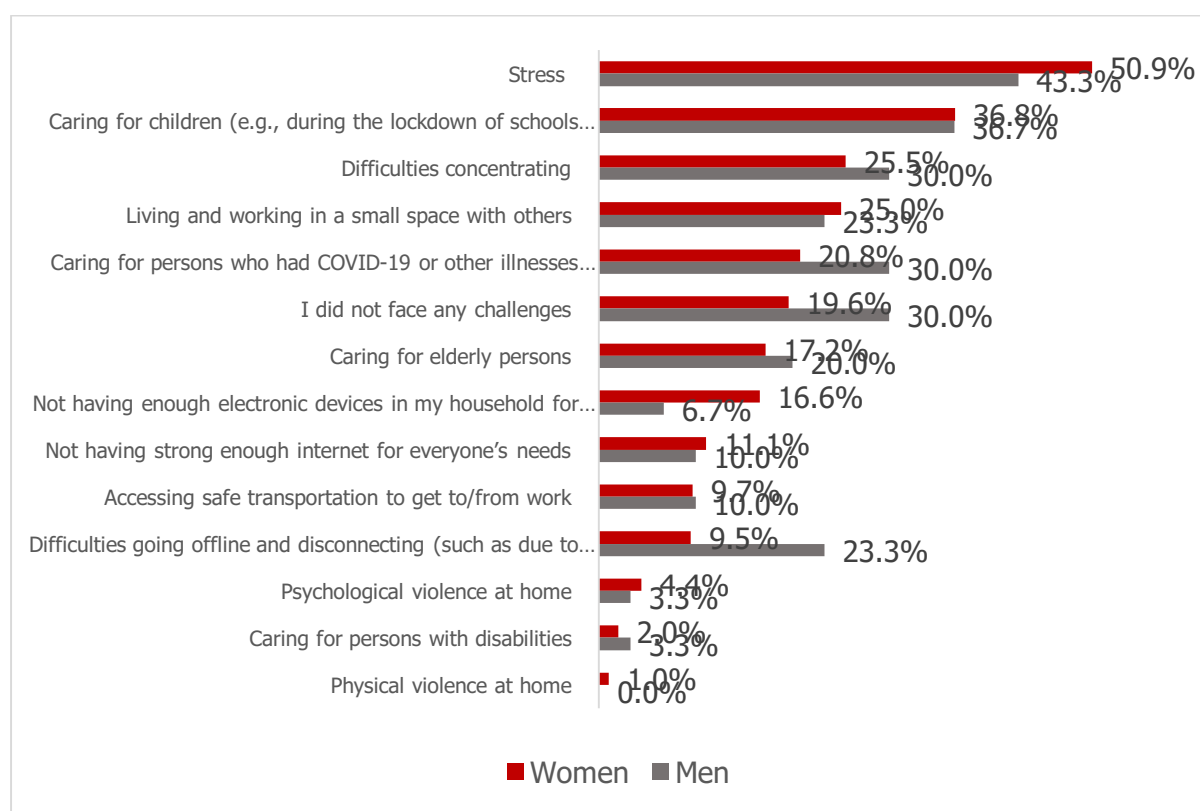


Figure 8: During COVID-19, what challenges did you face in balancing your personal and work life, if any? (multiple answers possible)

Nearly one-third of the survey respondents reported that they contracted the COVID-19 virus (29%). Among those who are employed, 94% were allowed to take off days because of COVID-19 and 64% took 11 to 20 days off. In most cases, this was treated as fully paid

medical leave. However, 15% of women survey respondents who are employed received only partially paid medical leave.

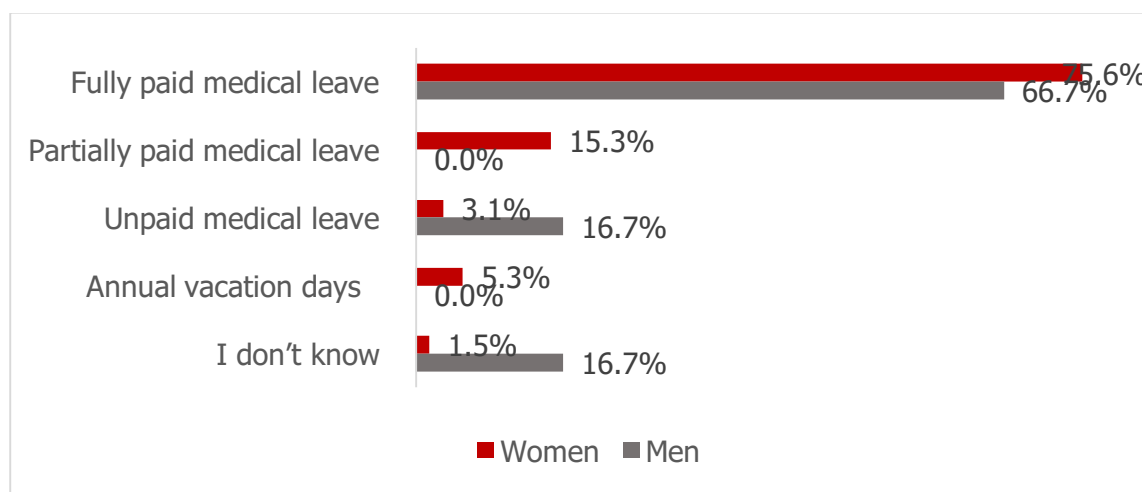


Figure 9: How did your employer treat your leave related to COVID-19? (multiple answers possible)

From those who were allowed to take off days because of COVID-19, 63,9% took 11 to 20 days off from work and for most cases it was treated as fully paid medical leave, although it's worth mentioning that for 15,3% of women it was treated as partially paid medical leave.

Conclusion

Our online survey showed that gender-based discrimination at work has continued in Montenegro, including related to hiring, promotion, working conditions, maternity leave, paternity leave, parental status and sexual harassment. In the last two years, workers faced added challenges, rights abuses and, in some instances, gender-based discrimination, because of the COVID-19 pandemic, which has exacerbated the already weak position of many workers. Persons with different abilities, LGBTQIA+ persons, minority ethnic groups and older people, especially women, seem to face multiple and even intersectional discrimination, though it has been difficult to document. Perpetrators have included both women and men, though women have tended to suffer discrimination more often, and men have been more likely to perpetrate it.

Most experiences of gender-based discrimination related to labour go unreported (in 80% of cases reported by the online survey participants). As discussed in the prior chapter, fear of losing employment, distrust in institutions and concern over social condemnation or other repercussions have been key factors hindering reporting. Sexual harassment, in particular, often goes unreported because of shame or fear of job loss.

Most men participating in the online survey agreed that men should have more, paid time off for paternity leave. This suggests that public support exists for increasing paid paternity leave in line with the EU Work-Life Balance Directive.

THE INSTITUTIONAL RESPONSE TO DISCRIMINATION

In the following chapter we sought to answer the question how relevant institutions respond in cases of discrimination. First, we want to know what each institutions' knowledge/perceptions/attitudes towards gender-based discrimination related to labour is. Then, we were interested in experience these institutions had with cases of GBD related to labour since 2018 and how well they have treated them. Finally, we wanted to assess their knowledge/awareness and treatment of such cases and see if it changed since the last report in 2018.

We have combined information about the legal competences of each institution in cases of corruption with available information from the interviews and online survey to see how different institutions perform. Where possible we have compared collected information to the 2018 WRC report in order to see if there are any changes.

"Everything seems very superficial when I see how social protection services work. It is more about form than it is about the essence. There is this lack of empathy among persons who are supposed to work on these issues." – Higher Court Judge

Police

In Montenegro, police are not directly authorised to act in cases of gender-based discrimination, except when a criminal offence is committed. When a person files a report of gender-based discrimination with the police, they usually instruct him/her to report it to the Ombudsperson Institution or to start a proceeding before the courts instead. Consequentially, police representatives do not have many experiences with work-related gender-based discrimination cases. Nor do police have statistics regarding the number and type of cases brought to their attention.

While research participants from the police tended to think that the legal framework regulates the state's response to gender-based discrimination generally well, some expressed uncertainty regarding the efficiency of the legal framework in providing adequate protection in practice. As one police representative stated, distrust in institutions exists, and persons affected by discrimination need to be shown that strong institutions and legal frameworks exist for protecting their rights when they report gender-based discrimination. Respondents suggested that improving the image of police could contribute to citizens having more trust in this institution, and this could contribute to people reporting more crimes of any kind.

Police have a very subsidiary role when it comes to addressing work-related gender-based discrimination. Since they do not have cases of such discrimination reported to them, it is hard to estimate their knowledge about the topic. However, the interviewees expressed anti-discriminatory attitudes and significant understanding of the main challenges in this regard.

The CSOs have different experience with the police. They acknowledge that there has been a positive change on the high and political level, but they believe that things have not changed on the level of working with the people. According to them, this is especially pronounced when it comes to women who suffer discrimination or violence.

"If we speak about LGBT persons, the police will be ordered to do things right and that was already decided on the top, for some time now. There are no problems there. But, if we speak about women who are supposed to go to the police by themselves and report what happened to them, in

like 70% of cases, the police will try to "soften" them. She will be demotivated because she will not be treated as a victim should be treated. As long as the representatives of our organisations are present, everything runs smoothly. However, as soon as a woman is alone, the police officer changes the way he/she behaves." – CSO representative

When discussing discrimination at their workplace, most police respondents explained that they have not encountered it during their service. However, if they did, they say that they would have a person "of confidence" designated to assist everyone who has a work-related problem. There are some respondents who had positive experiences with this process in the past

"The police work is to establish criminal responsibility, and discrimination at work does not fall under criminal responsibility. When we prove that the worker has not been paid, we need the help of an inspector, if it is determined we can act. Discrimination is little reported to the police. If it involves degree of criminal responsibility, when we get to that point, then we can react and initiate and push the inspection to punish the employer. All this is the responsibility of the labour inspectorate. When [such cases] need to be initiated, they do it. They perform supervision." - Police representative

Police representatives have shown adequate knowledge and perception towards gender-based discrimination related to labour in our interviews. However, CSOs claim that behaviour of officers "in the field" is sometimes different than the official politics of the force which is commendable. Our respondents did not have first-hand experience with GBD related to work cases, which was also the case in 2018 report.

Prosecution

Like police, state prosecutors do not have a direct role in cases of gender-based discrimination related to labour, unless it involved criminal aspects. Therefore, their responses during interviews reflected their attitudes more so than their actual experiences.

Their general impression regarding legislation related to discrimination is that it is "still developing" as other legislation in Montenegro. However, they say that it is already quite compatible with the highest international standards in the field of protection of fundamental human rights and freedoms, including the right to equal treatment of all laws and the exercise of fundamental rights. According to their opinion, legal provisions about the legislation are less problematic than it is their implementation.

I perceive discrimination as a multi-layered view, it has many aspects: discrimination related to work processes, discrimination related to the admission or establishment of employment, unequal evaluation of the results achieved, unequal evaluation of the level of education, qualification, previous experience... Discrimination based on some personal

characteristic, type of job, national, gender or form of discrimination based on race, religion, skin colour, affiliation, etc. (interview with a prosecutor)

Namely, several interviewed prosecutors emphasise their concern about the implementation of the laws, and how efficient they are in practise, including when it comes to discrimination cases. They believe that gender-based discrimination is a multi-layered problem that is difficult to prove and that makes legal provisions less effective. This view was also shared by the representatives of the labour unions.

As an additional tool for fighting discrimination, some representatives of the prosecution mentioned the need for special legal and advisory aid for women, which would help inform them of their rights and which would especially target women with lower education levels and those living in more rural areas.

CSO representatives also were critical of the prosecution. One interviewee stated that the approach depends on the gender of the prosecutor. According to him/her, women prosecutors are more aware of the problem and sensible towards it.

"When it comes to the prosecution, everything depends on the position of the prosecutor. If she is female, it would be better, because they are mostly empowered and strong women who have it their way. At the same time, most of them have experienced oppression so they have understanding. If a prosecutor is a man, it depends on whether he is older or younger. In the court, the story is completely different. The punishments are too weak and they annule everything good that is done before the court proceeding." – CSO representative

When asked to define discrimination and gender-based discrimination related to labour, most prosecutors showed knowledge and understanding. However, because of their role in the system which is not pronounced in the cases of discrimination, as was earlier explained, their experience with cases involving discrimination is rather modest.

Courts

The Montenegrin judicial system does not allocate cases to particular courts based on the types of offences. Rather, courts are divided hierarchically based on the severity of the potential punishment for a specific alleged crime. Basic courts hear both criminal and civil cases. If a higher penalty is set, the case would go directly to a higher court, which also is considered as the court of appeal for decisions made by the basic courts. Therefore, basic courts tend to decide in most gender-based discrimination cases. According to Article 24 of the Law on Prohibition of Discrimination, anyone who feels damaged by discriminatory treatment by an authority, or other legal or natural person shall be entitled to court protection, in accordance with the law. The proceeding is being initiated by filing a lawsuit. The lawsuit may be filed within 90 days from the day on which the person became aware that discrimination had occurred. If the plaintiff has proven the likelihood of the respondent having committed an act of discrimination, the burden of proof passes to the respondent.

When asked about the legal framework, judges tended to state that the existing laws are sufficient, especially considering that when making decisions, they can refer to international standards, such as the Convention for the Protection of Human Rights. In that

regard, they stated that the legal framework is not a shortcoming in the interpretation of rights and in ensuring protection against discrimination. Judges also stated that citizens have at their disposal many judicial instances and should use these to exercise their rights, from courts in Montenegro to international courts, such as the International Human Rights Court in Strasbourg. Such statements demonstrate judges' knowledge of the relevant legal framework and processes available for persons seeking justice.

However, this was not the case in all interviews. There were instances when the judges showed complete lack of understanding of what the discrimination is, especially gender-based discrimination related to labour. At one specific instance, quoted below, it was obvious that the judge did not recognise the clear elements of discrimination in the case s/he was ruling and probably ruled in a way to damage the discriminated person.

A judge in higher court: "I didn't have a case of discrimination. I had one case when the decision of work contract termination was asked to be annulled and the reason was that the plaintiff was on sick leave because of the pregnancy". Interviewer: "So, the woman was discriminated against because she was pregnant?" The judge: "We didn't go in that direction. We were deciding if the decision about termination was legal."

Regarding judges' treatment of cases, a recurring theme identified among the judges interviewed were difficulties with proving discrimination. Some also said that the application of these laws has not been "rooted" enough. This means that these cases are not common before courts and that adequate judiciary practice still doesn't exist. Judges also pointed to traditional social norms and practices in Montenegro, which have meant that themes like gender-based discrimination only recently have entered into public discussion.

"The problem is that discrimination is hard to prove. We have to see how to make it easier. First, we need to say that it doesn't work in the existing legal framework. Then, we have to fix it. I believe that the laws are not applied so that we can identify the problem. Gender equality is as hard to prove as any other [case]." - High Court Judge

CSO representatives also were critical of the judiciary. They say that they continue to give low sentences in gender-based and that many cases are not filed based on the correct criteria. As the result, the perpetrator ends up with the mildest possible punishment.

"We generally, as far as we know, do not have many of these verdicts in court practice where discrimination is proven, which in itself shows that something must be changed urgently. So, I expect that in this period that is ahead of us through the institution of the system, through the refinement of these regulations, better specification, we will pay more attention to the discrimination that is ubiquitous. It is definitely ubiquitous, except that it is not difficult to recognise; it is easy to recognise. It just needs the will of those who need to recognise it as such." - Labour Union representative

As mentioned, judicial practice in treating cases of gender-based discrimination has remained minimal, so assessing the competence of judges in treating such cases was difficult. The types of cases that judges did mention treating tended to relate to maternity leave violations. Other cases clearly involved gender-based discrimination, while still others did not have gender-based discrimination as the main issue, which made it difficult to prove that discrimination had occurred; this led to the victim dropping the case.

"I was part of the judicial council that investigated whether maternity leave was used and whether a person was discriminated against when the contract was changed from a fixed-term to an undetermined timeframe. The employer just eliminated a woman because she was pregnant and that was the reason for him not to give her a longer contract. Discrimination was definitely there. Men believe that women misuse their rights to take the time off work, to be blunt. - Higher Court Judge

In addition to the cases treated in courts, one woman judge shared her own experience with gender-based discrimination at work. For a period of time, she was the only woman judging criminal cases, and her abilities in the courtroom were often questioned because of her gender. She stated that, at that time, her professional accomplishments did not help the fact that she was a woman in the courtroom. This suggests that gender-based discrimination has occurred within the judiciary itself, and if judges discriminate against each other based on gender, it may signal an inability for some judges to rule fairly in gender-based discrimination cases.

"I had problems and experienced discrimination personally. Namely, for a few years, I was assigned to be a judge in criminal cases. I was the only woman judging criminal cases at the time, and the question was asked about my abilities to maintain discipline in the court and to react properly. I have noticed this [questioning] not only among colleagues, but also among clients, parties in the procedure. I had to put in an extra effort to defend judicial authority as a woman. It is something that goes without saying when it comes to men, but we have to fight for it before we can really work. It made a strong impression on me. It had nothing to do with my professional accomplishments, only with the fact that I was a woman."
– High Court Judge

While most interviewed judges did show knowledge and understanding of the issue, the interviews showed that education should be continued as there are some among judges who still do not recognise it. Since the judicial practice in cases of discrimination (including gender-based discrimination related to labour), additional efforts to standardize the rulings is necessary.

Labour and Tourism Inspectorate

The Labour Inspectorate is authorised to act in cases of work-related discrimination. The Tourism Inspection focuses on any irregularities related to tourism, which sometimes includes work in the tourism sector. According to the Law on Prohibition of Discrimination, the

inspector can temporarily stop any act in case she/he detects discrimination regarding work, employment, work protection, health protection, education, construction, traffic and tourism. These temporary stop orders are in power until the court decides on the case.

Interviewees from the labour and tourism inspectorates tend to comment that gender-based discrimination is not under their jurisdiction and that the Agency for Peaceful Settlement of Labour Disputes should treat such cases. They also recurrently stated that workers should try to settle these kinds of disputes with their employers before resorting to more serious measures. It shows lack of understanding of the nature of gender-based discrimination and possible intent to be resolved of the responsibility. The interviewees clearly stated that they don't want to deal with such cases and that they do not feel competent when it comes to them.

"It is not under my jurisdiction to deal with it, and I do not want to go into how I would define it" [gender-based discrimination]. - Labour Inspectorate

Representatives from other institutions and organisations suggested during interviews that the aforementioned lack of clarity in the legal framework potentially contributed to Labour Inspectors' limited treatment of gender-based discrimination cases, despite their potential to treat such cases. For example, Union representatives observed the lack of harmonisation of the Labour Law and the Law on Prohibition of Discrimination. In the Labour Law, the primary instance for addressing gender-based discrimination is the Agency for Peaceful Settlement of Labour Disputes or the Centre for Alternative Dispute Resolution. Meanwhile, the Law on Prohibition of Discrimination states the special role of the Labour inspectorate with regards to these cases. Interviews with labour inspectors suggested that they tend to follow the Labour Law, rather than the Law on Prohibition of Discrimination when deciphering their jurisdiction and thus duties to treat gender-based discrimination cases. As illustrated by the quotations in this section, Labour inspectors tended to state that gender-based discrimination was not in their jurisdiction. Thus, they had not treated such cases.

Rather, labour inspectors stated that workers should seek protection of their rights before trade unions. They stated that the labour unions are quite large, widespread, have a vast membership, and have an obligation to protect the rights of the employees. Inspectors emphasised that they are few in numbers and cannot protect every worker; they stated that they need the help of unions.

"Also, trade unions should, as a rule, be the best guardians of the rights of workers, employees, and, among other things, protection from any kind of discrimination. First, they [should support], and then other institutions and the whole system [should support] with them. Check how many trade union organisations exist, to know and recognise how widespread that organisation is and how many employees are able to protect their rights, and that is the strongest bulwark. The inspection is there to protect every worker, and it is impossible to achieve everything. It is as if one guard protects 100 factories. Unions are needed." - Labour Inspectorate

While indeed unions can play an important role in supporting workers, the legal and institutional responsibility for protecting workers in instances of gender-based discrimination

lies with the Labour inspectorate, among other institutions responsible for protecting these rights. One of the possible reasons why representatives of the Labour inspectorate do not recognise their role in discrimination related cases could be lack of trainings. Namely, when asked if they had attended any training and educational programmes, inspectors stated that they have not received any special training with regards to gender-based discrimination.

The interviews with the representatives of Labour inspectorate reveal that representatives of this institutions do not recognise their role in cases that involve discrimination related to labour. Since this is clearly not in line with the legislation, further education is necessary. This is a negative trend since the last report in 2018 when representatives of Labour inspectorate reported cases of discrimination in which they intervened. Even then, the majority of the respondents stated that they rarely come across discrimination cases, but they didn't deny their competence in such cases.

Ombudsperson Institution

The Ombudsperson Institution should be the final national instance for the protection of human rights in Montenegro. Once all other legal options are exhausted, a person can apply for the Ombudsperson's protection, including in cases involving discrimination. According to Article 21 of the Law on Prohibition of Discrimination, the Ombudsperson Institution can: act in cases of complaints against discriminatory acts of natural or legal persons when procedures before courts are not initiated; provide information to the complainant who believes she or he has been discriminated against by the natural or legal person, about his/her rights and duties, as well as about possibilities for court protection; conduct the conciliation proceeding, with the consent of the person allegedly discriminated against, between that person and the authority or other legal and natural person that he/she considers have performed discrimination, with the possibility of concluding a settlement out of trial, in accordance with the law regulating the mediation proceeding; inform the public about important issues of discrimination; if necessary, carry out research in the field of discrimination; keep separate records of submitted complaints with regards to discrimination; collect and analyse statistical data on cases of discrimination; and undertake actions to raise awareness on issues related to discrimination.

According to Article 22 anyone who believes that they have faced discrimination, by action or failure to act by an authority or other legal or natural person, may address the Ombudsperson Institution with a complaint. The procedure includes informing a person that applies for protection of her or his rights and preparation of a written official complaint. After all relevant information about the case in question is collected, the Ombudsperson sends a request to the entity or institution about which the complaint has been filed, requesting reaction and response. After receiving the response, the Ombudsperson Institution must prepare a report with its opinion about the case. The Ombudsperson's opinion is, however, not legally binding, so its implementation depends on the willingness of the specific institution to implement the recommendation.

Representatives of the Ombudsperson Institution demonstrated significant knowledge regarding gender-based discrimination, including gender-based discrimination related to labour. They recognised that Montenegro's legislation does not embody differences of gender identity, except distinguishing between men and women. Representatives of this institution stated that they have attended several specialised trainings focused on gender-based discrimination, so they said that they felt well-equipped to intervene when a complaint is made.

The representatives of this Institution shared their experiences with such cases. According to the Ombudsperson's experience, most persons who have experienced discrimination, including work-related discrimination, are women. In most of the cases they described the complaints they received related to fixed-term contracts that were not extended

when a woman became pregnant. However, the nature of fixed-term contracts does not provide many options for the Ombudsperson Institution to take action in such cases, they said. Once the contract expires, there is not much they can do. By insisting on signing fixed-term contracts, the employers found the way to circumvent anti-discrimination legislation related to maternity leaves, as has been shown in the legal analysis in this report.

Representatives of other institutions believed that the Ombudsperson Institution can influence significantly discrimination cases. They also observed that the relevance of the Ombudsperson Institution has grown within time. By being vocal and present in cases, including those regarding discrimination, the Ombudsperson Institution became more relevant than it was in the past. Representatives of institutions interviewed in the northern region of the country believed that the Ombudsperson should have an office in their region and that it would make the work of the Institution more effective because it would be closer to people who need to submit a complaint.

"I think that in the past few years, the Ombudsperson Institution has begun to work as it should. I believe they are very professional in investigating all claims. I can applaud them." - Higher Court Judge

Chamber of Commerce

The Chamber of Commerce is an organisation that represents the interests of the private commercial sector. They have a Board for Women's Entrepreneurship, which tries to encourage women's participation in the economy. However, in the interview they indicated that they have never dealt with the topic of work-related discrimination. Thus, the potential for the Chamber of Commerce to work with employers, particularly its members, to offer improved protections against and complaint mechanisms for gender-based discrimination has not been realised.

Even though they haven't dealt with cases of discrimination themselves, they shared opinion about the existing legal framework and legal mechanisms to fight discrimination related to labour. Representatives of the Chamber of Commerce believe that the legal framework is relatively good. They expressed satisfaction with the fact that Montenegro has ratified the Conventions 100 and 111 of the International Labour Organization, and that the domestic legislation is well harmonized with international trends. On the other hand, as they state, the most common problem when it comes to Montenegrin legislation is its application, as well as certain areas of discrimination not being yet precisely defined. The representatives also stated that the existing mechanisms are not used in the right way and to the full extent, neither by the subjects of discrimination, nor by the institutions. They also believe that there should be more monitoring in relation to cases of discrimination for things to be improved.

"Even when we pass the law, and when we envisage mechanisms for control, monitoring, reporting, i.e. sanctioning possible in case of violation, we do not fully deal with monitoring. Because only when we monitor the implementation and see if there were actions that deviate from the prescribed norms, i.e. they are punishable, then we can see if there is actually a problem, and to what extent, and then of course adopt policies,

specific measures and solutions to problems eliminated." (interview with a representative of the Chamber)

Labour Unions

Two main labour unions exist in Montenegro: The Alliance of Labour Unions and the Union of Free Trade Unions. Representatives of unions are not recognised by law as direct participants in processing discrimination cases. However, they often are mediators between people that experience discrimination and official institutions.

Based on their experience supporting cases involving discrimination, a recurring theme was the difficulties faced in proving gender-based discrimination. They stated that it is easier to recognise discrimination than it is to prove it because gender-based discrimination is a complex and multi-layer problem that is often intertwined with other possible forms of discrimination. It is difficult to establish if someone was discriminated against on the bases of gender.

In any case, I repeat, the legislative framework itself provides a fairly good protection, recognizes certain forms of discrimination, but practice is a problem, ie the implementation of these laws in practice (about completeness of the legal framework), (an interview with labour union representative)

Union representatives noted that another issue is insecurity and the lack of trust that persons who suffered/experienced discrimination have in the authorities. Although labour disputes should be treated with urgency, the lack of labour courts or specialised departments contribute to these disputes often lasting a very long time.

Given these general challenges, labour unions have had few experiences treating gender-based discrimination cases. Two labour union representatives observed that other grounds for discrimination have been brought to them more frequently, such as discrimination due to labour union membership. They also presented examples of cases brought forward by Roma people who experienced discrimination at work on the basis of their ethnicity.

"[D]iscrimination, whether at work or any other type of discrimination, is something that is a very complex issue for the reason that it is difficult to prove, especially when it comes to labour relations [...]. The lack of evidence of a material nature, but also the very questionable testimony from other employees when one of their colleagues is exposed to discrimination [are] something that for us [...] is a very big problem in providing comprehensive protection. I think that exactly these things that I have mentioned create a problem for the bodies that should protect workers who face discrimination." - Labour Union Representative

Many respondents in our online survey had negative opinion about capacity of the labour unions to protect their rights. Namely, 55% of the survey respondents thought that workers' unions represent poorly or very poorly their interests. Every fourth respondent (26%) thought that no workers' unions in Montenegro represent their interests, and 41% did not

know if they exist. Among those who said that workers' unions that represent their interests exist, half were members of one. Among them, 45% thought that their union represented poorly or very poorly their interests.

Insufficient knowledge of the existence of workers' unions and minimal confidence in unions' ability to represent workers' interests likely also contribute to unions receiving few cases from workers seeking their support.

CSOs

The interviewed civil society organisation (CSO) representatives stated that they have been approached for assistance in cases of gender-based discrimination. However, few CSOs specialise in treating gender-based discrimination, especially labour-related discrimination.

When asked where they had referred persons who suffered/experienced discrimination, they mentioned labour unions, the Women's Rights Centre WRC and for general legal help. Another place they would have referred persons seeking support is the Labour Inspectorate. Thus, CSO representatives generally had some knowledge about gender-based discrimination and tended to know where to refer cases of gender-based discrimination.

However, respondents emphasised that the responsible institutions' approach towards women was inadequate, as discussed in prior sections (see section about police, prosecution and judiciary, e.g.).

Although few CSOs have engaged directly in providing protection in cases of gender-based discrimination, many provide free legal aid and counselling. Also, as one interviewee emphasised, they can use their public influence as leverage to hold institutions more accountable in doing their work.

The efforts of CSOs and their campaigns showing the degree to which discrimination occurs were mentioned by police officials. These efforts were much appreciated by the police.

Cases of gender-based discrimination related to labour

In the following chapter, we present a description of selected cases dealt with by the Women's Rights Center since 2018, to illustrate the existing examples of gender-based discrimination in labor in Montenegro and to show how institutions have responded to them. Most cases are related to discrimination on the grounds of pregnancy / maternity and disability, mobbing is often reported, as well as violations of other labor rights, which we have not presented here due to the specific topic of the report.

Case 1

The beneficiary who was an employee of a state-owned company, who worked as a hygienist under a contract for temporary and occasional work, requested legal advice from the for Women's Rights Centre . Due to her difficult health situation, she was no longer able to do the job she had been doing so far. Therefore, she was on sick leave, fearing that her employer would fire her, because there was no information about her rights under the contract she signed. Given her health condition, she wanted to apply for the right to a disability pension, but there was no information on whether her employer had paid her pension and disability insurance contributions. She authorized a lawyer from the Women's Rights Center to submit a request to the Pension and Disability Insurance Fund to link work experience and correct errors in the register, in order to register the missing years of work.

After this procedure was completed, the lawyer offered her legal assistance in obtaining the right to a disability pension.

Case 2

An employee of a private company turned to the Women's Rights Center for legal advice and assistance. She was in a permanent employment relationship. The employee's maternity leave began in October 2019, which was later followed by maternity leave, during which her employer did not pay her salary. She sent a request to the Labor Inspectorate, but did not receive any feedback from them. Meanwhile, the employer closed the company due to bad business and large debts. In a conversation with a lawyer from the Women's Rights Center, the employee received information about special protection during pregnancy and maternity leave provided by the Labor Law, which guarantees her the same rights she had before she used the right to leave. Considering that in the specific case, the employee could not exercise her rights, the lawyer suggested representing in court and filing a lawsuit against the employer in civil proceedings. The employee authorized the lawyer to represent her and the procedure began shortly thereafter. The case is still pending.

Case 3

The employee worked for a private company for two years, under an employment contract that was renewed every six months. Meanwhile, she became pregnant and began exercising her right to maternity leave. She regularly delivered remittances to her employer, but her salaries were not paid. When she talked to the company's accountant about the possibility of solving the problem, he told her that she was not entitled to a salary because her contributions were not paid and suggested that she terminate the contract and get a new job in another company owned by him. A lawyer from the Women's Rights Center advised her to contact the Labor Inspectorate.

Case 4

The woman worked under a temporary employment contract from August to December. On November 30, she opened a maternity leave at the insistence of her gynecologist, due to a difficult pregnancy. After that, she received a decision from her employer to terminate her contract. The Women's Rights Center lawyer filed a lawsuit with the Basic Court. The procedure is ongoing.

Case 5

The employee concluded a fixed-term contract for a period of 4 months, in the position of "maintenance worker". In the meantime, the employee found out that she was pregnant and was on maternity leave due to a high-risk pregnancy, which was proven by the first report of a specialist doctor. Based on this report, the first-instance medical commission issued a finding and opinion on temporary incapacity for work, which determined temporary incapacity for work.

The employee constantly informed the employer about all of the above, through her husband. In the meantime, the employer handed the employee a decision to terminate the said employment contract by mail. Although the employer had information about maintaining the pregnancy, the employee's husband tried on several occasions to submit a report to the employer in order to calculate the salary compensation during her temporary incapacity for work. After submitting this report, it remained doubtful whether it was registered through the archives. Another employee was present at the submission of this report. Also, on another occasion, the employer's officials did not want to receive medical documentation, ie. the last remittances, which were again brought by the employee's husband to the employer's business premises.

As the employee's husband could not hand over the medical documentation to the employer, because the witnesses, according to the instructions received from the executive

director, refused to accept it, the documentation was sent by mail. After talking to a lawyer, the employee decided to initiate proceedings against the employer and authorized the lawyer to file a lawsuit to annul the dismissal decision requiring the employer to extend the employee's contract until the expiration of her right to maternity, maternity leave. unpaid wages.

In this procedure, the Basic Court issued a decision rejecting the lawsuit, so the lawyer filed an appeal against the said decision. In the second-instance procedure, the first-instance decision of the Basic Court was upheld and the plaintiff's request to annul the decision to terminate the employment contract and extend the contract until the expiration of the right to maternity, maternity and parental leave, was rejected. The reasoning of the second-instance verdict is similar to the first-instance verdict, stating that the fixed-term contract for temporary and occasional work is limited to 120 days, for unsystematized jobs financed by the Municipality, in accordance with the contract concluded by the current public company and the Municipality, to which the defendant referred in response to the lawsuit. From this, they concluded that the plaintiff was not employed, and therefore could not derive rights (the right to sick leave and contract extension). The lawyer stated a revision of the mentioned decision, so that the procedure is still ongoing.

Case 6

An employee of a private company where she worked as a saleswoman turned to WRC for legal help. Her employment contract was signed in 2015. She has been on maternity leave since January 2021. In the conversation, she explained that she had received a call from the director of the shop where she worked, who informed her that it was redundant and suggested that she come in for an interview. During the conversation with the director, she learned that another person had been accepted to her position, as well as that a colleague from another city had been transferred to work in that shop. The executive director offered her an agreed termination of her employment contract. After the initial consultation, the beneficiary scheduled a meeting with a lawyer. The lawyer explained that she was not obliged to sign an amicable termination of her employment contract. During the consultation, the lawyer explained to her the complete procedure for terminating the employment contract, including her rights according to the Labor Law and the obligations of the employer. The beneficiary was interested in whether she could ask for a higher amount of severance pay, and the lawyer explained that, if she is not interested in returning to work, she can emphasize that in the agreement. The lawyer also explained that the contract on termination of employment must be notarized and advised the user that she should return to work if she does not receive a decision on dismissal in writing, by the end of her maternity leave. She also explained to her that she has the right to annual leave, during her leave, stating that she must declare to the employer in writing that she will use the annual leave, in order for him to make a decision on using the leave. It was also agreed that the beneficiary will contact us if she has further problems.

Case 7

The Women's Rights Center sent a notice to the Supreme Court pointing out inconsistent legal practices and gender discrimination in one case in which an employed woman and an employed man, who were in the same job, were treated differently. After the Supreme Court rejected the notification, the Women's Rights Center filed a constitutional complaint. The decision of the Constitutional Court has been awaited for more than two years.

Case 8

The beneficiary gave birth two months prematurely and wanted to know if she was entitled to maternity leave for more than 365 days, due to premature birth. The WRC lawyer explained to her that, in accordance with the Labor Law, maternity leave is extended by the number of days for which the birth occurred earlier. She applied for extended sick leave, but the request was accepted so that her maternity leave was extended at the expense of parental leave (which can be used by both parents). After she publicly told her story, the beneficiary informed us that her maternity leave had been extended for an additional two months.

Case 9

According to the contract, the employee used the right to maternity leave at the time of reporting to the Women's Rights Center. She reported that she was not paid social security. She refused to identify the employer to the lawyer, explaining that he had promised a retroactive social security payment. She said she would call again if he didn't keep his promise. She also stated that the company she works for refuses to accept her remittances and advises her to keep them. The lawyer advised her to submit remittances regularly every month so that the employer could not claim that she did not submit them. She further stated that she informed the Labor Inspectorate about her situation, but that she was told that she should have more understanding towards the employer, and to have in mind that the private sector bears the huge burden of the COVID-19 pandemic. After the situation with non-payment of social insurance continued, the lawyer advised her to initiate an inspection procedure in order for the Tax Administration to react.

Case 10 (Violation of labor rights in connection with unpaid overtime work)

The beneficiary was employed for 5 months without a written employment contract. She kept records of arrivals and departures from work. She received her salary and salary for work on days off and for overtime work lasting 4 months, while for a period of one month the employer refused to pay her salary and salary for work on days off and for overtime work. In an attempt to resolve the dispute amicably, with the support of the WRC lawyer, the beneficiary sent a warning to the employer, stating a deadline of 5 days for a response. After the employer did not solve the problem in this way, the WRC lawyer filed a lawsuit for damages with the Basic Court, asking the employer to pay a certain amount of money based on salary compensation and compensation for overtime and work during days off. The procedure was completed, the request was approved, and the beneficiary received financial compensation from her employer.

Selection of the subject of the Media Union of Montenegro (beneficiary of small grants for the NGO Women's Rights Center)

Case 1

For several months in 2020, the legal advisor and her associates worked actively on the case of a woman who was employed as a hygienist in a foreign firm. On March 11, 2020, the employee, after an unpleasant situation at work the day before, turned to the Union to ask for support and help. Visibly upset, the employee suffered verbal insults from the employer, which almost led to physical contact and ultimately resulted in the employee being fired and given verbal dismissal. The legal advisor prepared for the employee: a letter to the employer on several occasions, a request for inspection, a request to initiate proceedings for protection against mobbing from the employer, a request to initiate a procedure for peaceful settlement

of labor disputes bearing in mind that the employer did not conduct procedures for protection against mobbing. an appeal to the then Ministry of Foreign Affairs. The case attracted the attention of trade unions and legal experts because it turned out that the institutions, due to the fact that it is a foreign company in Montenegro, are not able to react and provide protection to employees. This primarily refers to the activities of inspection bodies, why the employee, with the help of a legal advisor, turned to the Ministry of Foreign Affairs, which did not provide a response (even after repeated letters, even after letters sent by the Directorate for Inspection Affairs). As the employee failed to gain access to justice and protect her rights through the Agency for Peaceful Settlement of Disputes, because the procedure was suspended (since the employer did not accept reconciliation), the employee initiated court proceedings before the competent court through a selected lawyer. While the proceedings before the courts were ongoing, the beneficiary found a new job.

Case 2

Through the project team, the legal expert contacted the employee whose rights were violated by the employer, due to the termination of the employment contract via a viber message, which is not in accordance with the Labor Law, ie. the employer did not follow the legally prescribed procedure and did not state the exact reasons for the dismissal. This all happened while the employee was in self-isolation due to the Covid 19 virus. Although the employee hired a lawyer to represent her in this case, the project legal expert prepared several letters to the employer on behalf of the employee, gave some advice and suggestions regarding the lawyer's opinion to the employer, during the proceedings before the Agency for the Peaceful Settlement of Disputes, and finally gave advice on the exercise of rights based on unemployment before the employment service. The employer learned that the employee enjoyed the support of the Union, after which the dispute was resolved amicably, as the employee wished, even though the legal expert thought that it would be more adequate for the employee to initiate the procedure for annulling the termination of the employment contract and to return to work. However, reconciliation before the Agency for Peaceful Settlement of Disputes was very important for her, due to the length of the procedure during which, as a parent who takes care of children independently, she was not able to provide them with living conditions.

Case 3

The legal expert was contacted by an employee from a foreign company in Montenegro, who after 34 years of service was verbally informed that her employment would be terminated as redundant. The legal adviser assisted the employee in preparing a complaint to the employer regarding his intention to terminate the contract, stating that there were elements of discrimination because the employee worked in a position where another person was employed in addition to her. The employee had a permanent employment contract, with a length of service of 34 years, while the other person was employed under a fixed-term contract, with a length of service of 12 months. Also, contrary to the Labor Law, the employer did not adequately explain the reasons and criteria for declaring the employee redundant, nor was it logical that there was no need for her work, having in mind the nature of the employer's activities and job description for her position. The employee announced that she would initiate a lawsuit.

Case 4

An employee of a retail chain in Montenegro applied for legal assistance due to the fact that her employer illegally reduced her salary during her temporary absence from work due to an

injury at work, in order to force her to return to work despite the fact that she is entitled to temporary incapacity for work (sick leave) used on the recommendation of a doctor. In addition to counseling, the legal expert provided her with a specific type of legal assistance in connection with the preparation of communication with the employer, and then gave guidelines for further activities before the competent institutions, given that the employee did not receive a response from the employer. The procedure in this case is ongoing.

Conclusion

Even though some of the interviewed representatives of relevant institutions tended to demonstrate knowledge and understanding of gender-based discrimination, this did not apply to all. It would be fair to say that there were more among them who either did not understand the concept or tried to avoid any responsibility in such cases.

Given low reporting of gender-based discrimination, amid the lack of trust in institutions and fear of potential consequences, few institutions or organisations have had experience treating gender-based discrimination cases. This makes it difficult to assess their capacities to treat such cases. Specifically, labour inspectors' shirking of their duties to treat such cases, amid unclarities in the legal framework, has hindered any comprehensive institutional response to gender-based discrimination. CSO and union representatives also reported of poor treatment of cases by some representatives of institutions.

RECOMMENDATIONS

The recommendations are based on the findings in prior chapters, as well as drawn from the research participants' own recommendations. Most recommendations made in the previous 2018 report remain relevant.

For all institutions relevant to gender-based discrimination related to labour

- Improve access to public information on gender-based discrimination related to labour and procedures for accessing protection, as well as on the rights to equality, in order to stimulate women to advocate for their rights.
- Improve and standardise the collection and use of data related to gender-based discrimination in a way that enables comparisons over time.
- Include the gender of the alleged perpetrator in statistical evidence and report about it.
- Enable standardised tracking of discrimination statistics related to several factors and demographic differences, such as: age and gender, ability and gender, ethnicity and gender.
- Maintain gender-disaggregated statistics and create policies that measure performance related to the status of women and men in accordance with the Law on Gender Equality.
- Improve the electronic processing of cases, including gender-disaggregated data also in reference to the types of case reported, enabling better tracking of gender-based discrimination cases.
- Introduce standard classifications of types of discrimination and count the cases accordingly. The same classifications should be applied to other institutions that must report to the Ombudsperson Institution (e.g., police, courts, prosecutors, etc.).
- Coordinate with women's rights organisations, other CSOs and other relevant institutions and media to carry out effective, targeted awareness-raising campaigns that inform diverse people of their rights related to gender-based discrimination, as well as how and when to seek support from the Ombudsperson Institution.
- Undertake more efforts to address the lack of awareness regarding rights related to gender-based discrimination and the fear from retribution, including by proactively empowering persons who suffered/experienced discrimination to step forward.
- Get involved in awareness campaigns in order to strengthen the public's trust and confidence in the mechanisms of protection.
- Promote successful instances of protection from gender-based discrimination to increase public confidence in institutions that provide protection from discrimination. Coordinate with other institutions involved in the system of protection.
- Undertake more efforts to address the lack of awareness regarding rights related to gender-based discrimination and the fear of retribution, including proactively empowering persons who suffered/experienced discrimination to step forward.
- Improve institutional protection through more diligent work of competent authorities and adequate penal policy.

For the Government of Montenegro

- Significantly increase the human, technical and financial resources allocated to the implementation of the legislation on gender equality and the prohibition of discrimination on the basis of sex or gender.
- Conducts an assessment of the impact of the various capacity-building efforts and, based on the outcome, take the measures necessary to increase their efficiency. Measures should include the dissemination of information, including in cooperation with the Ombudsperson Institution, targeting the general public on how to access justice and the remedies available for obtaining redress and reparation.
- Set time-bound targets regarding combating gender based discriminated related to labour in the national and local action plans and assess the efficiency of those action plans based on such targets.
- Gender equality as a principle should be integrated and horizontally applied to all laws, policies and measures, as stipulated by the Law on Gender Equality. Conduct mandatory ex ante gender impact assessments to inform all measures and define goals that contribute to achieving gender equality in all spheres, including labour and employment.
- Ensure funding and an enabling environment for CSOs involved in activities towards addressing gender-based discrimination in labour.

For the Ministry of Justice, Human and Minority Rights

- Improve and standardise collection and use of data related to gender-based discrimination in a way that enables comparisons over time. The same should be applied to other institutions that must report to the Ministry and Gender Equality Department.
- Ensure an independent and consistent evaluation of the implementation of existing legal regulations and strategic documents regarding this topic.
- Provide continuous, specialised and gender-responsive training for representatives of all competent institutions, which, in addition to legal procedures, will also provide improved understanding of gender-based discrimination at work.
- Cooperate with and support CSOs involved in activities against gender-based discrimination in labour.

For the Legal Framework

- Further improve the legislative framework and harmonise it with EU directives, primarily the EU Directive 2019/1158 on the Work-Life balance of parents and carers, as well as Directive 2019/1152 on transparent and anticipated working conditions in the European Union.
- Amend the legislative framework in the field of labour, providing greater protection for women who are employed under fixed-term employment contracts.
- Draft the Law on Amendments to the Law on Prohibition of Discrimination and ensure its harmonization with EU directives, primarily Directive 2000/54.
- Ratify the International Labour Organisation Convention No. 190.
- Consider gender equality when creating measures of economic and other assistance for the economy and citizens in response to the COVID-19 pandemic.

- Further gender mainstream public policies.

For the Ombudsperson Institution

- Promote successful examples of protection against gender-based discrimination at work to increase and restore confidence in institutions and consequently stimulate people to report it.
- Participate in the education of competent institutions on this topic

For Police

- Ensure that a system of support and referral to appropriate institutions exists for persons reporting gender-based discrimination, preventing them from withdrawing their complaints.

For the Prosecution

- Promote successful instances of protection from gender-based discrimination to increase public confidence in institutions that provide protection from discrimination. Coordinate with other institutions involved in the system of protection.
- Get involved in GBD awareness campaigns in order to strengthen public's trust and confidence in the mechanisms of protection.
- Strengthen internal complaint mechanisms for supporting women prosecutors in reporting discrimination in their work place.

For Courts

- Continue education and training for judges in the implementation of applicable international instruments especially EU regulations with regards to gender-based discrimination at work.

For the Labour Inspectorate

- Legally provide the Labour Inspectorate with more authority in acting when discrimination occurs.
- Train members of the Inspectorate about their duties and responsibilities in cases of gender-based discrimination at work. Train them to be more accessible and open to provide assistance to the affected people.
- Train inspectors to proactively direct potential persons who would suffer/experienced discrimination to proper institutions that can help them protect their rights.
- Educate inspectors about their duties with regards to gender-based discrimination related to labour.
- Promote complaint mechanisms in cases the inspectors to not fulfil their duties with regards to such cases.
- Increase human resources of Labour Inspectorate.

For labour unions

- Conduct outreach campaigns to inform workers about the legal framework pertaining to gender-based discrimination and labour. Collaborate with experienced CSOs for more effective outreach, including that targets women worker specifically.
- Provide training for all union representatives regarding the relevant legal framework pertaining to gender-based discrimination at work.
- Provide legal aid for people who are considering reporting gender-based discrimination in an approachable and sensitive manner.
- Attend to multiple and intersectional discrimination, such as based on: age and gender, ability and gender, ethnicity and gender, and sexuality and gender.
- Ensure policies against gender-based discrimination and equal opportunities are in place in the working places and implemented.
- Undertake public outreach campaigns to improve people's awareness, understanding and trust in labour unions, including how they can support persons who have experienced gender-based discrimination at work.
- Improve women's participation in unions at all levels, and explicitly target more women to become active union members; collaborate with experienced CSOs for planning effective outreach.

For CSOs

- Encourage people, especially women, to report gender-based discrimination; empower persons who suffered/experienced discrimination to step forward.
- Provide legal aid for people who are considering reporting gender-based discrimination in an approachable and sensitive manner.
- Collaborate with other CSOs involved in anti-discrimination activities to coordinate efforts, towards efficiency, effectiveness and wise use of limited resources; set a joint strategy for shared work against gender-based discrimination in labour; share information regularly; and exchange best practices.
- Organise awareness-raising campaigns to increase women's and men's knowledge about gender-based discrimination in the labour market, as well as relevant institutions and procedures for seeking recourse for rights violations.
- Organise advocacy campaigns for changing legislation in order to better protect women's and men's rights related to labour.
- Specifically target people from minority ethnic groups, LGBTQI+ persons and persons with different abilities with information about their rights; support them in reporting and seeking justice for gender-based discrimination. Attend to multiple and intersectional discrimination, based on: age and gender, ability and gender, ethnicity and gender, sexuality and gender.

For Chamber of Commerce

- Organise trainings on gender-based discrimination at work for Chamber members, including how they can introduce policies and mechanisms that offer protection against such discrimination into their workplaces.

- Conduct employers' awareness campaigns to inform them about discriminatory nature of certain actions such as asking about marital status in hiring process and promote non-discriminatory behaviour.
- Raise awareness among employers about the discriminatory nature of fixed-term contracts and urge them not to use these types of contracts.

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ANNEXES

Annex 1. Methodology

This annex provides further details about the research methodology. In order to address the research questions outlined in the introduction, the research involved mixed methods, involving: an analysis of the relevant legal framework; a literature review; review of any existing institutional data related to discrimination cases; semi-structured interviews with representatives of relevant institutions to measure their knowledge of, awareness on and experiences with gender-based discrimination in the labour market; and an anonymous online survey of women and men. This section provides further details about each research method.

Key Terms and Delimitation

The research focused on gender-based discrimination in relation to labour. It did not examine gender-based discrimination that may occur outside the workplace. The key research terms were defined and operationalized as follows. "Discrimination" included all forms of gender-based discrimination, as defined by law. The term "labour" was used rather than "employment" to include study of unpaid and unregistered forms of labour. "Gender" involved all gender expressions and identities, including but not limited to: women, men, trans*, gender non-conforming, gender fluid and intersex. "Gender-based discrimination", then, was defined to involve discrimination affecting persons because of their gender.

Legal Analysis

The Legal Analysis examined and assessed current anti-discrimination legislation in place in Montenegro, including any shortcomings in aligning national legislation with the Acquis Communautaire (the "Gender Equality Acquis"). It also sought to identify the relevant institutions, their roles and responsibilities. It involved examination of international laws, treaties, conventions, national constitutions, national laws and secondary legislation/policies. The topics examined included: How is discrimination defined? What protection measures exist against discrimination? What mechanisms have been put in place to address or mitigate discrimination? What methods exist for reporting discrimination? What gaps exist in the legal framework? What are the relevant institutions and their responsibilities?

Literature Review

The Literature Review examined any existing data on gender-based discrimination that was available, so as to ground the report in existing information and avoid duplication of existing research. It included examination of the research methods used and timeframes.

Data Collection

The research team sought to collect data related to discrimination cases at work for the period of 2018 – 2020, disaggregated by gender, from the basic court in Podgorica, the police department, Agency for Peaceful Settlement of Labour Disputes, Ombudsperson institution, the Labour Inspectorate, the Tourism Inspectorate and the Judicial Council. This involved sending official data requests to these institutions.

The Survey

The research team sought to collect input from diverse women and men regarding their knowledge of anti-discrimination legislation, personal experiences with discrimination, whether such cases were reported and why they did not report discrimination if it occurred. Center for Women's Rights collaborated with its partner organisations in the region, particularly Reactor Research in Action (Macedonia), to create the online survey using Lime Survey. The survey was promoted broadly, including through social media, boosting on Facebook and email. The survey was open from 1 November through 3 December. For

demographic information about respondents, see Annex 2 and for the survey tool, see Annex 4.

Interviews

In total, 33 representatives of relevant institutions were interviewed using a semi-structured interview guide to measure their knowledge, awareness and experiences with gender-based discrimination and labour. Interviews were conducted with four police directorate employees (in Bijelo Polje, Podgorica, Herceg Novi and Bar), four prosecutors (from the north and centre of the country), ten representatives of the basic courts (in Bijelo Polje, Podgorica, Bar and Ulcinj), four interviews with criminal court judges (in Bijelo Polje), two interviews with the Labour Inspection, two interviews with labour union representatives, one interview with the Chamber of Commerce and six interviews with representatives of CSOs (Juventas, Sigurna ženska kuća, Queer Montenegro, Spektra and CEDEM).

Data Analysis

The research team coded the qualitative data resulting from interviews in a coding document, as per the research questions, to identify recurring trends and differences. At least two people participated in the coding of every interview, towards triangulation of researchers. Reactor carried out the statistical analysis of survey data using SPSS, which was reviewed by Center's researchers. Towards maximizing the usage of the data gathered, the data from everyone who completed a particular question was processed and presented. Thus, the number of missing cases differed for each variable and increased for questions posed towards the end of the survey. The number of responses ("n") is reported in the presentation of findings. Any statements including the term "significant" in relation to the survey findings suggest statistical testing with a confidence level $\alpha = 0.05$. However, limitations outlined in the next section must be considered.

Limitations

The team considered that the costs of surveying a nationally representative sample outweighed the benefits that this kind of sample offers in terms of generalizability of the findings. Therefore, the research team had to find a balance between cost and quality, selecting to use an online survey involving convenience sampling instead. If well-advertised, online surveys can be a very efficient means for understanding qualitatively the challenges affiliated with discrimination cases. The research team considered that identifying and understanding qualitatively discrimination cases would be more important than finding the actual 'extent' of discrimination. Moreover, the team thought that underreporting of discrimination likely would be widespread in a household survey, given the general population's hypothesized low level of knowledge regarding which acts could constitute gender-based discrimination. Further, the research team considered that the complete anonymity allowed by online surveys may enhance the willingness of people to report their experiences without fear of repercussions, given the sensitivity of the topic. Even so, these methodological choices contribute to some limitations regarding the research findings.

First, since random sampling was not used, the findings cannot be generalized to the entire population. Statistical inference means to generalize the findings from a sample to a population, usually using significance tests. Considering that the survey sample was a non-probability sample and that statistical inference based on conventions for p values presupposes probability sampling, the findings referred to as "statistically significant" should be interpreted as suggestive, but not conclusive, and in no way generalizable. Statistical tests were used as heuristics to differentiate "large enough" differences or correlations on which the research team could comment.

Second and related, since the survey sample was convenient, it was not demographically representative of the population of Montenegro. Therefore, the percentages reported do not reflect the prevalence of the phenomena among the general population in Montenegro; and the variability of the “sampled” experiences may be restricted. All variables were cross-tabulated with gender, not only because this was a key variable, but also because the sample was imbalanced in terms of gender. In the sample of persons that completed 90% of the questionnaire, twice as many women respondents as men completed the survey. This means that the observed distributions of answers in the sample were based more on the responses of women participants than on men respondents. This gender disproportion could constrain the possibility of observing gender-based differences. However, where indicative, established relationships (i.e., gender-based differences) were interpreted, but the conclusions remain “restrained” in terms of generalizability.

Validity

The research team sought to enhance the validity of the findings through triangulation of data sources (e.g., citizens, institutions, CSOs, statistics), methods and researchers. Peer review of findings by diverse experts also sought to identify any potential error prior to finalizing the report. These steps sought to enhance the validity of the findings.

Annex 2. Demographic Information about the Survey Sample

A total of 1676 participants clicked the online questionnaire and 435 participants (26%) completed approximately 90% of the questionnaire.

		Frequency	Percent
Gender	Women	410	94.3
	Men	25	5.7
Area they live in	Urban	411	94.5
	Rural	5.5	5.5
Age	18-29	74	17.0
	30-39	168	38.6
	40-49	130	29.9
	50-59	46	10.6
	60-69	7	1.6
Education	Primary or incomplete primary education	3	0.7
	Secondary education	92	21.1
	Vocational education on the basis of secondary education	5	1.1
	Vocational higher education	40	9.2
	Bachelor degree Bachelor (3 or 4 years)	182	41.8
	Master's degree (1 or 2 years)	104	23.9
Ethnicity	PhD	9	2.1
	Albanian	4	0.9
	Serbian	144	33.1
	Bosniak	12	2.8
	Montenegrin	297	68.3
	Croat	4	0.9
	Muslim	20	4.6
Marital status	Other	6	1.3
	Single	127	29.2
	Engaged	6	1.4
	Married	219	50.3
	Divorced	45	10.3
	Co-habiting	31	7.1
Do you consider yourself to have a disability	Widowed	5	1.1
	No	404	92.9
Employment	Yes	31	7.1
	Employed full-time	349	80.2
	Employed part-time	23	5.3
	Self-employed	6	1.4
	Unemployed, looking for work	36	8.3
	Unemployed, not looking for work	9	2.1
	Unemployed, still studying	1	0.2
	Unemployed officially, but I do unpaid work outside the home such as farming, caring for animals like cows or chickens,	2	0.5
Place of work	Private sector (business, including family business or farm)	159	36.6
	Government (including ministry, municipality, health institution, public school, university, etc.)	133	30.6
	Publicly owned enterprise in public sector	37	8.5
	Local civil society organization	22	5.1
	International civil society organization	4	0.9
	Other international body (EU, UN, UN agency, foreign embassy, etc.)	2	0.5

Annex 3. Sample interview guide

Interview Guide Basiv Court Judges

[To complete before interview and checked at beginning]

1. Interview code number: K __ __ __
2. Name interviewer:
3. Date:
4. Start time of the interview:
5. End time of the interview:
6. Location (city):
7. Name
8. Title
9. Email
10. Phone number

Introduction

Hello, my name is _____ and I am here on behalf of Women's Rights Centre, thank you for agreeing to be interviewed and to be part of this research.

Demographics

11. Year of birth
12. For how long have you been working in this position (years, months)?

Knowledge

13. First, please can you tell me how do you personally define "discrimination"? [RQIV.3.1]
14. What types of acts, for example, would you consider to be "gender-based discrimination"? [RQ4.3]
15. To what extent does the legal framework offer protection if discrimination occurs because of a person's gender, meaning *because* they are a woman or a man? [RQI.1, I.2, IV.3.2]
16. Based on your opinion and experience, to what extent is this legal framework related to gender-based discrimination complete or incomplete? Please elaborate. [RQI.1, I.2]
17. To what extent do you think that knowledge about discrimination as a rights violation has improved in the last three years (so since January 2018), if at all? Probe: for what reasons do you believe that it changed? If changed, what do you believe has contributed to this change? Who has contributed to this change?
18. What about within your institution – among civil court judges has it improved, stayed the same, worsened?
19. How capable do you feel to address gender-based discrimination related to labour if it occurs? [RQIV.4.]

Attitudes and Perceptions

20. Generally speaking, what would you say your colleagues' attitudes are towards discrimination against women related to labour? [RQIV.5. Probe: How about other institution' attitudes towards discrimination against women. Probe for examples and which institution.]
21. To what extent do you think that attitudes about discrimination as a rights violation have improved in the last three years (so since January 2018), if at all? Probe: for what reasons do you believe that (examples)? If changed, who do you believe has contributed to this change? If a

woman believes that she has been discriminated against at work *because she is a woman*, what should she do? [RQIV.3]

Training

22. What types of training did you receive related to discrimination on the basis of being a woman or a man? [Probe: or on gender equality specifically? When was the last training on each theme, how long, on what themes, by whom] [RQIV.3.1.]

Filter: Gender-based discrimination cases reported

We are looking at different forms of discrimination related to labour. In our research, and in accordance with the legal framework in Montenegro, we are defining discrimination to include: discrimination in hiring, promotion, contracts, sexual harassment, maternity/paternity leave, working conditions; working conditions during COVID-19, gender pay gap, informal economy, breastfeeding rights (violations. Based on this definition:

23. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since January 2018?? [RQIV.6]
- 23.1.1 Yes
 - 23.1.2 No

[If the answer is Yes, ask:]

24. Have you witnessed an increase in the number of cases of gender-based discrimination reported to your institution since January 2018?
25. Has there been an increase in the number of reports during the pandemic, of gender discrimination in the workplace?

[Skip the following questions if the answer is No, and ask:]

26. For what reason do you think few discrimination cases been reported and/or filed? [RQIII.1]RQII

Gender-based discrimination cases reported Cases

[Researcher listen for any potential lack of awareness/knowledge/attitudes]

27. Please tell me about the cases you have dealt with?

- 27.1 If yes, how many approximately? [RQII.1]
- 27.2 Please tell me briefly about each case [who, what, where (location and place of work), when, including alleged crime/violation, how they were treated by the institutions that handled the case, what was the verdict and/or measures, if relevant].
- 27.3 What was the gender of persons who suffered discrimination [women, men, both]? [RQII.2.]
- 27.4 What was the gender of the alleged perpetrator? [RQII.3.]
- 27.5 Have you observed whether discrimination tended to happen more to people in any of the following groups: ethnicity, sexuality, age, ability, geographic location? Please elaborate [RQII.4.]
- 27.6 Have you seen any cases in which multiple discriminations were claimed, such as on the basis of both gender and disability OR gender and ethnicity?
- 27.7 What types of discrimination did you encounter? [RQII.5.]
- 27.8 In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution. [RQIV.7]
- 27.9 How long does it approximately take for cases of discrimination based on gender in the labour market to be dealt with (including the verdict)? [RQIV.7.1]
- 27.10 What decision does the court usually take? [Probe: what measure have been given, if any] [RQIV.7.2]
- 27.11 Based on your personal experience, how would you say that other institutions responsible for addressing gender-based discrimination in Montenegro have treated these cases? What have been good and bad practices? Please be specific [probe for institution, who, what, where, when]

If this is not answered detailed enough, ask following questions and ask for detailed description of the case

Data Collection Practices

- 28. What are the current practices of collecting and tracking data related to gender-based discrimination in your institution?
 - 28.1 Does your institution disaggregate cases based on gender (the victim and the perpetrator)?
 - 28.2 [Probe] What are the strengths and weaknesses of data collection practices related to logging these cases? [RQII.7]
- 29. Do you have any other comments or things you'd like to add?
- 30. [Researcher notes (reflexivity)]

Annex 4. Survey on discrimination at work

Thank you for taking part in this important survey, which aims to identify ways to better address different forms of discrimination that can occur in relation to work. Understanding your thoughts and experiences can support us in identifying actions that can help prevent discrimination, as well as contribute to improved access to justice for discrimination when it occurs. The survey will take approximately 15 minutes. Be assured that all of your answers will be kept strictly confidential. No one will know who you are.

If you have any questions or concerns about this survey, please contact: [...].
By clicking "Next", you consent to participate in this important research. Thanks so much!

You can change the language of the survey by choosing from the drop-down menu below the title of the survey.

GENERAL INFORMATION

Where do you live and work?

Montenegro

Abroad

If abroad →

Thank you for your interest, this questionnaire is for people living and working in Montenegro.

In which city or town do you currently live or spend most of your time?

Do you live in urban or rural area?

Urban

Rural

What is your gender?

Woman

Man

Other

In which year were you born?

With which ethnic group do you identify? If more than one, please check all that apply.

Albanian

Serbian

Bosniak

Muslim

Montenegrin

Croat

Macedonian

Roma

Ashkali

Egyptian

Gorani

Turkish

Hungarian

Slovak

Vlach

Greek

Other (please write) _____

What is the highest level of education that you have completed?

Primary or incomplete primary education
Secondary school
Vocational education on the basis of secondary education
Vocational higher education
Bachelor degree
Master's degree
PhD

What is your current marital status?

Single
Engaged
Married
Divorced
Co-habiting
Widowed

How many children do you have under age 10?

Do you consider yourself to have a disability?

Yes
No

EMPLOYMENT INFORMATION

Are you currently:

Employed full-time
Employed part-time
Self-employed
Unpaid family worker (working on a farm or small family business)
Unemployed, looking for work
Unemployed, not looking for work
Unemployed, still studying
Unemployed officially, but I do unpaid work outside the home such as farming, caring for animals like cows or chickens, etc.

[If unemployed/family worker are you]

Are you:

Registered as unemployed with the employment agency, and looking for work
Not registered in the employment agency, but looking for work
Not looking for work

[If not looking for work]

What is the main reason that you did not look for employment?

You are waiting to be invited to your previous employment
Seasonal type of work
Illness (your personal)
Disability (your personal)
Taking care of children
Taking care of adult disabled person
Other personal or family obligations

School education or training
Retired person
You think that there is no available job
Other reason (specify)

In the last three years (so since 2018), has any of the following been true for you? Please check all that apply:

I was unemployed and not looking for work
I was unemployed and looking for work
I was employed part time
I was employed full time
I was in school/university
I was self-employed
I worked without pay for a family business or farm

Where do you work? Please check all that apply.

Private sector (business, including family business or farm)
Government (including ministry, municipality, health institution, public school, university, etc.)
Local civil society organization
International civil society organization
Other international body (EU, UN, UN agency, foreign embassy, etc.)

Which of the following best describes your current position?

Entry-level position (e.g., assistant, worker)
Mid-level position (e.g., coordinator)
Senior-level position (e.g., manager, director)
I'm my own boss
Other (please write)

Since 2018, have you ever been denied the right to take off work for any of the following reasons (please select all that apply)?

When I was sick with COVID-19
When a fellow household member was sick with COVID-19
When I was sick for another reason
For personal leave (e.g., death in family)
For national holidays
For vacation/ annual leave?

COVID-19 (for employed persons only)

Now we have some questions about COVID-19 and how it has affected you and your work.

During COVID-19, for how long were you not working at home or your workplace because your workplace was closed due to isolation or other measures?

0 days (workplace never closed)
1-7 days
8-15 days
16-30 days
30+ days
Not applicable to me

During this period, how were you compensated if at all?

I was not paid
I was paid at reduced salary
I was paid at actual salary
Not applicable to me

Since the COVID-19 outbreak, has your employer allowed you to work from home?

Yes

No

During COVID-19, what challenges did you face in balancing your personal and work life, if any? (Please check all that apply)

Caring for persons who had COVID-19 or other illnesses in my family

Caring for children (e.g., during the lockdown of schools and kindergartens)

Caring for persons with disabilities

Caring for elderly persons

Living and working in a small space with others

Not having enough electronic devices in my household for everyone's needs

Not having strong enough internet for everyone's needs

Difficulties concentrating

Psychological violence at home

Physical violence at home

Difficulties going offline and disconnecting (such as due to work pressure)

Stress

Accessing safe transportation to get to/from work

Other (please write)

I did not face any challenges

Have you had COVID-19?

Yes

No

Were you allowed to take off work when you had COVID-19?

Yes

No

How many days did you take off? ____

How did your employer treat your leave related to COVID-19? (please select all that apply)

Fully paid medical leave

Partially paid medical leave

Unpaid medical leave

Annual vacation days

Other (please write)

I don't know

Did your employer provide a mask, gloves, hand sanitizers and other protection measures against COVID-19?

Yes, always

Yes, sometimes

No

Not applicable as I was not working

As a result of COVID-19, did your employer decrease your salary?

Yes

No

As a result of COVID-19 have you lost your job?

Yes

No

For what reason(s)? Please check all that apply.

General layoffs of all workers

I had no contract so employer said to stop working

My employment contract was not renewed

I had to take care of my children and my employer pressured me to quit/fired me

I was a woman

Other reasons (please write)

Of the Government's relief measures related to COVID-19, have you been DENIED the right to any of the following (meaning you didn't receive the benefit)?

CONTRACTS AND PAY

Since 2018, have you ever been asked to work regularly without a contract (including for a family business)?

Yes

No

Do you currently have a written contract?

Yes

No

What is the length of your current contract (or the last contract that you had) in months?

Three months or less

4-6 months

7-12 months

More than 1 year, but less than 3 years

4 or more years

Indefinite

I have never had a written contract

In your workplace, who tends to have longer contracts?

Women

Men

It's the same for both

Not applicable (only men or only women work here)

I don't know

Since 2018, have you ever been asked to sign an employment contract without being allowed to read and understand the terms of your contract before signing it?

Yes

No

On average, how many hours do you usually work per week?

1-20

21-40

41-60

More than 61

Currently, what salary do you actually receive each month (net in EUR)?

Less than or equal to 129

130 – 170

171 - 200

201-300

301-400

401-500

501-800

800 or more

Does your employer declare to the state authorities the actual, real salary that you received?

Yes

No, my employer tells the authorities something else

I don't know

In your job, are you entitled to any of the following benefits? Please select all that apply.

Health insurance

Social security / pension paid by the employer

Neither of these

Has your employer ever asked you to return part of your salary to the employer?

Yes

No

Usually, how are you compensated for overtime worked? *

I don't receive anything extra (beyond my regular monthly wage)

I'm paid for the extra time worked at the same rate as my usual wage

I'm paid for the extra time worked with a higher rate than my usual wage

I receive time off

Not applicable: I never work overtime

YOUR VIEWS

Is discriminating against someone at work because they are a woman or a man illegal in your country?

Yes

No

I don't know

If it happens, this type of discrimination at work should be reported to [please check all that apply]:

The employer

The Labour Inspectorate

The Ombudsperson Institution

The police

None of the above

I don't know

HIRING

Now we have some questions about your experiences with hiring processes.

How many times have you been in a job interview since 2018?

Never

Once

2-5 times

More than 5 times

Don't remember

Since 2018, in a job interview have you ever been asked questions concerning:

	Yes	No
Your marital status or marriage plans		
If you have or plan to have children		
Medical proof that you are not pregnant		

Your sexual orientation and/or gender identity		
Something else not related to your skills, education or work experience that felt inappropriate (if yes, please elaborate):		

Since 2018, in your opinion, have you ever not gotten a job that you applied for because:

	Yes	No
You are a woman		
You were pregnant		
You have children or are planning to		
Your ethnicity		
Your age		
Your appearance		
Your political preference		
Your religion		
Your place of residence (for example, rural)		
Your sexual orientation and/or gender identity		
Other criteria not related to skills, education or experience		

	Yes	No
You are a man		
You are expecting a baby		
You have children		
You shared that you are planning to have children		
Your age		
Your appearance		
Your political preference		
Other criteria not related to skills, education or experience		

PROMOTION

Now we have some questions about access to promotion. All questions refer to the period since 2018 unless otherwise stated.

Has it ever happened to you that your employer didn't consider you for a promotion because... (please check all that apply)

Your appearance

Your gender (for example, I was told this is not a job for women/men)

You were pregnant

You have children or were planning to

Your ethnicity

Your sexual orientation or gender identity

Your age

Your religion
Your place of residence (for example, rural)
I don't know
None of the above happened to me
Other (please write):

WORKING CONDITIONS

Do you think your health or safety is at risk because of your work?

Yes
No

For what reasons do you feel at risk? Please check all that apply.

COVID-19
Bad air quality
Dangerous chemicals
Lifting heavy objects
Not being allowed to use the toilet
Other (please write)

PREGNANCY AND MATERNITY LEAVE

Since 2018, have you ever been pregnant when you were employed?

Yes
No
I am currently pregnant but am not yet on maternity leave

Has it ever happened that you were neither paid, nor received a government benefit during your maternity leave?

Yes
No

Did you return to your previous place of employment after your most recent maternity leave?

Yes
No
I am still on maternity leave

Why not? Please mark all that apply.

I did not want to work anymore
I started a new job
The employer terminated my contract/fired me
My contract expired while I was on maternity leave
The employer decided to employ my replacement instead
I have no one to take care of my children or childcare is too expensive
I could not find work
Due to illness or injury
Another reason (please write)

Has any employer ever pressured you to return to work earlier than you had planned to be on maternity leave?

Yes
No

When you returned to work, did you have:

More responsibilities
Fewer responsibilities

The same responsibilities

Did you have:

Higher pay

Lower pay

The same pay

Did you have:

More working hours

Less working hours

The same working hours

When you returned, were you:

Treated the same as before you left

Treated differently by your peers or boss because you took the leave

PATERNITY LEAVE

Would your employer give you paternity leave?

Yes, PAID paternity leave

Yes, UNPAID paternity leave

No

Do not know

Since 2018, have you had a newborn child while being employed?

Yes

No

How many days did your employer allow you to take off?

When you returned from leave, were you:

Treated the same as before you left

Treated differently by your peers or boss because you took the leave

Do you think that men should have more paid time off for paternity leave?

Yes

No

SEXUAL HARASSMENT AT WORK

The following is a list of situations that reflect certain behaviours. Please indicate if you consider them to be sexual harassment when they occur at work. On the second scale please indicate if it ever happened to you at work. Your identity will remain anonymous.

	Yes, this is sexual harassment. No it's not. Depends	Yes, this happened to me, more than once. Yes, this happened to me once. No, this never happened to me.
Making sexual gestures, jokes, or sounds		
Sending emails or text messages of a sexual nature (including after work hours)		

Touching intimate parts of another worker's body (bottom, breasts, etc.)		
Touching body parts on purpose (hand, shoulder, back, etc.) in a situation in which touching is unnecessary		
A colleague or superior proposing to have sex with him/her		
A colleague or superior forcing someone to have sex with him/her		

Were the persons who did this to you:

Women

Men

Both

Were the persons who did this in (please check all that apply):

Lower positions than you

Equal positions as you

Higher positions than you

Have you talked about this situation to anyone?

Yes

No

Who did you tell? Please check all that apply.

Friend, acquaintance

Family member

Colleague

My manager

Police

Religious leader

Person in an official reporting mechanism at my workplace

CSO that provides legal help

Someone else, please specify:

For what reason(s) did you decide not to tell anybody about this situation? Please check all that apply.

I was ashamed

I'm afraid of losing my job

I did not want to

I think I have to take care of it myself

Other (please write):

UNIONS

Do any workers' unions exist in your country, which could represent your interests?

Yes

No

Are you a member of any workers' union?

Yes

No

How well do you feel that your workers' union represents your interests?

Very well

Good

Somewhat

Poorly
Very poorly

OVERALL REFLECTIONS

Many of the acts we asked about in this survey so far could be considered forms of discrimination. Considering this, would you say that you have ever been treated differently (discriminated against), because you are a woman/man?

Yes
No

If no

Do you have any comments, stories or examples you want to share, including cases of discrimination that may have happened to someone you know? Please provide details?

If yes

Please, can you describe in detail any experience(s) that you have had with discrimination at work since 2018? We greatly appreciate any information you can share. Your identity will remain anonymous.

In which sector were you working when this occurred?

Private sector (business, including family business or farm)
Government (including ministry, municipality, health institution, public school, university, etc.)
Local civil society organization
International civil society organization
Other international body (EU, UN, UN agency, foreign embassy, etc.)
Other:

With which institutions/entities were you in contact regarding what happened to you? Please select all that apply.

None
Labour Inspectorate
Police
Courts
Prosecution
Ombudsman
Commissioner for Protection against Discrimination
CSO that provides legal help
Lawyer
Other (please write)

What happened when you reported discrimination to the relevant authorities?

They would not hear my case
They listened, but said they could not do anything
They listened and tried to assist me
They were very helpful and helped me file the case
Other (please write)

Have you been involved in any court action related to discrimination at work?

Yes
No

FOLLOW-UP

The research team may conduct a small number of follow-up interviews lasting up to one hour with respondents this fall. Your identity would be kept confidential and information protected. Such an interview would help us a lot in better understanding what happened,

and potentially helping you or others like you in the future. Would you be willing to participate in a follow-up interview?

Yes

No

Please enter your e-mail address and phone number so that we can contact you. This information will remain fully confidential.

Phone:

Email:

Thank you for your time and contribution to this important research.

This survey was created by a network of women's rights organizations in the region, with financial support from the European Union. Its contents are the sole responsibility of these organizations and do not necessarily reflect the views of the European Union.