

GENDER ANALYSIS OF PUBLIC ADMINISTRATION IN MONTENEGRO

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CONCLUSIONS AND RECOMMENDATIONS (FACTSHEETS)

SHORT OVERVIEW OF THE NATIONAL LEGISLATIVE, POLICY AND INSTITUTIONAL FRAMEWORK GOVERNING GENDER EQUALITY AND PUBLIC ADMINISTRATION REFORM

1. LEGAL FRAMEWORK

Constitution of Montenegro: Prohibition of any direct or indirect discrimination on any grounds is a constitutional principle and the Constitution Preamble stipulates respect for human rights and freedoms, as well as the quality of all citizens. Issues of anti-discrimination and equality between men and women are in particular regulated by Articles 8, 18, and 71 of the Constitution; while issues related to labour rights are regulated by Articles 62-67 (the right to work (Article 62), prohibition of forced labour (Article 63), rights of the employed (Article 64), provisions concerning the Social Council (Article 65), strike (Article 66), and social insurance (Article 67)). Gender equality provisions of the Constitution are a testimony of acceptance of ratified and international treaties in the domestic legal system. Specifically, article 18 of the Constitution guarantees gender equality stipulating that “the State shall guarantee the equality of women and men and develop the policy of equal opportunities.” However, there are no provisions on special (affirmative) measures for women or for any other group who is discriminated or put in unequal position. Likewise, there are no constitution provisions that regulate the work of civil service in terms of stipulation of the underlying principles of operation. Furthermore, the Constitution has not been written in gender sensitive language. Rather, it uses masculine denominations as the generic gender in denoting titles, positions and occupation.

Law on the Prohibition of Discrimination¹ is a framework anti-discrimination law, establishing a comprehensive systemic legal protection from discrimination. Recently, the Law entered the amendment procedure. Draft Law on Amendments to the Law on Prohibition of Discrimination, contained two provisions that intend to harmonize it with recommendations of the European Commission: the one that defines "discrimination on the

¹ Law on the Prohibition of Discrimination (Official Gazette of Montenegro, No. 46/2010, 40/11, 18/14, 42/17).

basis of association" and a the one further improving the provision regulating the "burden of proof".² The Law prohibits 'any form of discrimination, on any ground' (Article 2, paragraph 1). Although this article, inter alia, prohibits discrimination based on sex, the provisions on the definition and scope of discrimination based on sex are missing. Moreover it is not recognized by this Law as a special form of discrimination, except for harassment and sexual harassment.

When it comes to discrimination in the sphere of labour, Article 16, paragraph 1 of the Law on Prohibition of Discrimination specifically prohibits discrimination on any grounds listed under Article 2, paragraph 2 of this Law (including discrimination based on sex) of persons seeking employment. This provision is accompanied by the offence with an associated fine (Article 34a). Additionally, even though sexual harassment is considered a special form of discrimination, it is still not defined as a criminal offence under the law. This point was also noted in the European Commission Report 2020 on Montenegro.³ In line with the Constitution, the Law introduces foresees that special measures may be introduced and enforced, with the aim of creating conditions for national, gender and overall equality and the protection of persons in an unequal position on any grounds, within their jurisdiction and powers, by state bodies, state administration bodies, local self-government, public enterprises and other legal entities with public authority (hereinafter: organs), as well as other legal entities and individuals.⁴ When it comes to the enforcement of the legal provisions contained in this Law, the most relevant institution is the Ombudsperson.

The National Strategy for Gender Equality 2021-2025 envisages the establishment and unification of comparable records on cases of discrimination based on sex and gender.

The Law on Gender Equality is a *lex specialis* and stipulates equality between women and men in all areas of public and private life, as well as an equal opportunities policy. The Law stipulates the obligation of public institutions at central and local level, as well as business

² Report on the public debate on the Draft Law on Amendments to the Law on Prohibition of Discrimination, Ministry of Human and Minority Rights, 26/03/2020, at: <https://www.gov.me/clanak/223316--izvjestaj-sa-javne-rasprave-o-nacrtu-zakona-o-izmjenama-i-dopunama-zakona-o-zabrani-diskriminacije>

³ The European Commission's 2020 Report on Montenegro noted that the Ministry of Justice established a working group to reconsider this issue, the work on which is expected to be continued also by the new government. See page 38 of the Report.

⁴ So far, special measures aimed at achieving gender equality have only been applied to the Law on election of councillors and MPs (see above).

companies, to integrate gender in their policy making process. Accordingly: “in order to achieve gender equality in all phases of planning, making and implementing decisions, as well as taking actions in their competency, the state organs, organs of state administration and local self-government, public institutions, public enterprises and legal persons exercising public authority, as well as business companies, other legal persons and entrepreneurs shall be obliged to assess and evaluate the impact of those decisions and activities on the position of women and men” (Article 3). Furthermore, in line with the law, the Parliament, the Government, and municipalities are required to promote implementation of the principle of gender equality, in particular the principle of balanced gender representation in the process of election, appointment and constitution of bodies and official delegations (Articles 10 and 11).

The Law provides a comprehensive definition of direct, indirect and discrimination based on sex. The Law on gender equality also envisages special measures which could be used to achieve gender equality, that are not considered discrimination.⁵ It is interesting that foreseen fines are *inter alia* stipulated for responsible person in legal entities if it does not use gender-sensitive language in its work. However, the Law does not provide sanctions for violating Articles 10, 11, 12 pertaining gender balanced representation in political life neither it regulate or recognize the unpaid work. Overall, the Law on gender equality establishes only two offences for acts of discrimination: protection of pregnant women, mothers and persons who have changed sex from being brought into a disadvantaged position with regards to labour and social security rights (Article 33)⁶ and the failure of (legal persons) to use gender sensitive language (Article 33a, paragraph 1, point 1).⁷ At the same time, these are the only two offences which refer to the substance of the Law and the rights protected by it.⁸ In addition, it should be noted that the fines for the two offences concerning

⁵ In line with Article 16, special measures may be positive measures which, under equal conditions, give advantage to persons of underrepresented sex, or to those persons in distinctly unequal position based on sex, until equal representation, or defined goals for introduction of such measures are achieved, encouraging measures that provide special benefits or introduce special incentives in order to eliminate unequal representation of women and men, or unequal treatment based on sex; programmatic measures that include activities related to education, or to promotion and establishment of gender equality.

⁶ A fine of 1,000-10,000 € was envisaged for legal persons, 150-2,000 € for responsible persons within state or local authorities, and 150-3,000 € for entrepreneurs (Article 33 of the Law on Gender Equality).

⁷ A fine of 500-5,000 € was envisaged for legal persons, 150-1,000 € for responsible persons within state or local authorities, and 150-1,500 € for entrepreneurs (Article 33 of the Law on Gender Equality).

⁸ The rest of the offences focus on sanctioning legal persons who fail to complete certain technical tasks, which they are expected to carry out in line with the Law. These include the failure (of legal persons) to ensure trainings for employees on gender equality, failure to ensure gender segregated statistics and information in their possession, failure to submit reports to the Ministry on achieving gender equality from their area of

discrimination based on sex are lower than those set out in the anti-discrimination framework for other acts of discrimination, suggesting that except for harassment and sexual harassment⁹, this form of discrimination is considered less important or at least less serious than others.

The new **Labor Law**¹⁰, as the key law regulating employment rights, was adopted in 2019, and amended in 2021. Although it introduced some important novelties which improved legal protection of women's rights in the sphere of employment, further progress still needs to be made regarding alignment with the EU acquis, notably the 92/85/EEC directive¹¹.

The Law on Labour also prohibits discrimination towards persons seeking employment and employees, including discrimination based on sex (Articles 7-13). The Law entitles persons seeking employment and employees to initiate a lawsuit based on the anti-discrimination provisions in the law (Article 16).

The Law makes distinction between direct and indirect discrimination. The Law also sanctions and prohibits sexual harassment and mobbing in the workplace (Articles 10 and 14) and guarantees an equal salary for a man and a woman for the same work. In addition to this, the Labour law envisages special measures of protection for women during pregnancy and maternity/parental leave, as well as certain special measures for parents which are not to be considered discrimination (Articles 15 and 118).

In line with the law, both working parents are equally entitled to parental leave, which can either be shared between them, or transferred from one parent to the other (Article 127). Currently there are no publicly available data on the number of fathers using their right to paternity leave, in public administration or otherwise.

work, and failure to designate an employee to be in charge of coordination activities on issues concerning gender equality and participate in preparation and implementation of the gender equality Action Plan (Article 33a).

⁹ The Law on Gender Equality prohibits harassment and sexual harassment and recognizes them as types of discrimination based on sex. These are also prohibited by the Law on Labor. However, the protection from harassment and sexual harassment at work is exercised in line with the framework anti-discrimination law which considers them as 'special forms of discrimination' (see above) and provides for relevant fines.

¹⁰ Labor Law, Official Gazette of Montenegro, 19 and No. 8/21.

¹¹ See Page 38 of the Commission Staff Working Document on Montenegro 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Available online at: https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/montenegro_report_2020.pdf.

According to the new law, the employer cannot discontinue a fixed-term temporary contract with an employee if the contract expires during pregnancy or maternity/parental leave. Other important novelties include provisions which forbid employers to decline to sign a temporary contract with a woman due to pregnancy or change it in a way which would put them in a less favourable position due to pregnancy, maternity or nursing. The new law also introduced the right to one day of paid leave per month for prenatal checks.¹²

However, the new law failed to ensure a higher level of legal protection of pregnant employees and working mothers by failing to address one of the key shortcomings of the previous Labour Law, as the absence from work due to pregnancy, maternity or parental leave continues not to be counted towards the time required for transformation of a temporary employment contract to a permanent temporary contract.¹³ This provision is discriminatory against women who will have to wait longer for the transformation of their fixed-term contracts into permanent contracts and leaves room for further discrimination based on motherhood, as the decision on transformation of their fixed-term contracts into permanent temporary contracts upon their return to work depends on the employer's decision on whether or not to keep them.¹⁴

In addition to this the law also needs further alignment with the EU **Work Life Balance Directive** that aims to ensure a balance between work and private sphere, but also between the roles of women and men in family life.¹⁵ The key novelties of the Directive refer to 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, as well as the possibility of flexible working conditions for parents and guardians, teleworking.

¹² Labor Law, Official Gazette of Montenegro, 19 and No. 8/21.

¹³ A fixed-term employment contract may only last for a maximum of 36 months (3 years) after which they ought to either be transformed into a permanent contract, which guarantees a greater scope of rights, or terminated altogether (Article 37). The previous law set the maximum time of duration of a fixed term contract to 24 months, which means that in line with the new law employees on fixed term contracts will have to wait even longer for their transformation in permanent contracts.

¹⁴ Even though this provision was included in the early draft in 2017, by the time the law was adopted two years later in 2019, this provision was removed from the draft law under the influence of employers, notably Telekom, Bank Association, American Chamber of Commerce and Budva Utility Company, who pressured the government to resort to the previous legal solution. See also: "Gender Mainstreaming: Examples from Montenegro", NGO Institute Alternative, January 2021. Available online at: http://media.institut-alternativa.org/2021/03/Orodnjavanje-a-ne-prebrojavanje_eng-2.pdf

¹⁵ Directive 2019/1158 of the European Parliament and of the Council on the work-life balance of parents and guardians and repealing Council Directive 2010/18 / EU entered into force on 2 August 2019, recital 16

The need to adopt the Directive arose from the fact that the current legislation does not give enough incentives to men to use parental leave. Also, there is a likelihood that a woman will work fewer hours after paid maternity leave, and thus work more unpaid care. Severe illness of a family member also has a great impact on women's employment, and often leads to the complete exclusion of women from the labour market. Transposition of the Directive into Montenegrin legislation should provide for more flexible working hours and further improvement of paternity leave provisions, to allow for a more equal distribution of family responsibilities, enabling fathers to be more involved in the upbringing of children and allowing for more paid work opportunities for women. It is important to mention that this is a minimum harmonization Directive, and that the state can provide for greater rights for employees by national legislation than those established by the Directive.

The Law on Prohibition of Harassment at Work¹⁶ also applies to cases of harassment at work, or related to work (mobbing / Article 2) including sexual harassment, as well as other issues of importance to the prevention and protection against mobbing, in accordance with the provisions regulating the labour issues and provides for a fine.

Law on Civil Servants and State Employees¹⁷ *inter alia* also prohibits discrimination, favourable treatment or denial of rights, based on sex, change of sex, gender identity, sexual orientation and/or intersexual characteristics, marital or family status, and any other personal characteristics (Articles 7 and 13). The Law introduces and regulates Civil Servant (CS) Job Position Categorization. Accordingly, the Law makes distinction between four categories of CSs who are then divided in level on the basis of skills, qualifications and seniority (work experience) of the civil servant. The categories in the civil service of Montenegro are as follows: institution head, senior management staff, expert-management staff, expert staff, and operational staff (Articles 18-29). Accordingly, state employee performs administrative-technical and ancillary tasks that are necessary for timely and efficient performance of state authority activities. State employees' jobs are divided into three levels as follows: Level 1: Senior state employee, Level 2: State employee, and level

¹⁶ Law on prohibition of harassment at work (Official Gazette of Montenegro no. 30/2012 and 54/16.

¹⁷ Law on Civil Servants and State Employees (Official Gazette of Montenegro No. 2/18/34/19, 8/21.)

three Employee (Articles 30-31). The Law provides the job titles in masculine gender, although Article 16 stipulates that all expressions in masculine gender apply equally to both sexes. It also envisages usage of Gender-Sensitive Language in internal organization and systematization acts, and in individual acts on entering employment, appointment, nomination and reassignment of civil servants and state employees, although no sanctions for violation of these provisions were provided for by the law¹⁸

The Law does not envisage provisions which would address the need to ensure a balanced representation of women and men in the public service. In previous version, the Law on Civil servants and State Employees had the principle of gender equality enshrined in the provisions concerning the selection of candidates, stipulating that the head of state authority shall take into consideration the right to proportionate representation of members of minority nations or other minority ethnic communities, balanced representation, as well as employment of persons with disabilities.¹⁹ Current law does not address this issues.

Decree on organization and work of state administration²⁰ regulates the type and the scope of state administration institutions in Montenegro. The Decree elaborates establishment of Ministries and other bodies of state administration, and provides information about its internal organization as well as the scope of the work of each Ministry. No provision focuses on promotion of gender, gender equality and specific needs of women.

In the previous version of the **Law on pension and disability insurance** ²¹, the pension model of Montenegro applied a model of equalization of the retirement age. Pertinent to the provisions of the previous law, a person had a right to pension when they turned 67 old and accumulated 15 years of work experience (based on age criterion), or in case they have completed 40 years of service (age of service criterion)²². The Law was gender balanced, as

¹⁸ Article 16, Law on Civil Servants and State Employees.

¹⁹ See for example Article 45 of the Law on Civil Servants and State Employees, Official Gazette of Montenegro No. 39/2011, 50/2011 and 66/2012.

²⁰ Decree on organization and work of civil service (Official Gazette of Montenegro No. 118/2020 of 07.12.2020. Available online at: <http://www.sluzbenilist.me/pregled-dokumenta-2?id={923AE87C-4E02-4003-8E0E-3C068921BEC3}>).

²¹ Law on pension and disability insurance (Official Gazette of Montenegro no. 54/03, no.39/04, 61/04, 79/04, 81/04, 14/07, 47/07, 79/08, 14/10, 78/10, 34/11, 39/11, 40/11, 66/12, 36/13, 38/13, 61/13, 6/14, 60/14, 10/15, 44/15, 42/16, 55/16, 80/20).

²² Law on pension and disability insurance (Official Gazette of Montenegro no. 54/03, no.39/04, 61/04, 79/04, 81/04, 14/07, 47/07, 79/08, 14/10, 78/10, 34/11, 39/11, 40/11, 66/12, 36/13, 38/13, 61/13, 6/14, 60/14, 10/15, 44/15, 42/16, 55/16.)

it provided same opportunities for both genders in terms of pension scheme benefits. In line with the 2020 amendments to the Law which entered into force in August 2020, a difference in retirement age for men and woman was (re)introduced. Retirement age for men was set to 66 for men and 64 for women.²³ However, both men and women can decide to continue working until the legal retirement age of 67 years.²⁴

Family Law of Montenegro²⁵ regulates: marriage and relationships in marriage, relationships between parents and children, adoption, placement in family (fostering), custody, support, property relationships in the family and actions of authorized bodies with regard to marriage and family relationships. It stipulates that spouses shall be equal in marriage.²⁶ Although, same as Constitution, the Family Law define marriage as a matrimonial union between a man and a woman (Article 3), it is important to mention that in July 2020, Montenegro adopted the Law on life partnership of same sex partners (same-sex partnership law).²⁷ In line with the law, property relationships in the family are based on the principles of equality, reciprocity and solidarity, as well as on the protection of interests of children (Article 11). A community for living of a man and a woman lasting longer (common-law community), is equalled with marital community with regard to the right to mutual support and other property-legal relationships (Article 12).

The Law on Social and Child Protection²⁸ among others, covers protection of pregnant women and girls without family support and adequate living conditions; persons who are victims of neglect, abuse, exploitation and family violence or persons who are in danger thereof; victims of human trafficking; and single parents with a child without family support and adequate living conditions (Article 4). The Law stipulates that the principles of social

²³ Law Amending the Law on Pension and Disability Insurance (“Official Gazette of Montenegro”, no. 80/20);

²⁴ Please, see the Article 164, paragraph 1, of the Labour Law („Official Gazette of Montenegro “, no. 74/20 and 8/21);

²⁵ Family Law, Official Gazette of Montenegro no. 1/2007, 53/2016 and 76/2020.

²⁶ Article 39, The Law on Family (Official Gazette of Montenegro no.1/2007) <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B79054F65-3C37-4FC8-912B-49704386C652%7D> (accessed on May 28, 2017)

²⁷ After two unsuccessful votes in Parliament, the government revised its proposal for the same-sex partnership law in December 2019, after which the law was finally enacted in July 2020, which made Montenegro the first country in the region to regulate the status of same-sex couples.

²⁸ Law on Social and Child Protection (Official Gazette of Montenegro, no. 27/2013, 1/2015, 42/2015, 47/2015, 1/2017, 31/17, 42/17, 50/17).

and child protection including the prohibition of discrimination against beneficiaries of social and child protection based, *inter alia*, on their sex or sexual orientation (Article 7).

Controversial provisions of the Law on Social and Child Protection, i.e. the so called “Law on Mothers”, which envisaged financial subsidies for women with three or more children in case they were unemployed or decided to quit their jobs in exchange for the financial subsidies were abolished by the Constitutional Court (see also above). However, as a result of their short-lived implementation a great number of women have renounced their employment for the social payments, only to find themselves losing both their jobs and the right to financial subsidies following the decision of the Constitutional Court. Four years after the Constitutional court declared financial subsidies unconstitutional, the **Law on Compensation of Former Beneficiaries of Subsidies Based on the Birth of Three or More Children, was adopted by Montenegrin Parliament**²⁹.

To avoid adoption of legislative solutions which have adverse effects on the economic situations of women and their participation in the labour market, more attention needs to be paid to *ex ante* gender impact analysis and better quality gender mainstreaming in the process of drafting of legislation and policies, including proper consideration of the gender perspective during the Regulatory Impact Assessment procedures.

2. POLICY FRAMEWORK

The central strategic document for PAR is the **Public Administration Reform Strategy in Montenegro 2022-2026**, along with the with the Proposal of the Action Plan for the period 2022-2024³⁰ which contains all necessary elements for successful management of the reform process (objectives, activities, indicators, activity holders, deadlines, necessary funding). The Proposal of the PAR Strategy 2022-2026 was supported by the Public Administration Reform Council in December 2021. The Ministry of Public Administration, Digital Society and Media and in particular the Directorate for Strategic Planning,

²⁹ The Law on Compensation of Former Beneficiaries of Benefits Based on the Birth of Three or More Children was adopted on December 29th 2021. It is available here: <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/317/2676-15144-19-6-21-7.pdf>

³⁰ The Proposal of the Public Administration Reform Strategy 2022-2026 with the Action Plan for the period 2022-2024, available at: <https://wapi.gov.me/download/ab9503b0-5f2e-42ef-b124-b8df949acfaa?version=1.0>

International Cooperation and IPA Projects, coordinates the Strategy, monitor reform and provide administrative and technical support to the Council.

This document encompasses the entire public administration system which, in Montenegro, includes 540 institutions: at the central level: state bodies, state administration bodies, legal entities performing public authorizations (funds, agencies, etc.) and public institutions; at the local level: local self-government units, local government bodies and services, and institutions. Companies whose majority owner is the state, are not recognized through the scope of this strategic document, nor the companies established by the municipality.

As stated in the PAR Strategy 2022-2026³¹, for each strategic goal the analysis of the situation has been developed and challenges have been identified, operational goals and indicators have been defined, in accordance with the Methodology of Policy Development and Implementation of Strategic Documents³². In the new edition of the Methodology, special attention was paid to the principles of gender equality, as required by the above mentioned Article 3 of the Law on Gender Equality.

Hence, unlike in the previous Strategy 2016-2020, that was completely gender blind, the PAR Strategy Proposal 2022-2026 included gender equality, inclusion, anti-discrimination and equal opportunities for all, as horizontal issues that are essential for further modernization of public administration. Moreover, the activities that should contribute to the implementation and promotion of these standards in public administration, permeate through four out of five Strategic Goals (1,3,4 and 5), as well as through 5 out of 14 related Operational objectives, but only 8% of planned activities and result indicators of the accompanying Action Plan 2022-2024 are related to gender equality (15 out of 181).

The planned activities are supported by evident political will of the line minister, expressed through a strong message on importance of gender equality³³. However, there are still many

³¹ PAR Strategy Proposal 2022-2026, page 20 (accessed in January 2022)

³² Methodology of policy development, and monitoring of implementation of strategic documents, implemented by the General Secretariat of the Government of Montenegro - Sector for Coordination, Monitoring of Compliance and Monitoring of Implementation of Strategies Determining Public Policies, provides practical guidelines for developing, creating and monitoring the implementation of strategic documents that ensure their quality. The methodology is based on the Decree on the manner and procedure of drafting, harmonizing and monitoring the implementation of strategic documents ("Official Gazette of Montenegro", No. 54/2018), which introduces minimum quality criteria for each strategic document issued by the Government of Montenegro.

³³ The Minister Tamara Srzentić, in her video statement related to findings of the UNDP Research on Gender Equality and Perceptions of Public Administration Employees, from June 2021, stressed out that women make only a quarter of the total management in public administration and emphasized that gender equality, diversity, equity and inclusion are high on her ministry's list of priorities. The statement is available at: <https://www.youtube.com/watch?v=VFKlvHXxeQ>

challenges in gender mainstreaming the PAR Strategy 2022-2026. Namely, despite the new Methodology, there was no analysis of the social, economic, fiscal, environmental and gender impact of public policies and regulations. In the development of the Strategy 2022–2026, the findings and recommendations from many relevant documents - reports, analysis and research were used but only two of them were specifically related to gender equality (the UNDP research on *Gender Equality and Perceptions of Public Administration Employees* from June 2021 and *Gender Equality in Public Administration in countries of the Western Balkans - Report for Montenegro*, from 2017). The PAR Strategy missed to consult other available gender mainstreamed reports, analysis and sex-segregated data from relevant sectors, or the data on vulnerable and marginalized groups, even though it is focused on the needs of citizens and the economy. Without the use of such data, it is more difficult to predict the impact of the policy on women, men and marginalized groups (LGBTQ, Roma, persons with disabilities, persons at risk of poverty, children) which, in practice, significantly reduces the possibility of achieving desired effects on target groups, especially the proclaimed inclusiveness, diversity, equality, non-discrimination and equal opportunities i.e. the public administration tailored “with citizens and for citizens”. The available data on the civil service system in the *Staffing lists* (Annex 1 of the Strategy) do not include the structure in terms of gender, men and women by institution or type of institution. Such data are the prerequisite for identifying gender imbalances and gender bias in hiring, training and promotion practices. Available Staff Register does not generate certain data relevant for in depth analysis (previous positions, salary, automatic generation of data for certain category of civil servants etc.).

Furthermore, gender sensitive approach in terms of engendering indicators and target values could have been incorporated in majority of specific objectives and activities. Besides five that are partially engendered, objectives related to service delivery and human resource management, better institutional coordination for stronger effects of public policies, interoperability of information systems and increasing the number of sophisticated electronic services etc. are particularly important for achieving PAR that meets the needs of diverse citizens. For example, the planning of access to public information and services need to consider differences in computer and “smartphone” literacy, and access to the internet or mobile phone networks, especially among women and men in poor and rural communities.

Public accountability measures also hold promise to improve the quality of public services and the responsiveness of government officials but need to be designed and implemented with sensitivity to women's and men's different gender roles and attitudes, time, mobility, and other constraints. Furthermore, if public services were reduced or streamlined without adequate attention to the possible negative impact on women, it could exacerbate gender inequalities. Such was the case during the COVID-19 outbreak, when limited working time of public institutions, lack of public transport, childcare services and educational facilities, disproportionately affected women as primary caregivers in most households, limited their access to work and increased the risk of discrimination and family violence.

Lack of attention to gender in creating operational goals and result indicators, can reinforce existing gender imbalances in the public sector workforce, public decision making, and the provision of public services.

Hence, further engendering the PAR strategy should be prioritized and achieved through interventions based on gender analyses conducted as an integral part of annual PAR reporting. In this respect, the advisory and monitoring role of Department for Gender Equality, as a key gender equality mechanism should be further strengthened, through participation in the work of Public Administration Reform Council. This would ensure better coordination and coherence of PAR Strategy, Gender Equality Strategy 2021-2025, and current strategic documents³⁴. It would be of importance to ensure gender mainstreaming training for the representatives of PAR Council, in order to achieve complementarity with the relevant Gender Equality Strategy and other relevant policies that are related to gender equality or need to include gender equality as a horizontal issue.

The Strategic Framework for Public Administration Reform of Montenegro includes another umbrella strategy - the **Public Finance Management Reform Program for the period 2022-2026**³⁵. Complementarity of the PAR Strategy has been also achieved with the **Digital Transformation Strategy 2022-2026**³⁶, in separate areas of providing e-services and

³⁴ Sectoral division of strategic documents and the total number of strategies is available at: Sectoral division of strategic documents is available at: <https://javnepolitike.me>

³⁵ A Proposal of the Fiscal strategy of Montenegro 2021-2024, page 50, at: <predlog-fiskalne-strategije-crne-gore-za-period-2021-2024-godine.pdf>

³⁶ A Digital Transformation Strategy 2022-2026, with the action plan 2022 – 2023, available at: <https://www.gov.me/dokumenta/117a0bb6-7328-4f7c-8675-4df9e40369c3>

transparency of public administration i.e. data availability, as well as with the **Strategy of Cooperation between State and Non-Governmental Organizations**³⁷, as to improve joint involvement of relevant stakeholders in policy making. The Digital Transformation Strategy reads that in the process of digital transformation it is important to regulate the issue of gender equality, create preconditions for gender mainstreaming and enable everyone to use public services under equal conditions.³⁸ However, the Strategy remained rather gender blind, with only one engendered indicator (2.1.2. number of gender mainstreamed communication campaigns). The recently adopted Government's Program - **Europe Now!**³⁹ is also interrelated with PAR, as an economic reform program that brings a set of new tax policy measures. An analysis of this document showed that it is also *gender blind*, even though an increase of the minimum net salary and reducing of "grey economy", if properly implemented, might have positive impact on economic position and formal employment of women, who are more often than men in the category of low-wage employees or employees in the informal economy.

3. INSTITUTIONAL FRAMEWORK

After the reorganization of the Government of Montenegro in December 2020, the Ministry of Public Administration, Digital Society and Media (the Ministry) is still responsible for implementing the PAR Strategy. The Directorate for Strategic Planning in Public Administration, International Cooperation and IPA Projects with a special Directorate for Strategic Planning and Monitoring the implementation of Strategic Documents was established within the Ministry.

During the implementation of the PAR Strategy 2016-2020, political coordination was established by forming the **PAR Council** chaired by the Prime Minister of Montenegro. At the administrative level, special coordination teams will be formed within the Council, which will have a main contact person in charge of each of the strategic goals to make the data

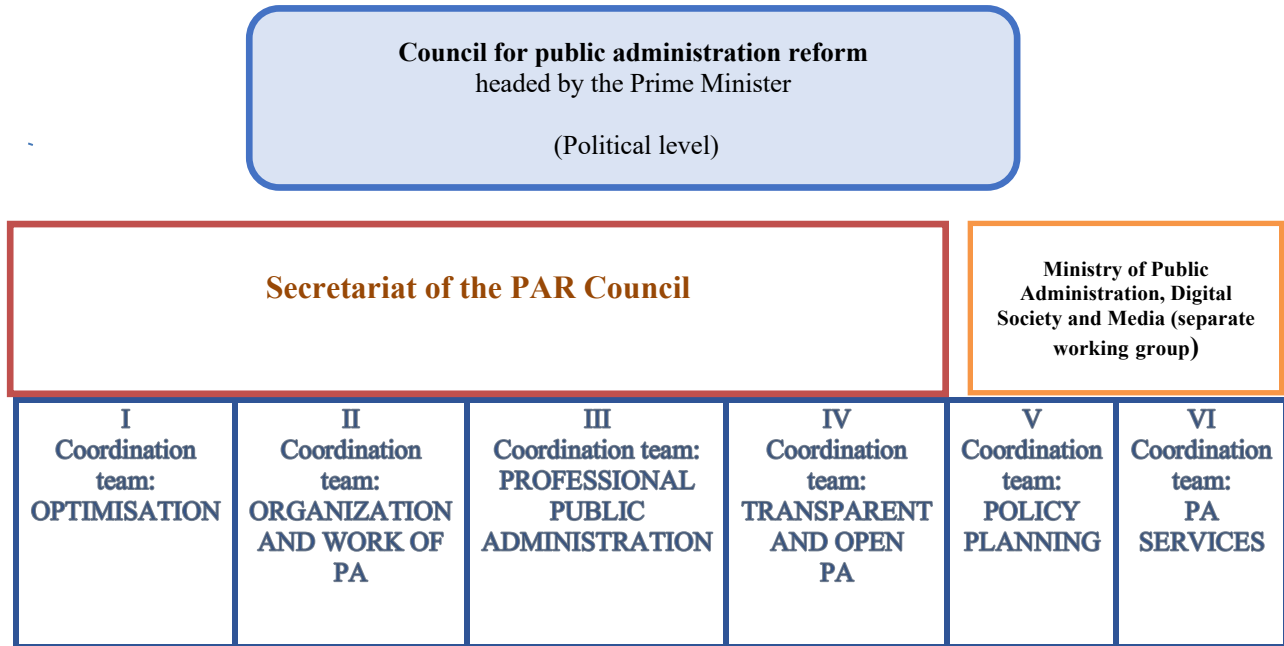
³⁷ The previous Strategy of Cooperation between State and Non-Governmental Organizations was valid till 2020, but the new document has not been drafted yet. The working group was established according to the information from the NGO representative from Center for NGO Development, acquired in January 2022.

³⁸ Digital Transformation Strategy, page 37

³⁹ Presentation of the Program „Europe Now!“ available at: <https://wapi.gov.me/download-preview/c1dc492d-9c20-4ed4-9d59-6cde376f6ff0?version=1.0>

collection and reporting implementation process more efficient. PAR Council is composed of representatives of key institutions for implementation of public administration reform⁴⁰. The Ministry of Justice and Human Rights that is in charge for gender equality does not have a seat in the Council. The Council consists of 12 members, 5 of which are women⁴¹.

PAR Coordination structure in Montenegro



4. STATUS OF WOMEN AND MEN IN THE CIVIL SERVICE OF MONTENEGRO⁴²

The Public Administration Reform Strategy 2016-2020 and the Public Administration Optimization Plan 2018-2020 envisaged a reduction in the number of employees at the central level by 5%, and at the local level by 10% by the end of 2020, compared to the initial value defined in December 2017. However, according to the Report from July 2021⁴³, in

⁴⁰ Minister of Public Administration, Digital Society and Media, Minister of Interior, Minister of Finance and Social Welfare, Minister of Economic Development, Chief Negotiator for Montenegro's Accession to the European Union, Director of Human Resources Authority, Director of the Agency for Free Access to Information and Personal Data Protection, representative of the Union of Municipalities of Montenegro, representative of the University of Montenegro and two NGO representatives

⁴¹ Decision on appointment of the Public Administration reform Council, No. 04-3183 / 2 of 1 July 2021.

⁴² Full table of gender structure of civil servants find in the original version of Gender Analysis of Public Administration.

⁴³ The Report on the implementation of the Public Administration Optimization Plan 2018-2020, for year 2020, Ministry of Public Administration, Digital Society and Media, July 2021, at: <https://wapi.gov.me/download-preview/ec2ba063-cbb9-4fd1-b08d>

December 2020, there was an increase in the number of employees by 8%, both at the central and local level. At the central level, during the implementation of the Optimization Plan, the number of employees increased by 3,134, and at the local level by 1,061, which is a total increase of 4,195 employees at the public administration level in the period from July 2018 to December 2020 (55 428 employees at the public administration level - 42 193 people were employed at the central level and 13 235 at the local level).

Neither the Public Administration Optimization Plan nor the report on its implementation for 2020, contain gender-disaggregated data or indicators. An additional problem is the inaccuracy of the Central Personnel Register (CKE) or the Personnel Information System (KIS), as the only digital tool in the field of human resources management, and the incoherence of KIS with other records of employees in state bodies. For this reason, the collection of data on the number of employees at the public sector level is slow and inefficient, it is not possible to determine the accuracy of data with certainty and other relevant data on employees are not available in one place⁴⁴.

In this report, we analysed gender representation in the Government and administrative bodies, according to the organizational structure available at the website of the Government of Montenegro⁴⁵. For the purpose of the analysis, two indicators were analysed: 1) the share of civil servants per title and 2) the share of civil servants per institution. Local government level was not covered by the scope of this analysis. The data for this analysis were collected from relevant institutions' web pages, and through the requests for free access to information, Women's Rights Centre sent to relevant institutions in the period from November 2021 to January 2022. The data from 19 out of 26 administrative bodies were analysed, while the data for the remaining 7 administrative bodies were missing.

Data showed that, in total, there are more women in Government than men (64 %). However, out of a total of 12 ministries, 67 % of men hold ministerial positions, while 4 ministries are headed by women. Men dominate among the counsellors to the the Prime Minister ⁴⁶(5 men and 3 women) and to the Deputy Prime Minister (4 men and 1 woman), while women have

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⁴⁴ This challenge is identified in the PAR Strategy Proposal 2022-2026, page 62

⁴⁵ <https://www.gov.me/organizaciona-struktura> (accessed in January 2022)

⁴⁶ Advisors to the Prime Minister are politically appointed, while the counsellors are public servants

high share among councillors at the PM Office (10 women and 1 men)⁴⁷. Chief Negotiator with the EU is a woman, as are most of her councillors (67%) and her councillor's adviser. Men dominate among the secretaries of state (68%), as well as among directors general (53%), ambassadors in the ministries (70%), Ambassadors (57%) and Charge d'Affairs (100%). Police Chief, police sergeant and all chief police counsellors and inspectors are men, as well as port captains. Men dominate among police inspectors and prison management. The share of men among directors of administrative bodies is 71 %. Apart from the fact that it is a rare case for a woman to occupy senior decision-making positions, only 32% of the positions of state secretaries are held by women, and they are less represented in the senior management. On the other hand, a significantly higher number of women than men in the ministries cover the position of secretaries, councillors and employees, with the high share among unallocated staff or the staff on temporary contract in the Government (70%). It is interesting that women dominate among urban and construction inspectors, judicial inspector, chief inspectors for housing, water, ecology, tourism and market are women. Women also make a majority of internal auditors and presidents of the Appeal and disciplinary Commissions.

Women dominate in all the ministries, while the share of women and men in administrative bodies is almost equal - 51% of women and 49% of men. The lowest percentage of women works in the Montenegro Hydrocarbon Administration (14%), Directorate for the execution of criminal sanctions (21%) and Railway Directorate (27%). The lowest percentage of male employees works at the Human Recourses Management Authority (15 %), as well as in the Ministry of Finance and Social Welfare (former Ministry of Labor and Social Welfare) -24%, and in the Ministry of Ecology, Spatial Planning and Urbanism (24 %).

5. CONCLUSIONS AND RECOMMENDATIONS

a. CONCLUSIONS:

1. Women make only a quarter of the total management in public administration i.e. they are still underrepresented in decision making and senior staff positions in public

⁴⁷Public servants

administration, often due to explicit or implicit bias in hiring, training, and promotion practices. New PAR measures need to include affirmative measures to preserve recent gains and to further improve the gender balance in the managerial positions in public sector.

2. Unlike in the previous Strategy 2016-2020, that was completely gender blind, the new PAR Strategy 2022-2026 included gender equality, inclusion, anti-discrimination and equal opportunities for all, as horizontal issues that are essential for further modernization of public administration. However, in developing the new PAR Strategy 2022-2026, the *ex ante* analysis of its social, economic, fiscal, environmental and gender impact was not conducted, as Regulatory Impact Assessment Analysis (RIA) is focused only on the assessment of fiscal and economic impact.
3. Gender machinery nor the gender focal point of the Ministry of Public Administration don't have a seat on the Council for Reform of Public Administration and as a consequence this body lacks the institutional capacity to anchor gender expertise in governance, planning, and policy dialogue, in line with the EU Gender Equality *Acquis*.
4. The Law on Civil Servants and Employees and sectorial Laws, in their provisions related to the appointment of individuals, bodies (Managing Boards and Supervisory Boards, Committees etc.) are not envisioning and applying principle of gender balance. There is no temporary measure to improve the gender balance at managing and advisory boards, working groups, committees established by the Government.
5. The Law on Gender Equality does not provide provisions on mechanisms for control and sanctions for violating Articles 10, 11, 12 of the Law on Gender Equality concerning gender balanced representation in public life.
6. The general provisions regarding the adherence to the principle of gender equality are not reflected in all relevant indicators of the Strategy of Public Administration Reform in Montenegro 2022-2026.
7. Even though Gender Responsive Budgeting is stipulated in the legislation, line ministries and municipalities are not employing this mechanism.

8. In terms of Boards for Appeals⁴⁸ in the Civil Service who are highly relevant in protection of civil servant rights and responsibilities, the legislator stipulates that the President and members of the Board for Appeals are appointed and dismissed by the Government, at the proposal of the Ministry, after a public competition. It ought to be noted that there is no stipulation in the Law that gender balance and gender diversity ought to be taken into consideration when deciding the composition of the disciplinary committees.
9. HRMA annual report does not provide gender disaggregated data of the actual number and percentage of civil servants in total and by categories. This data is a prerequisite for gender analysis and continuous assessment in line with gender equality provisions of the Law on Gender Equality. HRMA Register does not generate certain data relevant for in depth analysis (previous positions, salary, automatic generation of data for certain category of CS).
10. Gender is not sufficiently mainstreamed in the existing Civil servant training curricula and over 75% of employees in public institutions have not attended any trainings in the field of gender equality in the last five years.

b. RECOMMENDATIONS:

- Further engendering the PAR strategy should be prioritized and achieved through interventions based on gender impact analyses, conducted as an integral part of annual PAR reporting.
- Adopt a Decision on quotas imposing a balanced composition in statutory consultative organs established by the Government to ensure equal access of both gender in power structures and the decision-making process.
- Introduce monitoring and enforcement mechanism and sanctions that would encompass, among other things, an annulment of the procedure if the principle of gender balanced representation is violated.

⁴⁸ The Article 141 of the Law on on Civil Servants and Employees ("Official Gazette of the Republic of Montenegro", No. 2/2018, 34/2019 and 8/2021)

- The Law on Gender Equality should be amended so that it includes references to relevant liability procedures and sanctions on violation of gender balanced representation that beside a sanction for the state authority would imply annulment of the appointment procedure.
- Introduce gender analysis as a requirement prior to the adoption of the policies.
- Strengthen significantly institutional and administrative capacity and competencies of the national gender equality mechanism by replacing the currently existing Gender Equality Department within the Ministry,]with a competent authority which would be adequately equipped to ensure effective horizontal coordination of gender equality activities across public administration, coordinated by a top-level government official.
- Amend the Decision on PAR Council to ensure seats for the existing Department for Gender Equality of the Ministry of Justice, Human and Minority Rights to ensure the needed expertise for engendering PAR.
- Change the Law on Gender Equality with provision that would introduce fines for institutions that failed to gender mainstream policies, documents and legislation.
- Introduce administrative instruction with clear guidance for central and local level institutions for procedures for application Gender budgeting by line ministries and municipalities.
- Amend Article 141 of the Law on Civil Service to read that when deciding on composition of the Appeal Boards gender balance and gender diversity ought to be taken into consideration.
- Conduct gender analysis of the needs for e-services and ensure better access to public services for women and marginalized groups
- In the annual reporting, provide gender disaggregated data by categories of civil servants to enable monitoring and track changes in gender parity of civil servants.
- Regularly update the Register of civil servants for previous position and salaries
- Upgrade the system to automatically generate data for specific category of civil services.
- Carry out gender assessment and review of the current training curricula from the gender perspective; Make gender equality and antidiscrimination trainings an

integral part of training exercises for civil servants and consider making them obligatory.