

UNIJA POSLODAVACA
CRNE GORE
MONTENEGRIN EMPLOYERS FEDERATION

PROMOTION OF EQUALITY AND PREVENTION OF DISCRIMINATION AT WORK IN MONTENEGRO

LEGAL FRAMEWORK

PROMOTION OF EQUALITY AND PREVENTION OF DISCRIMINATION AT WORK IN MONTENEGRO

- Legal framework -

Podgorica, December 2014

Title:
Promotion of equality and prevention of discrimination at work in Montenegro: Legal framework

Authors:
Branislav Begović, BA in Law
Vesna Čalović, BA in Law
Krsto Pejović, BA in Law
Rumica Kostić, BA in Law

Publisher:
Montenegrin Employers Federation (MEF)
IX crnogorske brigade 11
81 000 Podgorica, Montenegro
T: +382 20 209 250
F: +382 20 209 251
E: office@poslodavci.org
www.poslodavci.org

for publisher:
Suzana Radulovic

Print:
M.A.S. Code, Podgorica

Circulation:
1.000 copies

Date and place of publishing:
Podgorica, December 2015

International Labour Organization

Expressions used in this publication make no distinction between female and male gender but imply both genders.

This publication has been published with the support of the (Bureau for Employers` Activities of the) International Labour Organization.

The responsibility for the opinions expressed in this report rests solely with the author/co-author. The International Labour Organisation (ILO) takes no responsibility for the correctness, accuracy or reliability of any of the materials, information or opinions expressed in this report.

„Perhaps the greatest accomplishment of a man is to limit himslef in life to the role of another person.“

(Dostoevsky)

CONTENTS

I **INSTITUTIONALISATION**

1. The Constitution of Montenegro	11
2. International legal documents	13
a) Universal Declaration of Human Rights	13
b) International Covenant on Economic, Social and Cultural Rights	14
c) International Covenant on Civil and Political Rights	15
d) International Convention on the Elimination of All Forms of Racial Discrimination	15
e) UN Convention on the Elimination of All Forms of Discrimination against Women	16
f) UN Convention on the Rights of Persons with Disabilities	17
g) International Convention for the Protection of Human Rights and Fundamental Freedoms	18
h) ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation	18
i) ILO Convention 100 on Equal Remuneration	19
j) UN Global Compact	20
3. European international legal documents	21
a) An Act Ratifying the Stabilisation and Association Agreement	21
b) European Convention on Human Rights and Fundamental Freedoms	22
c) European Social Charter	23
4. EU Directives	26
a) Directive 76/207/EEC	26
b) Directive 2000/43/EEC	27
c) Directive 2000/78/EU	28
II NATIONAL LEGISLATION	30
A) Laws	30
1. The Law on Prohbition of Discrimination	30
2. Labour Law	32
3. The Law on Health and Safety	37
4. The Law on Prohibition of Discrimination against Persons with Disabilities	38
5. Law on Prohibition of Harassment at Work	40
6. The Law on Gender Equality	40
7. The Law on Employment and Exercising Rights with Respect to Unemployment Insurance	41
8. The Law on Health Protection	41
9. The Law on Health Insurance	41
10. The Law on Patients' Rights	41
11. The Law on Defence	42
12. The Law on Armed Forces	42
13.The Law on Civil Servants and State Employees	42
14. General Law on Education	43
15. The Law on Primary Education	44
16. The Law on Vocational Education	44
17.The Law on Higher Education	45
18. The Law on the Protector of Human Rights and Freedoms	45
19. The Law on Internal Affairs	45
20. The Law on Personal Data Protection	46
21. The Law on Sports	46
22. The Law on Media	46
23. The Law on Public Broadcasting Services	47
24. The Law on Electronic Media	47
25. The Law on General Administrative Procedure	47
26. Criminal Code	48
27. The Law on Movement of Persons with Disabilities with Dog-helper	49
28. The Law on Election of Councillors and Representatives	49
29. The Law on Professional Rehabilitation and Employment of Persons with Disabilities	49

30. The Law on Rights and Freedoms of Minorities 50

B) Bylaws 50
1. Decision on Establishing the Council for Protection against Discrimination 50
2. Rules of Conduct of Employers and Employees in terms of Prevention and Protection against Harassment at Work 51
3. Rulebook on the Content and Manner of Keeping Records of Cases of Reported Discrimination ... 52

C) Codes of Ethic 52
1. Code of Ethics of Judges 52
2. Code of Ethics of Civil Servants and State Employees 53
3. Code of Ethics of Employers (Montenegrin Employers Federation), from December 16 2005 .. 53
4. Code of Ethics of Journalists (from 2003) 53
5. Codes of Business Ethics of Chamber of Commerce of Montenegro 53

III CONCEPTUAL AND OTHER CLARIFICATIONS 54

IV LEGAL RESPONSIBILITY FOR DISCRIMINATION 58
1. Criminal liability 58
2. Infringement liability 59

V INSTITUTIONAL PRACTICE 61
a) The Practice of Constitutional Court of Montenegro 61
b) The Practice of Supreme Court of Montenegro 63
c) Courts Practices from the neighbouring countries 66
d) The Practice of European Court for Human Rights 67
e) The Practice of Labour Inspection of Montenegro 72
f) The Practice of the Protector of Human Rights and Freedoms 72
g) The Practice of the Agency for Personal Data Protection and Free Access to Information 73

VI POTENTIAL ADVICES FOR PROMOTION AND PREVENTION OF DISCRIMINATION 75

VII CONCLUSION 82

Dear members of MEF,

This publication is a contribution to better understanding of problems arising from discrimination at work in Montenegro – unequal application of human and other rights that lead to legal inequality and uncertainty of people as a very important quality of their innate human dignity.

When we say „human rights“, we mean the rights of every human being acquried with birth, guranteed and inaleanable.

Ideas about human rights have been gradually transferred to politics and law from Antic Grece to nowadays and since the end of XIX century human rights have been „institutionalised“ by adoption of numerous documents establishing them at international level.

Human rights include rights from different areas of human life and they may be classified according to different criteria. They are mostly grouped as:

- Personal rights and freedoms
- Political rights and freedoms
- Social, economic and cultural rights
- Citizenship rights and responsibilities
- Special rights of minority groups
- Special rights of foreigners

Human rights are listed in detail in national constitutions as well as in numerous international documents – declarations etc. That is only a first step though. Those rights should be protected, which means that mechanisms for their effective protection are to be ensured, not only within national legal system but also within an international human rights protection system.

Each legal system, starting from generelly accepted international documents, builds its own human rights system. Non-discriminatory application of the law is an elementary prerequisite, not only of normal functioning of legal system but its very existence.

Unequal application of human and other rights results in legal inequality and uncertainty having as an effect a denial of natural equality of people. The very equal protection of human rights is one of the basic reasons of establishment and functioning of a state.

Violation, i.e. discrimination in terms of fundamental rights and freedoms is not „an ordinary violation“ of legal system but an essential denial of the very foundation of state-legal systems as such.

Prohibition of discrimination is a stsrting and fundamental principle both in international and national law.

Equality of people provides numerous small pleasures to every individual on a daily basis. Equality precedes freedom.

In this brochure we provided:

- initial definitions and basic concepts
- the list of national and international documents regulating human rights, the violation of which leads to discrimination
- the focus on problems of human rights at work, i.e. their violation in different forms of discrimination at work

- the linkage between discrimination cases and the legal mechanisms context (firstly preventive but also repressive) for the purpose of effective protection
- forms of judical and extrajudical protection from discrimination
- a brief review of courts practice in this regard.

The authors of the brochure expect it will be useful especially in terms of widening the scope of interest for the area of human rights as a key milestone of every legal system. Non-discriminatory procedures at work and related to work certainly widen the concept of work, i.e. production of goods and service offer, in the interest of both employers and employees.

In this regard, the brochure can be considered a guide for employers to help them avoid rocks in a stormy sea of human rights.

In the areas of human rights there is always a place for those respecting them.

Authors:
Branislav Begović, BA in Law
Vesna Ćalović, BA in Law
Krsto Pejović, BA in Law
Rumica Kostić, BA in Law

I INSTITUTIONALISATION

1.The Constitution of Montenegro („Official Gazette of Montenegro“, no. 1/07)

The Constitution of Montenegro stipulates the protection against different manifestations of discrimination such as:

Prohibition of infliction of hatred

- Infliction or encouragement of hatred or intolerance on any grounds shall be prohibited.

Prohibition of discrimination

- Direct or indirect discrimination on any grounds shall be prohibited.

Regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination.
Special measures may only be applied until the achievement of the aims for which they were undertaken.

Grounds and equality

- Rights and liberties shall be exercised on the basis of the Constitution and confirmed international agreements.
- All persons shall be deemed equal before the law, regardless of any particularity or personal feature.

Gender equality

- The state shall guarantee the equality of women and men and shall develop the policy of equal opportunities.

Limitation of human rights and liberties

- Guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution, to the extent necessary in an open and democratic society in order to satisfy the purpose for which the limitation has been permitted.
- Limitations shall not be introduced for purposes other than the ones for which they were prescribed.

Temporary limitation of rights and liberties

- During the proclaimed state of war or emergency, the exercise of certain human rights and liberties may be limited, to the necessary extent.
- The limitations shall not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature.
- There shall be no limitations imposed on the rights to: life, legal remedy and legal aid; dignity of and respect for a person; fair and public trail and the principle of legality; presumption of innocence; defense; compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; freedom of thought, conscience and religion; entry into marriage.

- There shall be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction twice for one and the same criminal offence (ne bis in idem); forced assimilation.

- Measures of limitation may be in effect at the most for the period of duration of the state of war or emergency.

Respect for person

- The respect of human personality and dignity in the criminal or other procedure, in case of deprivation or limitation of liberty and during the execution of imprisonment sentence shall be guaranteed.
- Any form of violence, inhuman or degrading behavior against a person deprived of liberty or whose liberty has been limited, and any extortion of confession and statement shall be prohibited and punishable.

Fair and public trial

- Everyone shall have the right to fair and public trial within reasonable time before an independent, impartial court established by the law.

Personal data

- The protection of personal data shall be guaranteed.
- It is prohibited to use personal data for purposes other than those for which they were collected.
- Everyone shall have the right to be informed about the personal data collected about him or her and the right to court protection in case of abuse.

Freedom of thought, conscience and religion

- Everyone shall be guaranteed the right to freedom of thought, conscience and religion, as well as the right to change the religion or belief and the freedom to, individually or collectively with others, publicly or privately, express the religion orbelief by prayer, preaches, customs or rites.
- No one shall be obliged to declare own religious and other beliefs.
- Freedom to express religious beliefs may be restricted only if so required in orderto protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution.

Protection of the persons with disability

- Special protection of the persons with disability shall be guaranteed.

Protection of identity

Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows:

1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities;
2) the right to choose, use and publicly post national symbols and to celebrate national holidays;
3) the right to use their own language and alphabet in private, public and official use;
4) the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities;

5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings also in the language of minority nations and other minority national communities;
6) the right to establish educational, cultural and religious associations, with the material support of the state;
7) the right to write and use their own name and surname in their own language and alphabet in the official documents;
8) the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written also in the language of minority nations and other minority national communities;
9) the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action;
10) the right to proportionate representation in public services, state authorities and local self-government bodies;
11) he right to information in their own language;
12) the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs;
13) the right to establish councils for the protection and improvement of special rights.

Prohibition of assimilation

- Forceful assimilation of the persons belonging to minority nations and other minority national communities shall be prohibited.
- The state shall protect the persons belonging to minority nations and other minority national communities from all forms of forceful assimilation.

Responsibility of the Constitutional Court

- The Constitutional Court shall decide on the following:
  a) Constitutional appeal due to the violation of human rights and liberties grantedby the Constitution, after all the effective legal remedies have been exhausted

2. International legal documents

Knowing the scope of international legal instruments is necessary from the point of accepting not only international legacy when it comes to human rights but to the same extent their incorporation into the national legislation.

Some international legal documents are partially marked off here, some of international outreach and the other stemming from European legal and cultural legacy.

Although Montenegro is not obliged to accept the secondary EU law, the process of systematical incorporation of EU law into domestic legislation started once Montenegro opted for EU membership.

Hereby, we would like to mark off the following international legal instruments:

a) Universal Declaration of Human Rights

Article 23 stipulates that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests...Article 24 stipulates that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

b) International Covenant on Economic, Social and Cultural Rights

As stipulated by Article 6 the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 stipulates that the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:
    1. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
    2. A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(a) Safe and healthy working conditions;

(b) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(c) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

According to the Article 9 the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10 stipulates that the States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

c) International Covenant on Civil and Political Rights

As stipulated by Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. No one shall be required to perform forced or compulsory labour, (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
    i. Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
    ii. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
    iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
    iv. Any work or service which forms part of normal civil obligations.

d) International Convention on the Elimination of All Forms of Racial Discrimination

Article 5 stipulates that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:

    i. The right to freedom of movement and residence within the border of the State
    ii. The right to leave any country, including one's own, and to return to one's country;
    iii. The right to nationality;
    iv. The right to marriage and choice of spouse;
    v. The right to own property alone as well as in association with others
    vi. The right to inherit;

vii. The right to freedom of thought, conscience and religion;
viii. The right to freedom of opinion and expression;
ix. The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

i. The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
ii. The right to form and join trade unions;
iii. The right to housing;
iv. The right to public health, medical care, social security and social services;
v. The right to education and training;
vi. The right to equal participation in cultural activities;
vii. The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

e) UN Convention on the Elimination of All Forms of Discrimination against Women

As stipulated by Article 11 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

f) UN Convention on the Rights of Persons with Disabilities (2006)

Article 5 stipulates equality and non-discrimination whereby States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

In Article 6, States Parties recognize that women and girls with disabilities are subject to multiple discriminations and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

In Article 27 States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

g) International Convention for the Protection of Human Rights and Fundamental Freedoms

Article 4 prohibits slavery and forced labour:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term „forced or compulsory labour“ shall not include:
   a) any work required to be done in the ordinary course of detention or during conditional release from such detention;
   b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service.

h) ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation

The term „discrimination“includes:
a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

For the purpose of this Convention the terms “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 3 stipulates that Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice —

14) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
15) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

16) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
17) to pursue the policy in respect of employment under the direct control of a national authority;
18) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4 stipulates that any measures affecting an individual who is justifiably suspected of, or engaged in, activitiesprejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Finally, as stipulated by Article 5 special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

i) ILO Convention 100 on Equal Remunaration

For the purpose of this Convention:
a) the term ***remuneration*** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
(b) the term ***equal remuneration for men and women workers for work of equal value*** refers to rates of remuneration established without discrimination based on sex.

Article 2 stipulates that each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

This principle may be applied by means of:
(a) national laws or regulations;
(b) legally established or recognised machinery for wage determination;
(c) collective agreements between employers and workers; or
(d) a combination of these various means.

As stipulated by Article 3, where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.
Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

j) UN Global Compact

This international document adopted in Montenegro in 2010 is an expression of voluntary corporate social responsibility worldwide. The initiative imposes corporate reposponsibilities, so the enrerprises are expcted to:

- integrate the principles of UN Global Compact into their own business strategies, daily operations or organisational structures
- incorporate the principles of UN Global Compact into decion making of governing bodies such as management boards, boards of directors etc.
- improve the procedures of responsible business practice.

Those companies that officially join UN Global Compact initiative are comitted to respecting 10 principles in all strategies and operations. Although there is no unique „correct“ method or model it is important that the application of 10 principles of UN Global Compact is understood as a longterm process of continuous improvement of business performance.

Companies are required to accept, support and implement 10 principles within their own „sphere“of influence.

In respect of the brochure topic, we will focus on the principle 6 of UN Global Compact related to support to elimination of discrimination reffering to employment and occupation.

UN Global Compact confirms that discrimination can have diffferent manifestations. It can be direct when for example laws and rules explicitly limit person's employment opportunities. Still, in most of the cases discrimination is indirect and occurs informally through attitutes and behaviour. Some forms of discrimination are rooted in the culture.

Non-discrimination simply means that employees are selected based on their suitability to perform the job without separation, exclusion or partiality on any other basis. Employees that face discrimination at work are deprived of opportunities thus having their fundamental human rights violated. This affects their personal concerns and has negative effect on their potential contribution in the society.

According to UN Global Compact, workplace is a stretegic point for elimination of discrimination in society. Fight against discrimination at work can help reduce shortages such as those arising from educational backgrounds as a result of inequalities faced in previos periods of life. If within one job people of different races, sexes and ages are gathered and treated equaly it helps building the mutual feeling of dedication to a common goal. In such way, stereotypes and prejudices which are the core of discrimination are reduced.

Once it appears discrimination is to be challenged efficiently and reasonably. ILO principles set the minimum treshold. National laws and practices can be broader in scope and include more detailed approaches to tackling discrimination at work.

In addition, Principle 6 of UN Global Compact stresses out:
Firstly, companies need to respect laws and decisions made by local administrations. Each company introducing equality promotion measures should be aware of lingual, cultural and family differences between its employees at a workplace. Managers and supervisory boards should particularly strive to understand different forms of discrimination and its effects at work.

3. European International Legal Documents

An entire civilisation heritage of Europe especially cultural and legal cannot be diregarded in the process of Montenegrin integration to European Union.

For the purpose of this Guide, we are marking off the following legal documents:

a) An Act Ratufying the Stabilisation and Association Agreement... („Official Gazette of Montenegro, no.7/2007) that came into force on May 1st 2010.

...establishing the following as general principles:
Respect of democratic principles and human rights set in Universal Declaration of Human Rights and defined by European Convention on Human Rights, Helsinki Final Act and the Charter of Paris for New Europe, respect of international law principles including full cooperation with International Criminal Court for ex Yugoslavia, respect of the rule of law and market economy principles, in line with the Document of the Bonn Conference on Economic Cooperation in Europe. In Title V – Movement of Workers, Establishment, Supply of Services, Capital – Chapter I (Movement of workers), Article 49 stipulates that subject to the conditions and modalities applicable in each Member State:
- treatment accorded to workers who are nationals of Montenegro and who are legally employed in the territory based on nationality, as regards working conditions, remuneration or dismissal, compared to nationals of that Member State;
- the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal wokers and of workers coming under bilateral Agreements within the meaning of Article 50, unless otherwise provided by such Agreements, shall have access to the labour market of that Member State, during the period of that worker's authorised stay of employment.

Also, Montenegro shall, subject to the conditions and modalities applicable in that Republic, accord the treatment referred to in paragraph 1 to workers who are nationals of a Member State and are legally employed in its territory as well as to their spouse and children who are legally resident in Montenegro.

In Title VI – Approximation of Laws, Law Enforcement and Competition Rules, Article 76 on Public Procurment stiplutes:

1. The Community and Montenegro consider the opening-up of the award of public contracts on the basis of non-discrimination and reciprocitym following in particular the WTO rules, to be a desirable objective.

2. Montenegrin companies, whether established or not in the Community, shall be granted access to contract award procedures in the Community pursuant to Community procurement rules under treatment no less favourable than that accorded to Community companies as from the entry into force of this Agreement. The above provisions shall also apply to contracts in the utilities sector once the Government of Montenegro has adopted the legislation introducing the Community rules in this area. The Community shall examine periodically whether Montenegro indeed introduced such legislation.
3. Community companies established in Montenegro under the provisions of Chapter II of the Title V shall, from the entry into force of this Agreement, be granted access to contract award procedures in Montenegro under treatment no less favourable than that accorded to Montenegrin companies.
4. Community companies not established in Montenegro shall be granted access to contract award procedures in Montenegro under treatment no less than accorded to Montenegrin companies as from the entry into force of this Agreement.
5. The Stabilisation and Association Council shall periodically examine the possibility for Montenegro to introduce access to contract award procedures in Montenegro for all Community companies. Montenegro shall report annually to the Stabilisation and Association Council on the measures they have taken to enhance transparency and to provide for effective judicial review of decisions taken in the area of public procurement.
6. As regards establishment, operations, supply of services between the Community and Montenegro, and also employment and movement of labour linked to the fulfillment of public contracts, the provisions of Articles 49 to 64 are applicable.

b) European Convention on Human Rights and Fundametal Freedoms (1950)

Article 4 stipulates:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

For the purpose of this Article the term „forced or compulsory labour“ shall not include:

a) Any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
b) Any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
c) Any service exacted in case of an emergency or calamity threatening the life or well-being the community;
d) Any work or service which forms part of normal civic obligations.

Article 14 prohibits discrimination stipulating that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, [property, birth or other status.

Article 17 stipulates that nothing in the Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or et their limitation to a greater extent than is provided for in the Convention.

Moreover, Article 18 stipulates the restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

c) European Social Charter (revised, 1965)

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, have the right to a special protection.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to independence, social integration and participation in the life of the community.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Children and young persons have the right to appropriate social, legal and economic protection.
18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
21. Workers have the right to be informed and to be consulted within the undertaking.
22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
23. Every elderly person has the right to social protection.
24. All workers have the right to protection in cases of termination of employment.
25. All workers have the right to protection of their claims in the event of the insolvency of their employer.

26. All workers have the right to dignity at work.
27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
29. All workers have the right to be informed and consulted in collective redundancy procedures.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

With a view to ensuring the effective exercise of the right to work, the Parties undertake:
1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation (Article 1 – The right to work).

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work (Article 2 – The right to just conditions of work).

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions (Article 3 – The right to safe and healthy working conditions).

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions (Article 4 – The right to a fair remuneration).

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women (Article 8 – The right of employed women to protection of maternity).

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a) access to employment, protection against dismissal and occupational reintegration;
b) vocational guidance, training, retraining and rehabilitation;
c) terms of employment and working conditions, including remuneration;
d) career development, including promotion (Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex).

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
a) to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
b) to take account of their needs in terms of conditions of employment and social security;
c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment (Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment).

4. EU Directives

In its legal nature directives are considered to be so-called sources secondary of EU law. As legal document, directive is a binding act, in terms of objectives and time limits as well as in terms of ways of achieving that objective. The latter means that it is up to Member States to implement the directive through their national legislation. If a Member State fails to do so or the result of implementation is different from the one provided by the directive, any person may invoke the direct effect against the Member State if the provisions of the directive are unconditional and precise enough.

a) Directive 76/207/EEC from February 9 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Article 1 stipulates the purpose of the Directive which is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security.

Article 2 stipulates:
„For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsover on grounds of sex either directly or indirectly by reference in particular to marital or family status.“

This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1).
Article 3 stipulates that Application of the principle of equal treatment means that there shall be no discrimination whatsover on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

b) Directive 2000/43/EEC from June 29 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Article 2 defines the principles of equality whereby there shall be no direct or indirect discrimination based on racial or ethnic origin.

For the purposes of the Directive:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;

Harassment shall be deemed to be discrimination when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination.

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin (so-called positive discrimination). (Article 5)

In line with Article 8 on „the burden of proof“, Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. This shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs. It shall also not apply to criminal procedures.

As stipulated by Article 9 Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

c) Directive 2000/78/EC from October 27 2000 establishing a general framework for equal treatment in employment and occupation

As stipulated in Article 2, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred in the Directive. For the purposes of the Directive:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
   (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
   (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

An instruction to discriminate against persons on any of the grounds referred to in the Directive shall be deemed to be discrimination.

This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Article 4 stipulates:
Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned. (Article 5)
Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:
(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

II NATIONAL LEGISLATION

National legal documents (laws ans bylaws) are indicators of not only the level of state arrangement based on the rule of law but also of cherishing traditional customs, deeply rooted in the mindsets of Montenegrins.

For the purpose of this publication, the list of laws and bylaws had to be reduced to fit the scope and purpose of the topic therein.

a) Laws

In regards to laws directly and/or indirectly referred to equality and prevention of discriminiation at work we will focus on the following:

1. The Law on Prohibition of Discrimination ("Off. Gazette of Montenegro", no. 46/10 from August 6 2010, 40/11 from August 8 2011, 18/14 from April 11 2014)

As stipulated in Article 2, any form of discrimination, on any ground, shall be prohibited.

Discrimination is any unjustified, legal or actual, direct or indirect distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender identity, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation as well as other personal characteristics.

Direct discrimination exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or were brought, or may be brought in an unequal position by an act, action or failure to act, on any ground referred to in paragraph 2 of this Article, unless the act, action or failure to act are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

Indirect discrimination exists if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into unequal position in respect to other person or group of persons, on any ground referred to in paragraph 2 of this Article, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

The incitement or giving instruction to discriminate against certain person or a group of persons on any ground referred to in paragraph 1 of this Article shall be deemed to be discrimination.

Article 3 stipulates that the right on protection from discrimination belongs to all natural and legal persons to which the Montenegrin legislation is applicable, if they are discriminated against on any ground referred to in Article 2, paragraph 2 of this Law.

Article 4 stipulates that no one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination.

Article 7 stipulates that harassment, on any ground referred to in Article 2, paragraph 2 of this Law, represents certain behaviour toward or treatment of a person who such behaviour or treatment does not want, and which has the purpose or represents violation of the personal dignity, and causes state of intimidation, inconvenience, hostility, humiliation or offensiveness.

Every unwanted verbal, non-verbal or physical treatment sexual in nature that violates the dignity of a person or group of persons, i.e. which consequences are such that cause fear, hostile or humiliating environement or produce the feelings of humiliation or offense shall be deemed to be discrimination.

Article 12 stipulates Disabling, restricting or making difficult for a person or a group of persons to get employment, to work, to get education or any other unjustified differentiation or unequal treatment based on health conditions, shall be deemed to be discrimination.

Moreover, as stipulated in Article 13 disabling or restricting the exercise of the rights or any other unjustified differentiation or unequal treatment of a person or a group of persons on the bases of age, shall be deemed to be discrimination.
According to Article 15 Discrimination in the field of education and vocational training is considered to be making difficult or denying the enrolment into educational institution and institution of high education and the choice of educational programme at all levels of education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other educational activities, classification of children, pupils, participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law.

In addition to the cases of discrimination prescribed by the law regulating the field of labour and employment, discrimination in work shall also refer to the payment of unequal salary or remuneration for work of equal value to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law. Persons performing temporary or seasonal work or working under special agreement, students and pupils on practice, as well as other persons participating on any ground in the work for an employer, shall also have the right on the protection from discrimination referred to in paragraph 1 of this Article. Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 2 of this Article.

As stipulated in Article 17, race discrimination shall be deemed to be any differentiation, unequal treatment or bringing in an unequal position of a person or a group of persons on the basis of religion, skin colour, language, nationality or national and ethnic affilation or any justi-

fication of underestimation of a person or a group of persons i.e. justification of the notion of superiority of a person or a group of persons to persons not being members of that group.

Article 18 stipulates that entrance in facilities/buildings and areas in public use which are inaccessible to the persons with reduced mobility and persons with disability, i.e. making impossible, restricting or making difficult the use of mentioned facilities, in a way which is not disproportionate burden for a legal or natural person who is obliged to provide for that, shall be deemed to be discrimination.

Discrimination against person with disability exists also in the case when special measures to remedy limitations or unequal position this person is facing are not taken.

As stipulated in Article 19 any differentiation, unequal treatment or bringing a person in an unequal position based on gender identity or sexual orientation, shall be deemed to be discrimination.

Everyone has the right to express their gender identity and sexual orientation.
Gender identity and sexual orientation are personal matters of every person and no one can be invited to publicly declare its gender identity and sexual orientation.

Gender identity is a personal feeling about gender regardless the gender determined and registered upon birth.

Gender identity is a personal matter and it does not follow the binary concept of “male” or “female”.

Sexual orientation is an emotional and/or physical attraction or affection towards persons of the same and/or different gender.

2. Labour Law ("Off. Gazette of Montenegro", no. 49/08 from August 15 2008, 26/09 from April 10 2009, 88/09 from December 31 2009, 26/10 from May 07 2010, 59/11 from December 14 2011, 66/12 from December 31 2012)

As stipulated in Article 5 direct and indirect discrimination of persons seeking employment, as well as the employed persons based on sex, birth, language, race, religion, skin color, age, pregnancy, health state, that is, disability, nationality, marital status, family duties, sexual orientation, political or other affiliation, social background, material status, membership in political and trade union organizations or some other personal characteristic shall be prohibited.

According to Article 6:

(1) Direct discrimination, in the sense of this law, shall represent any action caused by any of the grounds defined in Article 5 of this law by which the person seeking employment, as well as the employed person is put in a less favorable position as compared to other persons in the same or similar situation.

(2) Indirect discrimination, in the sense of this law, shall exist when a certain provision, criterion or practice puts or would put into a less favorable position the person seeking employment or an employed person, as compared to other persons, due to a specific characteristic, status, orientation or conviction.

Article 7 prohibits discrimination on several grounds:

1) Employment requirements and selection of candidates for the performance of a specific job;
2) Working conditions and all rights based on employment relationship;
3) Education, capacity building and training;
4) Promotion at work;
5) Cancellation of the labor contract.

Provisions of the labor contract defining discrimination on any of the grounds from Articles 5 and 6 of this law shall be null and void.

As stipulated in Article 8 harassment and sexual harassment at work and in relation to work shall be prohibited.

- Harassment, in the sense of this law, shall represent any unwanted behavior caused by one of the grounds from Articles 5 and 6 of this law, as well as harassment via audio and video surveillance, aimed at or constituting violation of dignity of the person seeking employment, as well as an employed person, and which causes fear or creates hostile, humiliating or insulting environment.
- Sexual harassment, in the sense of this law, shall represent any unwanted verbal, non-verbal or physical behavior aimed at or constituting violation of dignity of the person seeking employment, as well as the employed person in the sphere of sexual life, and which causes fear or creates hostile, humiliating aggressive or insulting environment.

Employee shall not suffer harmful consequences in case of reporting, that is, testifying because of harassment and sexual harassment at work and in relation to work in the sense of Paragraphs 2 and 3 of this Article.

Article 8a prohibits every form of harassment at work (mobbing). i.e. every bahaviour towards an employee or a group of employees that repeatedly violates the employee's dignity, honour, personal and professional integrityand position causing fear or creating hostile, humiliating or offensive environment, deteriorates working conditions that ends up with employee's isolation or leads the employee to terminate his/her labour contract himself/herself.
Prohibition of harassment at work (mobbing), i.e. harassment prohibition measures , harassment victims protection measures as well as other matters of interest for prevention and protection from harassment at work or related to work shall be regulated by special law.

Article 9 reffers to positive discrimination as follows:

- Making the difference, exclusion or giving priority with regard to a specific job shall not be considered discrimination if the nature of business is such or if the job is performed in such conditions that characteristics related to one of the grounds from Articles 5 and 6 of this law constitute a real and decisive factor for the performance of job and if the purpose that should be achieved in that manner is justified.
- Provisions of the law, collective agreement and labor contract regarding special protection and assistance to certain categories of the employed persons, and especially the ones regarding the protection of the disabled persons, women during pregnancy and maternity leave and leave from work in order to care for a child, that is, special care for a child, and the provisions regarding the special rights of parents, adoptive parents, guardians and foster parents shall not be considered discriminatory.

As stipulated in Article 10, protection before the responsible court shall be granted.

(1) Article 18 stipulates that a person who intends to sign a labor contract shall submit to the employer the evidence of fulfillment of the working requirements for the post for which he/she is hired, which are defined in the act on systematization.
(2) The employer shall not request the employee to submit data regarding family, i.e. marital status and family planning, or to submit instruments and other evidence that are not directly significant for the performance of tasks for which the person is hired, that is, for which the person is signing a labor contract, or to give a statement on the cancellation of labor contract by that person.
(3) The employer shall not condition the establishment of employment, that is, singing of the labor contract with the evidence of pregnancy, unless the tasks involved carry a significant risk for the health of the woman and child, determined by the responsible health authority.

Article 42 stipulates a special protection in case of assignment to another place of work outside the seat of employer, especially employed woman during pregnancy, employed woman with the child below five years of age and single parent with a child below seven years of age, employed parent with the child that has serious development difficulties, employed person below 18 years of age and employed person with disability shall not be assigned to work in another place outside the place of permanent or temporary residence.

Employed woman and employed person under 18 years of age shall not work at the place that requires hard physical labour, labour under ground or under water nor shall they do the jobs that could be harmful or highly risky for their health and life.

Article 105 stipulates that an employed woman working in the industry and civil works sectors shall not be assigned to a night shift. The prohibition referred to in paragraph 1 of this Article shall not apply to an employed woman engaged in a management position or performing activities regarding health, social and other protection.

Exceptionally from the provision of paragraph 1 of this Article, an employed woman may be assigned to a night shift, when it is necessary that the work interrupted by natural disasters is continued, i.e. to prevent damage to the raw materials or other material.

Furtermore, Article 106 stipulates that:

(1) An employee below 18 years of age shall not be assigned to work longer than full time hours or to night shift.
(2) Working hours shorter than full time hours may be determined for the employee referred to in paragraph 1 of this Article by the individual collective agreement (with the employer).
(3) Exceptionally from the provision of paragraph 1 of this Article, an employee under 18 years of age may be assigned to night shift, when it is necessary that the work interrupted by natural disasters is continued, i.e. to prevent damage to the raw materials or other material.

Article 107 stipulates the protection of persons with disabilities as follows:

- Employer shall be obliged to assign an employed disabled person to jobs that correspond to his residual work capacity and degree of his qualifications, in accordance with the systematization act.

- If an employed disabled person cannot be assigned under paragraph 1 of this Article, the employer shall provide him with other rights, in accordance with the law regulating professional training of disabled persons and the collective agreement.
- only if an employed disabled person cannot be assigned and provided with other rights in accordance with paragraphs 1 and 2 of this Article, the employer may declare him redundant.
- An employed disabled person who has become redundant shall be entitled to a severance pay (of at least 24 avarage month payments, if disability is caused by an injury outside of a workplace or desease, i.e. of at least 36 avarage month payments, if disability is caused by injury at the workplace or professional illness).

As stipulated in Article 108:

1) An employer shall not refuse to conclude a labor contract with a pregnant woman, or cancel the labor contract due to her pregnancy or if she uses the maternity leave.
2) An employer shall not cancel the labor contract with the parent who works half of the full time due to attending a child with severe development difficulties, a single parent of a child under seven years of age, or a child with severe disability, or with a person using one of the afore mentioned rights.
3) An employer shall not cancel the labour contract during the absence of an employee due to child care and while using parental leave.
4) A female employee whose labour contract concluded for a definite time runs out within the period of her maternity leave, the period for which the contract has been concluded shall be extended until the end of her maternity leave.
5) The parent who works half of the full time due to attending a child with severe development difficulties, a single parent of a child under seven years of age, or a child with severe disability, or a person using one of the afore mentioned rights shall not be declared redundant.

According to Article 109:

(1) Based on the findings and recommendations of the competent medical doctor, a pregnant and breastfeeding woman may temporarily be assigned to other jobs, if that is in the interest of protecting her health or the health of her child.
(2) If the employer is unable to provide the assignment of the employed woman, referred to in paragraph 1 of this Article, to another job, under paragraph 1 of this Article, the woman shall be entitled to absence from work, with wage compensation in accordance with the collective agreement, which cannot be lower than the compensation the employed woman would have received if she had been working at her post.
(3) During a temporary assignment to other jobs, the employed woman referred to in paragraph 1 of this Article shall be entitled to a wage paid for the job she performed prior to the re-assignment.

As stipulated in Article 110:

(1) An employed woman during her pregnancy and a woman having a child less than three years of age cannot work longer than full time hours or in night shift.
(2) Exceptionally from paragraph 1 of this Article, an employed woman who has a child older than two years of age can work in night shift, only if she gives her written consent to such a work.
(3) One of the parents of a child having severe development difficulties, as well as a single parent of a child under seven years of age may work longer than full time hours or in night shift only on the basis of a written consent.

Article 111 stipulates that:
(1) One of parents is entitled to paternal leave due to childcare.
(2) The duration of paternal leave is 365 days from the date of birth of the child.
(3) A parent may initiate the use of the paternal leave 45 days before the childbirth.
(4) If a parent starts working, he/she shall not be entitled to continue to use the paternal leave.
(5) If one of the parents starts working prior to the expiration of 45 days from the day of childbirth, the other parent may use the remaining period of paternal leave.
(6) The employed woman may start working prior to the expiration of the leave, but not prior to the expiration of 45 days from the day of childbirth.

Article 111a stipulates that an employed woman may initiate the use of the maternity leave 45 days before the childbirth, but no later than 28 days before the childbirth.

If an employed woman starts working prior than expiration of 365 days from the childbirth, in addition to the daily break, she shall be entitled to, in agreement with an employer, use additional 90-minute absence from work for baby breastfeeding.

As stipulated in Article 112, if an employed woman gives birth to a still-born or the infant passes away before the expiration of the maternity leave, she shall be entitled to extend her maternity leave for the period of time which is, by the findings of an authorized medical doctor, needed for her to recover from the childbirth and psychological condition caused by the loss of a child, but no less than 45 days during which time she shall be entitled to all rights based on the maternity leave.

Article 113 stipulates that upon expiration of the leave referred to in Article 111, one of the employed parents shall be entitled to work half of the full time hours until the child turns three years of age, if the child needs additional care.
The employee who adopted the child, or person who was given the child in custody and care, by a competent custodial body, shall be entitled to work half of the full-time hours, in the duration referred to in paragraph 1 of this Article

According to Article 114, a parent, adoptive parent or person entrusted with a child with development difficulties for custody and care by a competent custodial body, i.e. a person taking care of a person with severe disability shall be entitled to work half of the full working hours.
The working hours referred to in paragraph 1 of this Article shall be considered full working hours for the purpose of exercising rights from work and on the basis of work.

Article 143 refers to cancellation of labour contract by employer. Labour contract shall not be cancelled in the cases of:
- Temporary disability due to illness, workplace accident or professional desease;
- Use of maternity i.e. parental leave, leave due to child care and special child care;
- Political organization affiliation; trade union membership, personal defferences of an employee (sex, language, nationality, social background, religion, political and other beliefs or some other affinity of an employee);
- Acting as representative of employee in accordance with the Law;
- Employee’s addressing to trade unions or bodies competent for labour rights protection in accordance with the Law and labour contract;
- Employee’s addressing to competent state bodies when he/she has reasons to doubt the existence of corruption or good-willingly submits a complaint referring to it;

- Employee's addressing to employer or competent state bodies due to environmental damage caused by employer's business.

Article 159 refers to freedom to exercise trade union rights stipulating:

- The employer shall enable the employees to freely exercise the trade union rights.
- The employer shall provide a trade union organization with conditions for efficient performance of trade union activities that protect interests and rights of the employees, in accordance with the collective agreement.
- A representative of the trade union organization shall be entitled to be absent from work with wage compensation for the purpose of performing the activities organized by the trade union, in accordance with the collective agreement.
- The employer shall not be obliged to pay wage compensation to a trade union representative whose absence from work is not in accordance with the collective agreement referred to in paragraph 3 of this Article.
- The employer shall be informed in writing about the absence of a member of trade union organization in the cases referred to in paragraph 3 of this Article, minimum three days prior to the absence thereof.

According to Article 160, the representative of the trade union organization and representative of employees, during the performance of trade union activities and six months upon termination of trade union activities, shall not be held accountable with respect to performance of trade union activities, declared as redundant, assigned to another job position with the same or other employer with respect to performance of trade union activities, or placed, in another manner, in a less favorable position, if he acts in accordance with the law and the collective agreement.

The employer shall not place a representative of the trade union organization or representative of employees in a more or less favorable position due to his membership in a trade union or his trade union activities.

3. The Law on Health and Safety ("Off. Gazette of the Republic of Montenegro no. 79/04 from Decembar 23 2004 and "Official Gazette of Montenegro", no. 26/10 from May 7 2010, 40/11 from August 8 2011)

In the Article 4 referring to enforcement, it is stipulated that Provisions of the present Law shall apply to all employees who work in the territory of Montenegro with national and international legal and natural entities, Government authorities, local government units, the employees who are referred to work abroad respectively if the legislation of the receiving country envisages less favourable safety at work measures than the ones established by the present Law, and all other persons who participate in the process of work and work environment if not otherwise established by a separate Law.

Provisions of this Law also apply to:
- high school and university students at work as a compulsory part of their curricula;
- professional practice and pratical training (workshops, cabinets, laboratoties etc.);
- persons attending professional training, retraining or skills upgrading;
- persons at professional rehabilitation;
- imprisoned persons obliged to work;
- persons attending voluntary and public works of general interest, labour actions and contests;
- persons doing voluntary work.

Provisions of this Law shall not apply to persons who, in accordance with law, do their jobs from their home, i.e. are contracted by an employer for work in the household.

Health and safety at work measures shall not impose any costs on employees nor persons who have the same status as employees according to this Law.

Article 20 refers to jobs with special work conditions. The jobs with special work conditions shall be the jobs to which only employees, who in addition to meeting the requirements for establishing labour relations, also meet special requirements in terms of gender, age, education, skills, health conditions and psychological abilities may be deployed.

The employer must not deploy an employee to work in such workplaces with special work conditions unless it is previously established that the employee meets the prescribed requirements.

An employee who works on the workplace with special work conditions shall be obliged to inform immediately the employer if he/she establishes not to be able to perform such jobs, and to undergo medical examination which he/she was referred to by the employer.

4. The Law on Prohibition of Discrimination against Persons with Disabilities ("Off. Gazette of Montenegro", no. 39/11 from August 04 2011)

As stipulated in Article 2, every form of discrimination against persons with disabilities, on any ground, shall be prohibited.

The consent of persons with disabilities to discrimination shall not free from responsibility the person practising discrimination.

Article 5 stipulates the forms of discrimination being:

- Direct discrimination shall exist if a person or a group of persons, in the same or similar situation, by an act, action or failure to act is brought into or has been brought into, or may be brought into an unequal position, on the grounds of disability, except if such an act, action or failure to act are objectively and reasonably justified by means of a legal objective, with the use of means that are appropriate and unnecessary for the achievement of the objective, or in an acceptably proportionate relation with the objective which is to be achieved.
- Indirect discrimination shall exist if a person or a group of persons, on the grounds of disability, are brought into or have been brought into, or may be brought into an unequal position in relation to other persons or a group of persons, by passing a regulation or a general act, or by undertaking an action, which is apparently based on the principle of equality and non-discrimination, except if such an act or action is objectively and reasonably justified by a legal objective, with the use of means that are appropriate and necessary for the achievement of the objective, or in an acceptably proportionate relation with the objective which is to be achieved.

The following shall fall under the notion of discrimination against persons with disabilities:

1) if a persons or a group of persons, on the grounds of disability, is unjustifiably treated, compared to how other persons would be treated, because they requested, or intended to request legal protection from discrimination, and

2) encouraging or giving instructions for certain person or group or persons to be discriminated against on the basis of disability.

Article 6 refers to violation of equal rights and obligations, stipulating that the violation of equal rights and obligations shall exist:
1) if a person or a group of persons, on the grounds of disability, are deprived of rights and obligations, or are imposed obligations, which another person or a group of persons are not deprived of or imposed to in the same or similar situation, and
2) if the objective or the consequence of the measures being undertaken towards a person with disability are unjustified and if there is disproportion between the measures being undertaken and the objective which is to be achieved by means of these measures.

The regulations and the introduction of special measures, undertaken with the purpose of the protection of persons with disabilities, their family members and organisations involved in the protection of persons with disabilities, which are offered special support, necessary for exercising and use of rights under the same conditions other persons exercise and use the same, shall not be deemed discrimination or violation of equal rights and obligations.

As stipulated in Article 12, it shall be prohibited to discriminate against persons with disabilities on the grounds of disability in the area of employment:
1) towards a person with disability looking for employment, and
2) towards a guardian of a person with disability looking for employment.

Previous testing of psychophysical abilities for the position for which no testing is prescribed shall be also considered discrimination against persons with disability in the area of employment.

The following shall not be considered discrimination against persons with disabilities on the grounds of disability in the area of employment:
1) selection of the candidate, who achieved best result during the previous testing of psychophysical abilities, in relation to the conditions envisaged for the position, and
2) undertaking stimulating measures for the faster employment of persons with disabilities pursuant to the law.

Finally, Article 13 stipulates that it shall be prohibited to discriminate persons with disabilities on the grounds of disability in the area of labour:
1) towards an employed person with disability, and
2) towards a guardian of a person with disability.

The following shall be considered discrimination against persons with disabilities and of a guardian of a person with disability on the grounds of disability in exercising the rights resulting from employment:
1) setting lower wage, or compensations for the work of equal value;
2) prescribing special working conditions, if such conditions are not envisaged for that position, and
3) prescribing special conditions with the purpose of exercising other labour rights.

Harassment, insulting and disdain by the employees before the employer on the grounds of disability shall be also considered discrimination against person with disability and of the guardian of a person with disability.

5. The Law on Prohibition of Harrassment at Work ("Official Gazette of Montenegro", no. 30/12 from June 08 2012)

Article 2 gives the definition of mobbing. Mobbing, pursuant to this Law, shall include any active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates a intimidating, humiliating or offensive environment, aggravates working conditions or leads to the isolation of the employee or leads the employee to terminate contract of employment or another type of contract upon his own initiative.

Mobbing shall include incitement or leading others to behave in the manner referred to in Paragraph 1 of this Article.

Executor of mobbing shall be considered an employer in the capacity of natural person, responsible person engaged by the employer in the capacity of legal entity, an employee or group of employees engaged by the employer or a third person with whom the employee or the employer have contact during the performance of tasks at the workplace.

As stipulated by Article 4 all forms of mobbing shall be prohibited, as well as the abuse of the right to protection against mobbing.

6. The Law on Gender Equality ("Official Gazette of Montenegro no. 46/07 from July 31 2007 and “Official Gazette of Montenegro", no. 73/10 from December 10 2010, 40/11 from August 8 2011)

Article 2 provides definition of gender equality whereby it means that women and men equally participate in all spheres of public and private life, and that they have equal status, equal opportunities to enjoy and exercise all their rights and freedoms, make use of their individual skills and capability for the development of society and equally benefit from achieved results.

Article 4 provides definition of discrimination based on sex whereby it is stipulated that it is every legal and de facto, direct or indirect differentiation, privilege, exclusion or restriction based on sex which makes other person being difficult or negated acknowledgement, enjoyment or exercising of rights and freedoms in political, educational, economic, social, cultural, sports, civil and in other fields of public and private life.
Sexual harassment, incitement of other person to discrimination and usage of words in masculine gender as generic neutral form for masculine and feminine gender is considered to be discrimination.

The right of women on protection of maternity and prescribed special protection at the working place for biological characteristic is not considered to be discrimination.

Article 5 stipulates that general and special measures, adopted or undertaken for elimination or prevention of unequal treatment of women and men, for elimination of consequences of unequal treatment of women and men and promotion of gender equality shall not be considered as discrimination within the meaning of this law.

Finally, as stipulated in Article 6, no one shall suffer any harmful consequences due to giving a statement before the competent body in the capacity of witness or victim of discrimination based on sex or alerting the public about the case of discrimination based on sex.

7. The Law on Employment and Excercising Rights with Respect to Unemployment Insurance ("Official Gazette of Montenegro", no. 14/10 from March 17 2010, 39/11 from August 04 2011, 40/11 from August 8 2011, 45/12 from August 17 2012, 61/13 from December 30 2013)

The principles of the Law, as stipulated by Article 5, are:

- freedom of choice of occupation and job;
- prohibition of discrimination;
- gender equality;
- affirmative actions aimed at hard-to-employ persons;
- impartiality of those in charge of employment affairs;
- employment affairs are free of charge.

8. The Law on Health Protection ("Sl. list RCG", br. 39/04 od 09.04.2004 i "Sl. list Crne Gore", br. 14/10 od 17.03.2010, 40/11 od 08.08.2011)

Article 4 stpulates that all persons are equal in exercising their rights to health protection, regardless their nationality, race, sex, age, language, religion, education, social background, material ststus and other personal affinities.

9. The Law on Health Insurance ("Official Gazette of the Republic of Montenegro", no. 39/04 from April 09 2004, 23/05 from April 12 2005, 29/05 from May 09 2005 and "Official Gazette of Montenegro", no. 12/07 from December 14 2007, 13/07 from December 18 2007, 73/10 from December 10 2010, 39/11 from August 04 2011, 40/11 from August 8 2011, 14/12 from March 07 2012, 36/13 from July 26 2013)

As stipulated in Article 28, the wage compensation during temporary incapability for work shall be established at a minimum amount of 70% of the compensation basis.

The wage compensation during temporary incapability for work caused by an injury at work and occupational disease, isolation of germ-carriers, and donation of blood, tissue and body organs, during maintaining pregnancy, as well as for persons with malign diseases, disabled and mentally ill persons, shall be provided at 100% of the compensation basis.

The wage compensation based on temporary incapability for work while maintaining pregnancy shall be provided from the Fund's means for compulsory health insurance from the very first day of temporary incapability for work.

10. The Law on Patients' Rights ("Official Gazette of Montenegro no. 40/10 from July 22 2010, 40/11 from August 8 2011)

As stipulated in Article 1, every person, sick or healthy, that requires the service in the medical facility or he/she is provided with the service for the purpose of health care, improvement of health, desease prevention, treatment and rehabilitation, he/she (the patient) has rights established by Law.

In excercising those rights, it is ensured that the patient's human dignity, physical and psychic integrity rights are respected and protected.

Article 2 stipulates that every patient is granted equal rights on quality and continuous health care appropriate to their health condition, generally accepted professional standards and ethic principles, additionally having the right to easing the suffering and pain in every phase of the desease and condition, at all health care levels.

11.The Law on Defence ("Official Gazette of the Republic of Montenegro" no. 47/07 from August 07 2007, "Official Gazette of Montenegro", no. 86/09 from December 25 2009, 88/09 from December 31 2009, 25/10 from May 05 2010, 40/11 from August 08 2011, 14/12 from March 07 2012)

As stipulated in Article 8, labor duty is a right and duty of citizens to participate in performance of certain tasks and assignments of importance to national defense in a state of war or state of emergency.

No strikes may be organized during the performance of labor duty.

Labor duty shall be imposed on all citizens able to work, as follows: men aged 18 to 65, and women aged 18 to 60, who were not assigned to serve in the Armed Forces.

Article 9 stipulates that performance of labor duty may not be imposed on the following citizens without their consent:

1) A parent of a child under 15 years of age, whose spouse is under conscription;
2) A single parent who has a child under seven years of age, two or more children under 15 years of age, or a child with a disability, or a child with special needs and where the person's general health condition requires care and assistance by another person;
3) A woman during pregnancy or motherhood - if a child is under 15 years of age;
4) A person whose spouse is disabled or whose child has special needs and where the person's general health condition requires care and assistance by another person;
5) A person incapable of work.

12. The Law on Armed Forces ("Official Gazette of Montenegro",no. 88/09 fom December 31 2009, 75/10 from December 21 2010, 40/11 from August 8 2011)

Article 52 stipulates that All candidates applying for admission to service in the Armed Forces shall be guaranteed application of principles of transparency, justice and equal rights, without discrimination on any grounds (gender, race, language, religion, political or other belief, ethnic or social background, economic status or other status).

13. The Law on Civil Servants and State Employees ("Official Gazette of Montenegro", no. 39/11 from August 04 2011, 50/11 from October 21 2011, 66/12 from December 31 2012)

Article 7 stipulates that in performing tasks, civil servant and state employee must not discriminate citizens on the grounds of their race, skin colour, nationality, social or ethnic origin, links to a minority ethnic group or national minority, language, religion or convictions, political or other opinion, gender, gender identity, sexual orientation, health condition, disability, age, wealth status, marital or family status, group affiliation, or assumption about group affi-

liation, political party or other organization affiliation, as well as on the grounds of other personal features.

As stipulated in Article 10, civil servant and state employee shall enter employment on the basis of public announcement.

Job positions of civil servants and state employees shall be accessible to all candidates under equal terms.

Selection of candidates shall be based on their professional training, knowledge, skills, prior working experience, work performance and testing results.

Article 11 stipulates that civil servant and state employee shall be entitled to promotion and professional development.

Promotion shall depend on professional and working capacities, competencies, quality of work and work performance.

Article 13 stipulates that Aay positive or negative discrimination of a civil servant and/or state employee regarding his rights and obligations, or deprival or limitation of his rights, particularly on the grounds of political, ethnic, racial or religious affiliation, or on the grounds of another personal feature, contrary to the Constitution and law, shall be prohibited.

Finally, as stipulated in Article 16, all references in this Law to physical persons in the masculine gender shall be deemed to include the feminine gender.

The principle referred to in paragraph 1 of this Article shall mean that in internal organization and systematization act, and in individual acts on entering employment, appointment, nomination and reassignment of civil servants and state employees, as well as in other acts deciding on their rights and obligations, titles shall be in a gender of a person to whom such acts relate.

14. General Law on Education ("Official Gazette of the Republic of Montenegro",no. 64/02 from November 28 2002, 31/05 from May 18 2005, 49/07 from August 10 2007 and "Official Gazette of Montenegro",no. 04/08 from January 17 2008, 21/09 from March 20 2009, 45/10 from August 04 2010, 40/11 from August 8 2011, 45/11 from September 09 2011, 36/13 from July 26 2013, 39/13 from August 07 2013, 44/13 from September 20 2013)

As stipulated in Article 9, regardless of the national affiliation, race, gender, language, religion, and social background and of other personal characteristics, all citizens of Montenegro shall be equal in exercising theor rights to education.
Foreign citizens with temporary or permanent residence in Montenegro shall be equal in excercising their rights to education to Montenegrin citizens in line with a special law.

Article 9a stipulates that discrimination in educational institutions such as physical, psychic and social violence; harrassment and neglection of children and pupils; physical panshment and personal offenses i.e. sexual abuse of children and pupils or employees or every other form of discrimination shall be prohibited for the purpose of this Law.

15. The Law on Primary Education ("Official Gazette of the Republic of Montenegro", no. 64/02 from November 28 2002, 49/07 from August 10 2007 and "Official Gazette of Montenegro", no. 45/10 from August 04 2010, 40/11 from August 8 2011, 39/13 from August 07 2013)

As stipulated in Article 2, the aims of primary education are:
(4) to provide primary education for all citizens;
(5) to develop creative personalities;
(6) to reach internationally comparable standards of knowledge, and acquire knowledge required for continuation of education;
(7) to develop in pupils critical thinking, self-determination and the interest for new knowledge;
(8) to educate pupils for self reliable reasoning and the participation in social life;
(9) to acquire general knowledge that enables the independent, efficient and creative application in practice;
(10) to develop pupils" personalities in line with their capabilities and with the development dispositions;
(11) to educate for respect toward the national, historical and cultural values, as well as for recognizing the cultural and other characteristics of other nations;
(12) to educate for mutual tolerance, respect for differences, cooperation with others, respect for human rights and fundamental freedoms, and along with that to develop abilities for life within a democratic society;
(13) to adopt knowledge relating to the basic regularities of nature and of society, as well as the maintenance of human health;
(14) to develop democratic attitudes, tolerance and cooperation (in schools and out of them) and the respect for the rights of others;
(15) to create and encourage healthy life style and responsible relation toward the natural surrounding.
(16) to create abilities to work with pupils: diligence, patience, order, work and discipline;
(17) to create pupils' professional orientation skills

16. The Law on Vocational Education ("Official Gazette of the Republic of Montenegro", no. 64/02 from November 28 2002, 49/07 from August 10 2007 and "Official Gazette of Montenegro", no. 45/10 from August 04 2010, 39/13 from August 07 2013)

As stipulated in Article 2, the aims of vocational education are as follows:
(1) providing for acquiring the knowledge and developing the respective skills and competencies with the requirements of contemporary, democratic and industrially developed societies and with the market economy requirements;
(2) providing students and adults with the acquiring of qualifications, which enable them to participate in the labor market equally:
(3) providing of knowledge and abilities necessary for life and work, for personal interests,professional development of individualities and for the further schooling;
(4) providing career guidance
(5) providing of conditions for the enhancement of knowledge within the occupation;
(6) the compatibility of vocational education system in Montenegro with the education in developed democratic countries.
(7) development of students' awareness of the need for lifelong learning.

Furtermore, Article 16 stipulates that any foreign national with temporary or permanent residence in Montenegro may be enrolled into school under the same conditions as Montenegrin citizen. Every foreign national student or Montenegrin student who are not familiar or are not enough familiar with the language of instruction are entitled to schools support in acquiring that language.

17.The Law on Higher Education ("Official Gazette of the Republic of Montenegro", no. 60/03 from October 28 2003 and "Official Gazette of Montenegro",no. 04/08 from January 17 2008, 45/10 from August 04 2010, 73/10 from December 10 2010, 40/11 from August 08 2011, 47/11 from September 23 2011, 48/13 from Octobr 14 2013)

As stipulated in Article 7, in exercising the right to higher education no discrimination is allowed on any grounds such as sex, race, marital status, colour of skin, language, religion, political or other beliefs, national, ethnic or other origin, belonging to a national community, material status, disability, birth, or on
similar grounds, position or circumstances.

18. The Law on the Protector of Human Rights and Freedoms ("Official Gazette of Montenegro", no. 42/11 from August 15 2011)

As stipulated in Article 2, the Protector shall autonomously and independently, on the principles of fairness, take measures to protect human rights and freedoms, when they are violated by the act, action, or failure to act of state bodies, state admiinistration bodies, bodies of the local self-administration, local administration, public services and other holders of public powers as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination.

Furter on in Article 8, it is stipulated that For the Protector may be appointed a person who is citizen of Montenegro, possessing university degree and at least 15 years of working experience with high personal and professional authority.

The Protector, based on internal arrangement of tasks, provides specialization, above all, for the protection of persons deprived of their liberty in order to prevent torture and other forms of inhuman or degrading treatment or punishment, protection from discrimination, protection of minority rights, protection of the rights from the area of labour and employment, child protection, protection of persons with disability and gender equality.

For the Deputy may be appointed a person who is a citizen of Montenegro, possessing university degree and at least 10 years of working experience with high personal and professional authority.
Additionally, Article 9 stipulates that one of the Deputies shall also deal with the protection from discrimination.

19. The Law on Internal Affairs ("Official Gazette of Montenegro", no. 44/12 from August 09 2012, 36/13 from July 26 2013)

As stipulated in Article 14, Police officers shall act in compliance with the Constitution, ratified international treaties, law and other regulations.
Police officers shall comply with standards of police action, in particular those arising from the duties regulated by international regulations and relating to the duty of serving people, re-

specting legality and combating illegality, exercising human rights, non-discrimination while policing, limitation and restraint in the use of force, prohibition of torture and inhuman and degrading treatments, providing aid to injured persons, duty to protect classified and personal data, duty to reject unlawful orders and combat any form of corruption.

20. The Law on Personal Data Protection ("Official Gazette of Montenegro", no. 78/08,70/09.44/12)

Article 4 stipulates that protection of personal data shall be provided to every individual, regardless of nationality, domicile, race, skin colour, sex, language, religion, political or other belief, ethnicity, social origin, property, education, social position or other personal attributes.

21. The Law on Sports ("Official Gazette of Montenegro",no. 36/11 from July 27 2011, 36/13 from July 26 2013)

As stipulated in Article 4 sports shall be available to all regardless the age, physical capability, disability, sex, race, language, nationality, social background, political affiliation, material status and other personal affinities.

22.The Law on Media ("Official Gazette of the Republic of Montenegro", no. 51/02 from September 23 2002, 62/02 from November 15 2002, and "Official Gazette of Montenegro", no. 46/10 from August 06 2010, 73/10 from December 10 2010, 40/11 from August 08 2011)

As stipulated in Article 3, Montenegro shall provide a part of the funding for realisation of the citizens' right to be informed as granted by the Constitution and law, without any discrimination whatsoever and on the basis of programmes important for:
- science and education development;
- development of culture;
- informing people with hearing and sight impairments.

Montenegro shall provide a part of the funding for programming in Albanian and languages of other national and ethnic groups.

As stipulated in Article 23, it is forbidden to publicise information and opinions that instigate discrimination, hatred or violence against persons or group of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation.

The founder of the medium and the author shall not be held accountable if the information referred to in paragraph 1 of this Article is part of scientific or authorial work the subject of which is a public issue and is publicised:

- without intention to instigate discrimination, hatred or violence, especially if that information is a part of an objective news report;
- with intention to critically indicate the discrimination, hatred or violence or any phenomena which represent or might represent instigation to such behaviour.
-

23. The Law on Public Broadcasting Services ("Official Gazette of Montenegro", no. 79/08 from December 23 2008, 45/12 from August 17 2012)

As stipulated in Article 2, the activity of public broadcasting services shall be the production and broadcasting of radio and television programmes, which shall meet democratic, social, educational, cultural and other needs of public interest of all segments of Montenegrin society; ensure exercise of the rights and interests of citizens and other subjects in field of informing, regardless to their political, religious, cultural, race or sex affiliations, and to provide, in prompt and qualitative manner, various informative services.

24. The Law on Electronic Media ("Official Gazette of Montenegro", no. 46/10 from August 06 2010, 40/11 from August 08 2011, 53/11 from November 11 2011, 06/13 from January 31 2013)

As stipulated on Article 3, the relations in the field of AVM services shall be governed, among others, by the principle of objectivity, prohibition of discrimination, and transparency.

Article 136 stipulates that the funds shall be used to foster production of commercial broadcaster programmes of public interest, which are particularly significant for:

- members of minority nations and other minority communities in Montenegro;
- promotion, prevention and combating all forms of discrimination;
- fostering and promotion of social integration of persons with disabilities;
- foster AVM service providers to make their services gradually accessible to persons with a hearing or visual disability;
- fostering and promotion of human rights exercise and safeguarding;
- foster raising awareness of gender equality.

25. The Law on General Administrative Procedure ("Official Gazette of the Republic of Montenegro", no. 60/03 from October 28 2003, 73/10 from December 10 2010, 32/11 from July 01 2011)

AS stipulated in Article 15, the competent authority shall conduct the procedure using the language constitutionally determined as the official language in Montenegro, whereas both the Cyrillic and the Latin script shall be equal. In municipalities, where national and ethnic groups form the majority or an important part, their languages and scripts shall also be in official use, in accordance with the Constitution and special law.

If the procedure is not conducted in the language of the party or other participants in the procedure who are citizens of Montenegro, the authority shall provide translation of the procedure into their language by an interpreter, and the summons and other writings shall be delivered in their own language and script.

Parties and other participants in the procedure, who are not citizens of Montenegro, shall be entitled to follow the procedure with assistance of an interpreter, as well as to use their own language in the procedure in the same way (through an interpreter).

26.Criminal Code ("Sl. list RCG", br. 70/03 od 25.12.2003, 13/04 od 26.02.2004, 47/06 od 25.07.2006, "Sl. list Crne Gore", br. 40/08 od 27.06.2008, 25/10 od 05.05.2010, 73/10 od 10.12.2010, 32/11 od 01.07.2011, 64/11 od 29.12.2011, 40/13 od 13.08.2013, 56/13 od 06.12.2013)

As stipulated in Article 158, anyone who, contrary to the regulations governing the use of language and alphabet of peoples or members of national and ethnic groups living in Montenegro denies or restricts to citizens the use of their mother tongue or alphabet when exercising their rights or addressing authorities or organizations, shall be sentenced to a fine or imprisonment .

Article 159 reffers to the infringement of equality of citizens, stipulating that anyone who, due to national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, property or other personal status denies or restricts the rights of man and the citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, shall be sentenced to imprisonment not exceeding three years.

Should the act be committed out of hatred towards a particular race, colour, religion, origin, state or nationality, that person shall be sentenced to three to fine years of imprisonment, and if such person acts in an official capacity while performing his/her duties, s/he shall be sentenced to one toeight years of imprisonment.

Article 160 refers to infringement of the right to expression of national or ethnic affiliation, stipulating that:

Anyone who prevents other persons to express their national or ethnic affiliation or culture shall be sentenced to a fine or imprisonment not exceeding one year.

Sentenced to the punishment referred to in Paragraph 1 of this Article shall also be every person who coerces other person to declare his/her national or ethnic affiliation.

Should the act referred to in Paragraphs 1 and 2 of this Article be committed by a person acting in an official capacity during performance of his/her duties, that person shall be sentenced to imprisonment not exceeding three years.

Article 161 refers to infringement of freedom of confession of religion and performance of religious rites, stipulating that:

Anyone who prevents or restricts freedom of confession or performance of religion, shall be sentenced to a fine or imprisonment not exceeding two years.

Sentenced to the punishment referred to in Paragraph 1 of this Article shall also be anyone who prevents or disturbs performance of religious rites.

Anyone who coerces others to declare their religious beliefs shall be sentenced to a fine or imprisonment not exceeding one year.

A person acting in an official capacity who commits the act referred to in Paragraphs 1 to 3 of this Article shall be sentenced to imprisonment not exceeding three years.

Article 225a refers to the illegal employment of foreigners, stipulating that: Anyone emloying a foreigner who is not a national of EU Member State nor he/she has the right of free move-

ment in EU and he/she illegaly resides in Montenegro; anyone employing under the exploiting working conditions or knowing that a person employed is a victim of human trafficking or he/she is under 18 years old and employing him/her for a longer period of time or twice in a row or employing more such persons shall be sentenced to six months to five years imprisonment.

27. The Law on Movement of Persons with Disabilities with Dog-helper ("Official Gazette of Montenegro", no. 76/09 from November 18 2009, 40/11 from August 08 2011)

As stipulated in Article 3, persons with disabilities with dog-helper are entitled to using road, rail, maritime and air transport having the access to the whole passenger area.

Article 4 stipulates that persons with disabilities with dog-helper are entitled to free access and stay at public places such as: offcial premises, hotels, restaurants, banks, post-officies, theatres, sports facilties, markets, shops, schools, faculties etc.. Persons with disabilities with dog-helper are also entitled to access and stay in health facilities.

Article 5 stipulates that employed persons with disabilities with dog-helper are entitled to fress access and stay in the working area.

Finally, as stipulated in Article 8, legal entity, responsible person in legal entity and entrepreneur shall ensure person with disabilities with dog-helper-foreigner and instructor with dog-helper excerices their rights in accordance with this Law.

28. The Law on Election of Councillors and Representatives ("Official Gazette of the Republic of Montenegro", no. 4/98 from February 18 1998, 05/98 from February 25 1998, 17/98 from May 20 1998, 14/00 from March 17 2000, 18/00 from March 31 2000, 09/01 from February 22 2001, (Federal Republic of Yugoslavia) 09/01 from March 02 2001, 41/02 from August 02 2002, 46/02 from September 10 2002, 45/04 from July 02 2004, 48/06 from July 28 2006, 56/06 from September 07 2006, 46/11 from September 16 2011, 14/14 from March 22 2014)

As stipulated in Article 39, a candidate list for election of MPs submitted by civic groups or political parties representing a minority nation or a minority national community may include no less than 1/3 and no more than as many candidates as are elected.

Article 39a stipulates that For the purpose of exercising the gender equality principle, there shall be no less than 30% of candidates of less represented gender in the candidate list.

29. The Law on Profesional Rehabilitation and Employment of Persons with disabilities ("Official Gazette of the Republic of Montenegro" no. 49/08 from August 15 2008, 73/10 from December 10 2010, 39/11 from August 04 2011)

As stipulated in Article 2, the goal of the Law shall be to create conditions for greater employment of persons with disablities and their equal participation at th elabour market by eliminating barriers and ensuring equal opportunities.

Article 5 stipulates that discrimination in the process of professional rehabilitation, recruitment and employment of persons with disabilites shall be prohibited.

30. The Law on Rights and Freedoms of Minorities ("Official Gazette of the Republic of Montenegro ", no. 31/06 from May 12 2006, 51/06 from Auigust 04 2006, 38/07 from June 22 2007 and "Offcial Gazette of Montenegro", no. 02/11 from January 12 2011, 08/11 from February 04 2011)

As stipulated in Article 1, Montenegro shall ensure the protection of rights to autochthones minority peoples, national minorities, ethnic minorities and persons belonging to them, in accordance with the Constitution and generally accepted rules of international law and ratified international treaties.

Article 4 stpulates that persons belonging to minorities shall be deemed equal to other citizens before the law and shall enjoy equal legal protection.
Any violation of rights of minorities shall be deemed unlawful and punishable.

Article 5 stipulates that the Law shall ensure to minorities and persons belonging to them full exercise of rights, which may not be reduced with respect to the achieved level, under equal terms and with a view to provide their substantial equality with other citizens.

Article 8 stipulates that minorities and persons belonging to them shall have the right to express, preserve, develop, transmit and publicly manifest their national, ethnic, cultural, religious and linguistic identity, as a part of their tradition.

The Republic shall develop and promote studying of history, tradition, language and culture of minorities.

Minorities and persons belonging to them shall be provided with the freedom of information at the level of standards that are set forth in international documents on human rights and freedoms.

Persons belonging to minorities shall have the right on free establishing of the media and their unhindered work based on: freedom of expression, research, collection, dissemination, publishing and receiving information, free access to all sources of information, protection of personality and dignity and free flow of information.

b) Bylaws

Within the context of the scope of bylaws, supportive documents for the enforcement of legislation adopted by executive branch of power, we present here the following bylaws:

1. Decision on Establishing the Council for Protection against Discrimination ("Official Gazette of the Republic of Montenegro", no. 50/11 from 21.10.2011, 53/11 from 11.11.2011, 32/13 from 08.07.2013)

This Council is composed of 15 members and a secretary. It is formed from various Ministries, representative trade unions and NGOs dealing with protection from discrimination of persons with disabilities, protection and promotion of human rights, protection and promotion of rights of women and gender identity, sexual orientation.

The council is appointed by Government of Montenegro with the mandate of 4 years and the scope to: monitor and coordinate the activities of state bodies, state authorities and other relevant institutions in the implementation of legal mechanisms to protect against all forms of discrimination; to analyze the applicable regulations in terms of their compliance with international standards in the field of protection of all forms of discrimination and, if necessary, to initiate their amendments; to analyze administrative measures taken by the competent authorities in relation to the protection against all forms of discrimination, the problems that arise in practice in the protection against discrimination and it suggests measures for their elimination; the Council proposes and undertakes appropriate measures to promote non-discrimination, as a basic and general principle of the protection of human rights; it creates necessary cooperation with national and international bodies and organizations dealing with the protection of human rights and freedoms; it proposes other measures relevant to the protection of human rights and freedoms.

2. Rules of Conduct of Employers and Employees in terms of Prevention and Protection against Harassment at Work ("Official Gazette of the Republic of Montenegro" no. 56/12 from November 09 2012)

According to the enforceable act for the implementation of the Law on Prohibition of Harassment at Work, the established duties are:

a) For an employer:
1) To inform employee prior to the entry into work on:
- Prohibition of harassment at work;
- Behaviours that are considered harassment at work;
- The rules of conduct of the employer and the employee at work;
- Rights, obligations and responsibilities regarding harassment at work;
- Abuse of the right on protection against harassment at work;
- The procedure for the protection against harassment at work at the company level;
- The person to whom the request for protection from harassment is to be submitted and a list of mediators maintained by the employer;
- Dates of obsolescence for initiating the procedure;
- The protection of parties in procedure,

2) To provide a work environment in which operations are conducted in an atmosphere of respect, cooperation, openness, security and equality,
3) To develop awareness among employees about the need for mutual respect, cooperation and teamwork in performing their tasks,
4) To provide a good example by being kind to everyone, with dignity and respect
5) To allow unions to contribute in education and prevention of harassment
6) To permit the employees to express their opinions, views and suggestions regarding the performance of the job, and to provide for their voice to be heard and not to suffer adverse consequences becaouse of that.

b) For an employee:
(4) To behave to other employees and employer with dignity and respect,
(5) To contribute with personal example to a working environment that is free of harassment and behaviour that could lead to harassment, and that tasks are carried out in an atmosphere of respect, cooperation, openness, security and equality,
(6) To contribute with their participation to the prevention of harassment

(7) Prior to the initiation of the procedure on protection from harassment, if in a particular case it is feasible and possible, to make it clear to the person considered as performing harassment, that his/her behaviour is unacceptable and that legal protection will be sought if the behaviour does not cease immediately;
(8) if you initiating the procedure for the protection from harassment to indicate: data about the employee who is charged with harassment, a brief description of behaviours that are believed to represent harassment, duration and frequency of the behaviours that are considered harassment, the date when it was last done, as well as evidence (witnesses, written documents, medical reports, allowed audio and video recordings, etc..).

3. Rulebook on the Content and Manner of Keeping Records of Cases of Reported Discrimination ("Official Gazette of the Republic of Montenegro" no. 23/11 from May 06 2011)

It prescribes several compulsory elements for cases related to discrimination, whose records are kept in electronic data base and which allows direct access for the Ombudsman of Human Rights and Freedoms of Montenegro. The data records are kept in the form of a register.

c) Codes of Ethics

Codes of Ethics are the internal documents of different institutions, weather or not related to industry (administrative, executive or judicial authority, companies, different associations, etc.), which professionaly or moraly, but also disciplinary, oblige employee or members to certain rules of conduct in their activities. We use this opportunity to remind on certain types of such documents:

1. Code of Ethics of Judges ("Official Gazette of Republic of Montenegro" no.16/14)

Article 4 defines the principles of impartiality:
Judicial impartiality is an essential term and condition for ensuring a fair trial. -- - The judge must be free from any connection, affection or partiality, which affects - or which might be deemed to affect – his/her ability to make decisions independently.

- The judge shall exercise the judicial function without favour, bias or prejudice based on race, colour, religion, nationality, age, marital status, sexual orientation, social and property status, political orientation, and any other differences.
- The judges with their behaviour in and out of court will seek to maintain and strengthen the public's confidence in the personal and institutional impartiality.
- The judge, exercising of judicial functions, with their behaviour in and out of court, in their professional and personal relationships with members of the legal profession and other persons, is bound to avoid situations which might reasonably cause doubts to their impartiality.
- The judge will ask to be excluded from conducting the case in which there is a reason to cast doubt on his / her ability to render an impartial decision. Doubts about the impartiality of the judges are especially encouraged by family, friends, business, social and other connections with the parties and their representatives.
- The judge is obliged to refrain from making public statements or comments on matters that are in operation, due to which the public could create the appearance of bias.
- The judge is obliged to refrain from any political activity or participation in political rallies and events organized by political parties, which may compromise the impres-

sion of his / her impartiality. The judge will not assist the work of political parties by providing financial contributions.
- The judge will not be a member or participate in the activities of secret societies or associations that do not provide full transparency of its work.

Article 6 defines the principle of equality:
- The judge shall perform judicial functions respecting the principle of equal treatment of the parties by ensuring that for each party is provided a fair trial.
- A judge is required to know and respect the differences based on race, colour, religion, nationality, age, marital status, sexual orientation, social and property status, political orientation, or any other criteria.
- The judge has the right and duty to request from the court employees and all others who are under his/her official influence, to behave to parties in the proceedings and the citizens who address the court with respect and consideration.

2. Code of Ethics of Civil Servanst and State Empoyees ("Official Gazette of Republic of Montenegro" no. 20/12 from April 12 2012)

Article 7 defines the principle of respecting the equality of citisens in a sense that the civil servant shall respect principle of equality of citisens in every legal situation, and especialy when dealing with rights, obligations and legal interests of citisens. Also, in performing their duties, civil servants must not put in privileged or unequal position any citizen when exercising rights and obligations, based on race, colour, religion, nationality or any other personal matter.

3. Code of Ethics of Employers (Montenegrin Employers Federation), from December 16 2005

Along with other principles, it highlights:
- Fundamental principle of equal right to employment
- Sexual harassment is forbidden.

4. Code of Ethics of Journalists (from 2003)

Principle no. 5 highlights: Race, religion, nationality, ethnics, sexual orientation and family status of the individual, the reporter will mentione only if it is necessary for the information.

5. Codes of Business Ethics of Chamber of Commerce of Montenegro ("Official Gazette of Montenegro" no. 45/11 from September 09 2011)

Article 10 defines that business entities individualy regulate their organizations and rules of conduct, while they are obliged to respect applicable regulation, collective and individual agreements and to protect human and civil rights, dignity and reputation of every employee.

III CONCEPTUAL AND OTHER CLARIFICATIONS

Insufficient knowledge about the phenomenon of discrimination can lead to deceptive optimism in mastering the essence of discrimination. Every day we are faced with the reflex of this approach. Therefore, there arise relatively frequent conflicts either when there is no basis for them, or when they are caused either by ignorance or belief that the problem will be removed by itself.

Obviously we still need a "higher threshold" of knowledge on domestic and international regulations in this area, and we need to willingly and voluntarily respect what we already know.

United Nations Charter and International Labour Organization, as a specialized UN agency, proclaimed the principle of tolerance, as one of its primary goals. It can be defined in a negative and positive way.

Negatively defined tolerance principle is the principle of prohibition of discrimination.

Positively defined tolerance principle is the principle of equality of opportunity and treatment (for our consideration, especially in the areas of employment and labour).

Institutional steps give optimism in the field of human rights and freedoms and provide the first determinant of the human community in which, by using the means of mass communication, contacts of people regarding the work and ideas are widened.

Basic Concepts presented in this brochure represent only a modest attempt at resolving the phenomenon of discrimination.

The word "discrimination" is derived from the Latin word "discriminatie" meaning an unjustified distinction, sharing, distribution according to different characteristics, discernment. Generally, there are four meanings of discrimination:

- The first one: unjustified differentiation (either from the aspect of labour and employment or from a number of other aspects)
- The second one: in psychology which serves to establish a difference of two or more elements or parts of a decision
- The third one: in the social sciences where the differentiation is done by negative evaluation
- The fourth one: when indicates restriction of anyone's rights, humiliation of individuals or groups because of nationality, religion, race, class, gender or political affiliation.

For the purpose of this brochure, general and specific definitions of discrimination provided in the legislation are sufficient:

a) in The Law on Prohibition of Discrimination:

1) Discrimination is any unjustified legal or factual, direct or indirect discrimination or unequal treatment or non-treatment of a person or group of persons in relation to other persons, such as exclusion, restriction or preference to any person in relation to other individuals, based on race, colour, nationality, social or ethnic origin, related to minority nation or minority national community, language, religion or belief, political or other opinion,

sex, gender identity, sexual orientation, health status, disability, age, financial status, marital or family status, membership in a group or an assumption of belonging to a group, political party or other organization, as well as other personal characteristics.

2) Direct discrimination occurs when an act, action or failure to act, bring or may bring a person or group of persons in a similar situation in an unequal position in relation to another person or group of persons on any of the grounds referred to in item 1.
3) Indirect discrimination occurs when an apparently neutral provision of regulation or general act, criteria or practice, bring or may bring a person or group of persons in an unequal position in relation to other persons or group of persons on any of the grounds referred to in item 1, unless the provision, criteria or practice are objectively and reasonably justified by a legitimate aim, using the resources that are appropriate and necessary to achieve the objective, that are in acceptable proportional relation with the objective to be achieved.
4) Discrimination is regarded as encouraging, helping, giving instructions, as well as announced intention in discriminating a specific person or group of persons on any of the grounds referred to in item 1.
5) Harassment of a person or group of persons by one or more of the grounds referred to in item 1, when unwanted behaviour has the purpose or effect of outrage upon personal dignity, causing fear, feelings of humiliation or offense or creating a hostile or degrading environment, shall be deemed to be discrimination within the meaning of the item 1.
6) Discrimination is considered as any form of unwanted verbal, non-verbal or physical behaviour of a sexual nature that wants to hurt the dignity of a person or group of persons, or which has such effect, and which specifically causes fear, creates a hostile or degrading environment, and causes a feeling of humiliation or offense.
7) In addition to discrimination cases determined by the labour and employment legislation, discrimination at work also includes the payment of unequal wages or remuneration for the work of equal value to a person or group of persons, on any of the grounds referred to in item 1.

The right to protection from discrimination "extends" to persons performing temporary and occasional jobs or jobs covered by separate agreement, to students as well as to other persons who are on any grounds involved in the work with employer.

b) The Labour Law:

Direct and indirect discrimination is prohibited against persons seeking employment and employees based on sex, origin, language, race, religion, colour, age, pregnancy, medical condition or disability, nationality, marital status, family responsibilities, sexual orientation, political or other opinion, social origin, property, membership in political and trade union organizations or any other personal characteristic.

1) Direct discrimination is any action based on the stated reasons by which person seeking employments, as well as an employee, are treated less favourably than other persons in the same or a similar situation.

2) Indirect discrimination occurs when a certain provision, criteria or practice bring or could bring at a disadvantage position a person seeking employment or an employee, compared to other persons, because of a certain characteristic, status, affiliation or belief.

3) Direct and indirect discrimination are prohibited in relation to:
   - Recruitment conditions and selection of candidates for a specific job;

- Conditions and all rights arising from employment;
- Education and training;
- Promotion;
- Termination of employment contract.

The provisions of the employment contract establishing discrimination on any of the stated grounds are invalid.

4) Harassment and sexual harassment at work and in work-related conditions are prohibited.

Harassment is any unwanted behaviour caused by any of the listed grounds, as well as harassment by audio and video surveillance, which has the purpose or effect of violating the dignity of a person seeking employment as well as employee, and which causes fear or creates a hostile, humiliating or offensive environment.

Sexual harassment is any unwanted verbal, non-verbal or physical behaviour that has the purpose or effect of violating the dignity of a person seeking employment, as well as employee, in the sphere of sexual life, and which causes fear or creates a hostile, humiliating, embarrassing, aggressive, or offensive environment.

Employees can not suffer adverse consequences in the event reporting or witnessing harassment and sexual harassment at work and in relation with work.

5) There are forbidden all forms of harassing at workplace (bullying), or any behaviour to an employee or group of employees that is repetitive and has the purpose or effect of violating the dignity, reputation, personal and professional integrity, the position of an employee which causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions and leads to the isolation of the employee or leads to their own initiative of terminating the contract.

6) Discrimination is not a distinction, exclusion or preference in respect to a particular job when the nature of the job itself or the job performed under such conditions when the characteristics associated with some of the listed grounds are real and decisive condition for work performance and when the purpose to be achieved is justified (so-called positive discrimination/affirmative action).

Provisions of the law, collective agreements and labour contract related to the special protection and assistance of certain categories of employees, and particularly those related to the protection of persons with disabilities, women during pregnancy and maternity leave and leave for child care or special care for the child, as well as provisions relating to the special rights of the parents, adoptive parents, guardians and foster parents, are not considered to be discrimination.

c) It is worth of pointing out the following:

- Constitution of Republic of Montenegro, Article 24 provides: “Guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution, to the extent necessary in an open and democratic society in order to satisfy the purpose for which the limitation has been permitted.Limitations shall not be introduced for purposes other than the ones for which they were prescribed."

Also, the Constitution of Montenegro, Article 25 states: “During the proclaimed state of war or emergency, the exercise of certain human rights and liberties may be limited, to the necessary extent. The limitations shall not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature.

There shall be no limitations imposed on the rights to: life, legal remedy and legal aid; dignity of and respect for a person; fair and public trail and the principle of legality; presumption of innocence; defense; compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; freedom of thought, conscience and religion; entry into marriage.

There shall be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction twice for one and the same criminal offence; forced assimilation.

Measures of limitation may be in effect at the most for the period of duration of the state of war or emergency.”

This confirms that each legal institution means certain categorical restrictions and limitations, which also applies to human rights and freedoms, since they do not represent the absolute categories.

Since we do not intend to deal with the social, political, ethical, psychological and related aspects of discrimination, it may be concluded that there are reasons because of which some forms of discrimination are not considered discrimination due to "stronger reasons". Instances of deviations from the regular meanings of discrimination are determined by the Constitution of Montenegro as well as by certain laws and as a result, they are excluded and consequently not a subject to sanctioning. This is especially related to the field of labour relations where the standards are regulated when some of the actions do not have characteristics of discrimination.

IV LEGAL RESPONSIBILITY FOR DISCRIMINATION

The legal situation in which there is a person (natural or legal entity) due to their actions for which laws predict a sanction: a penalty, the obligation of compensation for damage, or loss of a position, etc. constitute the essence of accountability.
The basic types of legal liability are:
- Criminal liability
- Misdemeanour liability
- Civil liability
- Disciplinary liability

Subtypes of legal liability, especially civil liabilities, are:
- Objective liability
- Subjective liability
- Liability for other person
- Contracting Liability

For the purposes of this brochure, we reduced the issue of legal liability only to those conditions and acts of natural or legal entities which are incriminated by laws, due to violation of statutory procedures.

a) Criminal Liability

When it comes to criminal liability, we have to recall the determinants of the Constitution of Montenegro, Articles 33 and 35, which provide that:
- No one shall be punished for an act that, prior to being committed, was not stipulated by the law as punishable, nor may be pronounced a punishment which was not envisaged for that act.
- Every one shall be deemed innocent until the guilt thereof has been established by an enforceable court decision; the accused shall not be obliged to prove the innocence thereof; the court shall interpret the doubt regarding the guilt to the benefit of the accused.

The Criminal Code, inter alia, recognises the following offenses relevant to this brochure:

1. Violation of the rights to use language and script (Article 158)
- prescribes a monetary fine or imprisonment up to one year

2. Violation of equality (Article 159)
- Imprisonment of up to three years (Paragraph 1)
If the offense is committed against a member of a group defined on the basis of race, colour, religion, origin, state or ethnic origin, there is prescribed the imprisonment of 3 months to 5 years (Paragraph 2) and if the offense is committed by an official on duty there is prescribed imprisonment from 1 to 8 years.

3. Violation of the freedom of expressing national or ethnic origin (Article 160)
- prescribes a monetary fine or imprisonment up to one year (Paragraph 1)
If the offense is committed by an official on duty there is prescribed imprisonment from up to 3 years (Paragraph 2).

4. Harassment (Article 166a)
- Imprisonment of up to 1 year (Paragraph 1)
If the offense is committed by an official on duty there is prescribed imprisonment from 3 months up to 3 years.

5. Torturing (Article 167)
- Imprisonment from 6 months to 5 years (Paragraph 1)
If the offense is committed by an official on duty there is prescribed imprisonment from 1 to 8 years.

6. Violation of reputation of the people, minorities and other communities of minority nations
- prescribes a monetary fine from 3 thousand to 10 thousand EUR.

7. Violation of Equality in Employment (Article 225)
- prescribes a monetary fine or imprisonment up to one year

8. Inciting national, racial and religious hatred (Article 370)
- Imprisonment from 6 months to 5 years (paragraph 1)

If the offense is committed under pressure, in abuse, jeopardizing the safety, exposing national, ethnic or religious symbols to mockery ... a prison sentence of 1-8 years (Paragraph 3)

If the offense is committed by the abuse of position or the acts caused riots, violence or other serious consequences the penalty is imprisonment of 1-8 years and for Paragraph 2 and 3 imprisonments from 2 to 10 years (Paragraph 4).

b) The Infringement Liability

From a wide range of laws regulating the misdemeanour liability, for this publication we highlight the following:

1. The Law on prohibition of Discrimination:
The following financial penalties are defines:
-for legal entity in the amount from 500 to 20,000 euro
-for responsible person in the legal entity in the amount of 100 to 2000 euro
-for entrepreneurs in the amount of 300 to 6,000 euro

2. The Law on Professional Rehabilitation and Employment of Persons with Disabilities
For violation of Article 22:
-for legal entity in the amount from 500 to 20,000 euro
-for responsible person in the legal entity in the amount from 100 to 2000 euro
-for entrepreneurs in the amount from 500 to 6,000 euro

3. Labour Law
For offences by employers, for 36 in total, the following penalties:
-for legal entity in the amount from 500 to 20.000 euro
- for responsible person in the legal entity in the amount from 30 to 2.000 euro
- for entrepreneurs in the amount from 500 to 6,000 euro

4. The Law on Civil Servants and State Employees

For violation by responsible person-head of state authority body, for ten incriminations in total, fines have been imposed in the amount from 30 to 2.000 euro.

5. The Law on Employment and Exercising Right with Respect to Unemployment Insurance

For several incriminations, there are penalty fees:

- -for violation of Article 27 Paragraph 1 and Article 62 Paragraph 1 in the amount from 500 to 20.000 euro
- -for responsible person in legal entity from 100 to 2.000 euro
- for legal entity for violation of Articles 24 and 27 Paragraph 2 in the amount from 500 to 20.000 euro
- for responsible person in legal entity from 100 to 2.000 euro
- for entrepreneurs from 150 to 6.000 eur
- for violation of Article 20 Paragraph 3, Article 22 Paragraphs 2 and 3
- for legal entity from 500 to 20.000 euro
- for responsible person in legal entity from 100 to 2.000 euro

6. The Law on Prohibition of Harassment at Work

For offences by employers for 4 incriminations in total, there are prescribed penalty fees:

- for legal entity from 500 to 10.000 euro
- for responsible person in legal entity from 100 to 1.500 euro
- for entrepreneur from 500 to 3.000 euro

7. The Law on Occupational Safety and Health

For offences by employers, for 18 incriminations in total, there are prescribed penalty fees (we give herewith an overview from the existing law, although there is a new law about to adopt which includes concept of health at workplace):

- for legal entity in the amount from 500 to 15.000 euro
- for responsible person in legal entity from 25 to 1.000 euro
- for entrepreneur in the amount from 500 to 1.000 euro

8. The Law on Gender Equality

For violation of Article 14 which relates to collecting, recording and processing data which can be presented by gender, there are penalty fees:

- for legal entity from 2.500 to 8.000 euro
- for responsible person in legal entity from 400 to 1.000 eur
- for entrepreneurs in the amount from 500 to 5.000 eur

9. The Law on Employment and Work of Foreigners

For offenses by employers, for several incriminations, there are prescribed penalty fees:

a) For violation of Article 4 Paragraph 2, Article 12, Article 16, Article 34 Paragraph 3 and Article 28 Paragraph 5, Article 38 Paragraph 3:
    - for legal entity in the amount from 500 to 20.000 eur
    - for responsible person in legal entity from 30 to 2.000 eur
    - for entrepreneurs from 150 to 6.000 eur
b) For offenses by foreigners due to violation of Article 11 Paragraph 4 and Article 18 Paragraph 4 there is a penalty fee from 30 to 2.000 euro
c) Mandatory fee for violation of Article 38 Pararaph 3 in the amount from 200 euro for natural person and responsibe person in legal entity, and for entrepreneurs up to 400 euro.

V INSTITUTIONAL PRACTICE

Court Practice in Montenegro is not a source of law, but helps in identifying the meaning of the regulations and establishing the legal system, despite the shortcomings of the legal system.

Court practice in a broader sense comprises the decisions, positions, opinions, perceptions and other judicial work product, regardless of their validity and quality.

Court practice in the narrow sense comprises decisions, positions, opinions, and other judicial work products which ensure uniform application of the legislation.
Court practice is shaped and expressed in the form of legally binding court acts making, legal interpretations and general legal concepts.

The authors of the brochures note that the existence of various decisions of the courts in the same or approximately the same factual and legal situation, leads to violations of the right to equal protection guaranteed by Article 19 of the Constitution of Montenegro.

a) The Practice of Constitutional Court of Montenegro

An important segment of Constitutional Court is assessment of compliance of laws with the Constitution and promulgated international treaties. Pursuant to the purpose of this brochure, we present only some cases of the Constitutional Court of Montenegro.

1. Decisions no.78/04 and 102/04 from May 06 2005: Constitutional Court has determined that the provision of Article 187 of the Civil Procedure Code is not in accordance with the Constitution of Montenegro, according to which, if the prosecutor fails to pay the prescribed fee for the lawsuit after the court warning, and there are no conditions for the liberation of paying it, it is believed that the charges are withdrawn.

In the opinion of the respective Court, in the exercise of its functions, the state collects funds through taxes and duties, as everyone is obliged to pay taxes and duties. However, the way of meeting this obligation cannot conditional in a way that non-payment of fees has the effect of withdrawing the presumption of lawsuits. Because the obligation of citizens established by the Constitution of Montenegro, cannot derogate other constitutionally established and guaranteed rights, such as the right to equal protection of the freedoms and rights in due process. The relations arising from the constitutional obligation to pay taxes and duties may not be placed over the exercise of the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The protection of such rights involves primarily access to the body where the proceedings are conducted and with it the power and duty of the legislator to regulate the content and boundaries of the law. Therefore, the authorization does not imply that the law may impose such restrictions that exclude the guaranteed right or turn them into something else. The realization of paying the tax can provide an instrument for enforced collection. This put into question the achievement of equality and protection of constitutionally guaranteed rights in court.

2. Decision no. 105/03 from March 22 2003: The court has determined that the provision of Article 286, paragraph 3 of the Customs Act is not in accordance with the Constitution of Montenegro, under which the appellant must pay the full amount of duties and other statutory

fees and to pay in advance on the deposit account of the Customs the amount of 40% of the full amount of duty. In the opinion of the respective court, assuming that everyone is obliged to pay taxes and other fees, that the right to appeal is guaranteed to everyone, this related provision of the law stipulates the obligation to pay the full amount of duties and other charges in advance. Prescribed provision violates the guaranteed right of appeal or other legal remedy. Also, the right to appeal as a regular remedy may not be restricted or conditioned by fulfilling material or other obligations, since this right is one of the guaranteed rights and freedoms that are provided by the Constitution of Montenegro. The law may prescribe only the way of exercising that right. This Law not only limited the guaranteed rights, but it was denied when the offender does not pay the full amount of duties and when does not deposit in advance 40% of the fee. At the same time, the offender shall be guilty, before it is determined by the decision of the first instance body.

3. Decision Už–III no. 85/11 from July 08 2013: The court granted the constitutional appeal and quashed the decision of the Supreme Court of Montenegro on the civil procedure on annulling the sale contract. The Court found that the decision of the Supreme Court of Montenegro which rejected revision as an unauthorized, violated the right of the complainant to a fair trial in the part relating to access to a court which is guaranteed by the Constitution of Montenegro and Article 6 Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Access to the courts is not absolute, but it is a subject to restrictions. However, it cannot distort the very essence of the law, which is an access to legal remedies. Constitutional principle of the rule of law must not be equated with only the request for legal action, but must include a request that the legal consequences are the legitimate expectations of the parties. In this case the applicant had a legitimate expectation that the decision would come in the audit court. The Supreme Court of Montenegro approved revision and explained it with excessive formalism and interpretation of procedural requirements for access.

The constant practice of the European Court of Human Rights, on the occasion of the right to a fair trial, shall be interpreted as limitations applied must not prevent or reduce access to legal remedy to the complainant, which would weaken the very essence of the law.

4. Decision Už-III no. 508/10 from December 26 2012: The Court granted a constitutional appeal and quashed the judgment of the Superior Court and returned the case to the High Court in ... for retrial. The dispute was over the illegal termination of employment by the employer. The Court found that the constitutional right on fair trial guaranteed by Article 32 of the Constitution of Montenegro and Article 6, Paragraph 1 of the Convention was violated against the complainant.

It is pointed out that the right to a fair trial obliges courts to give reasons for their decisions although that obligation does not imply that the court must respond to the allegations of the parties in details, since the courts have some discretion rights for which arguments and evidence to accept, but also have an obligation to explain its decision so as to specify clear and understandable reasons on which the decision is made. A reasoned decision shows that the parties were heard. In this case the High Court in.... reversed the first instance verdict, but the question of crucial importance for the outcome of the case was not properly explained, the judgment did not contain the relevant provisions of substantive regulations as required by Article 32 of the Constitution of Montenegro and Article 6, Paragraph 1 of the Convention.

5. Decision Už-III no. 87/09 from January 19 2012: The court granted the constitutional appeal, quashed the judgment of the Supreme Court of Montenegro and remanded the case for retrial. The dispute was over the denial of the right to equal protection guaranteed by Article

19 of the Constitution of Montenegro and Articles 6 and10 of European Convention for the Protection of Human Rights and Fundamental Freedoms. Basic Court, High and Supreme Court of Montenegro differently valued the claim and prosecutor, where the Constitutional Court of Montenegro considered that relevant laws (procedural and substantive) do not provide the possibility for damages due to the violation of honor and reputation to be determined without presenting evidence and solely through own judgment of judges. The existence of mental pain as a result of violation of the honor and reputation is not generally known fact, but those injuries have to be determined by courts through evidences. The High and Supreme Court of Montenegro did not establish all the relevant facts to make a decision, but arbitrarily decided that there was a violation of the honor and reputation, and thus defined damages and liability for that. In particular, the European Court noted that the Supreme Court of Montenegro in revised procedure did not interpret the Law on Media in accordance with the principles of the Convention or the relevant practice of case law of the European Court. This violated the complainant's constitutional right on the fair trial in line with Article 32 of the Constitution of Montenegro and Article 6 line 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court further emphasized that freedom of expression "sine qua non" is basic for functioning and existence of any democratic society and for human rights and freedoms. This does not mean that this freedom is absolute and unrestricted. An independent judiciary is required in each case to determine the limit of reasonable and necessary, and unjustified and unnecessary restrictions. The European Court, starting from Article 10 of the Convention, considered that between the information (facts) and opinion (value assessment) there is a clear distinction because the existence of facts can be demonstrated, and the truth on the basis of value assessment cannot be proven.

6. Decision U-II no. 27/11 from July 20 2012: The Constitutional Court of Montenegro did not grant the initiative to review the constitutionality and legality of the Rules of Procedure on determining the organization and systematization of company. The complainant stated that the general act was a discriminatory and not in line with the law, the General Collective Agreement, Branch Collective Agreement and the collective agreement with the employer. The Constitutional Court of Montenegro in line with Article 8 Paragraph 1 of the Constitution of Montenegro (according to which any direct and indirect discrimination is prohibited) and following the conceptual determination of an act of systematization according to Article 15 Paragraph 1 points 4 and 06 of Labour Law, determined that the Rules of Procedure were passed by the authorized person who had a legal authority to autonomously amend job positions, job descriptions, skills and work experience, the type and level of professional or academic qualifications or education level and professions. Also, the Court determined that identification of the organizational unit did not violate the principle of compliance with relevant legislation and Articles 145 of the Constitution of Montenegro, as well as the principle of equality under the Article 17 of the Constitution of Montenegro. Specifically, the prescribed conditions for performing certain tasks apply equally to all employees who are in the same legal situation. In addition, the Rules of Procedure did not discriminate based on any personal capacity of employees.

b) The Practice of Supreme Court of Montenegro

1. Verdict REV no. 820/12 from December 13 2012: It reversed the decision of the High Court in… and the verdict of Basic Court in .... and the defendant was obliged to return complainant to work and to allocate her to job position she had performed previously or to those positions that correspond to her qualifications and experience. Complainant was employed for an indefinite period of time and she went on pregnancy leave and then on maternity leave. During the pregnancy leave she was given the decision that there was no longer the need for

her work, and that there was a surplus of employees. This was preceded by the Rules on Procedure on internal organization and jobs classification as well as the adoption of measures to deal with surplus, etc. The complainant was not provided with any of the rights foreseen in the article 93 paragraph 2 line 5 of Labour Law and the contract was canceled with payment of redundancy. Basic Court and High Court found that the conduct by the defendant was lawful, and refused the request of the complainant. The Supreme Court of Montenegro found reasoning of lower instance courts unacceptable, since they ignored and were obliged to appreciate legality of the contract cancelation from the aspect of ratified international treaties, which in accordance with Article 9 of the Constitution of Montenegro are part of the internal legal order of Montenegro. This primarily relates to the amended European Social Charter which guarantees the right of employed women to maternity protection because termination of employment is considered unlawful if passed by the employer before the expiry of maternity leave. Even the exceptions set out in Annex of modified European Social Charter can not apply to termination of an employment contract for an indefinite period of time, due to the surplus arising from the reorganization of the employer. Also, Montenegro commits to the ILO Convention no. 83 on Maternity Protection.

2. Decision REV no. 722/13 from November 15 2013 rejected the revision which was based on the view that the facts of experiencing the behavior and work of other employees did not include that the complainant was discriminated or abused, but rather represented personal experience and the person's attitude towards work and colleagues. This Court emphasized that the provisions of the Labour Law in Articles 5-9 regulate non-discrimination and harassment on several grounds. Also, the Law on Prohibition of Harassment at Work establishes the procedure for protecting those exposed to abuse at work (even though the law was not applicable at the time of the dispute). In particular, it was pointed out that the Constitution of Montenegro in Article 28 guarantees the dignity and security, inviolability of physical and psychological integrity of persons, their privacy and personal rights. In the present case, the complainant claimed that she was conscientious in the work, and she was annoyed with actions of other employees who did not behave in a way she did. Since in the company where she worked there was a shortage in a cash register, she was annoyed because all the employers who made a shortage were not dismissed. Due to this, the staff that remained at work acted vindictively in a way that they did not want to communicate with her.

The allocation in another facility she understood as expelling out of the building and thought it was even harassment on a national basis by the colleagues with other nationality. However, when it comes to proving bullying, the one who claims it, needs to prove that abuse is made, and the employer bears the burden of proving that there was no abuse. Lower instance courts have concluded that the complainant failed to provide proof of abuse, which consequently provided that there was no harassment or discrimination.

Particularly that complainant was not discriminated in relation to other employees, as medical records and reports of physicians, psychologists and psychiatrists clearly indicate that there were no stress reactions of complainant due to abuse and bullying by the employer or any of employees. The complainant herself emphasized that she was anxious enough about the potential expiry of the contract of employment. The conclusion of the Supreme Court of Montenegro unequivocally demonstrates that complainant did not prove that there was discrimination and bullying at the workplace.

3. Verdict REV no. 947/13 from December 18 2013: altered the contested judgment, dismissed the prosecution's appeal and upheld the first instance judgment. In this case, the first

instance court dismissed the complaint. The complainant, in fact, refused to comply with the work order of the defendant which related to referral to another job because of the needs of the labor, due to which the conditions for termination of employment were met within the meaning of Article 143, Paragraph 1 of the Labour Law. The same court ruled that the defendant complied with all the prescribed procedure, and that the contract of employment with complainant was lawfully terminated. The second instance court overturned the first instance decision and accepted the complaint, finding that the defendant's actions were illegal, because the decision to terminate the contract could not be made before the expiration of five days from receipt of notice. The Supreme Court of Montenegro did not accept the reasoning of the High Court, since the first instance court found that the complainant pleaded on the warning delivered by the defendant, which the second instance court did not question. The complainant pleaded before the decision on termination of employment, and is therefore irrelevant statement given before the expiration of five days from receipt of the notice.

The defendant provided complainant and allowed the right to be heard prior to termination of employment. The deadline of 5 days should be interpreted as the longest period in which the employee can answer. If the complainant pleads earlier, any other guaranteed right is not violated because the defendant did not wait for the end of the basic period of 5 days from the date of notice. The court emphasized that the verdict had no irregularities that would indicate a violation of Article 6 Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Verdict REV no. 770/10 from May 25 2010: altered the verdict of the High Court by upholding the verdict of the Basic Court in paragraphs 1 and 3, and the appeal of the defendant was rejected as unfounded.

The first instance verdict partially adopts a claim given that the medical expert determined that the complainant suffered damage as a result of stress caused by harassment by the defendant. The High Court reversed the judgment of the first instance court by rejecting the claim as unfounded, considering that the defendant's actions were not unlawful actions that would indicate the abuse of the complainant. The Supreme Court of Montenegro considered that the position of the High Court is unacceptable and based on the wrong application of material law. The complainant covered with the defendant certain position by the time he was removed, but did not received any decision that would contain the reasons why it was done. Only after 11 months, the complainant was assigned to the position of lower rank. The findings and opinion of the medical profession and the testimonies of witnesses show that the complainant is mentally and physically healthy person, but after the removal from the managerial position, same health problems began to emerge as a result of stress caused by the conduct of the defendant. The expert estimated that the damage of health caused permanent reduction of general life activity for 30% as a result of stress caused by harassment.

The Supreme Court of Montenegro considered that the first instance court properly obligated defendant to pay amounts that are adequate and appropriate to the damage incurred and which represent fair compensation. This also applies to compensation of damage for complainant on the basis of mental distress due to violation of honor and reputation.

5. Verdict REV no 1509/09 from February 16 2009: partially granted revision, and reversed the judgments of the High and Basic Court, where in respect of non-pecuniary damages awarded for emotional distress due to tarnished honour and reputation and, defendants appeal

are dismissed as unfounded and first instance verdict is confirmed, and the rest of that claim for the amount of ….euro, revision is dismissed.

In the procedure before the contested judgment, it was confirmed that the defendant had repeatedly brought the decision on changing the employment status of claimant, violating thus the employment rights due to which the decision of the defendant in the proceedings are void. Since the unlawful termination of employment contract is the gravest violation of the employee rights, the court of first instance ruled that the final court decision which annulled the decision on the termination of employment with the defendants were knowingly tolerated, causing the complainant to suffered mental pains. The High Court found that the complainant did not prove that the injustice caused serious mental disorders, and that there were no conditions for liability of the defendant. The Supreme Court of Montenegro considered that the conception of the High Court was unacceptable. The fact that the complainant during the court proceedings did not provide medical documentation, did not exclude liability of the defendant for harassment and malicious conduct towards the complainant. The first instance court, however, made a correct conclusion that the defendant ignored the court ruling and returned the complainant only formally to work in order to bring back decision on termination of employment, after which complainant was allocated on the position with compensation in the amount of 60% ...

The best evidence for harassment and malicious conduct of the defendant toward the complainant was adoption of the decision to terminated employment (service) with the right to a pension, even though the complainant at the time of adoption of the decision did not have 40 years of service or a sufficient age for legal termination of employment.

Behaviour of the defendant who used legal means through the abuse, further extended complainant's feeling of humiliation and powerlessness which resulted in suffering emotional pain caused by injury to reputation, honour and dignity, and for which there is a right to compensation for non-pecuniary damage under Article 200 of the Law of Obligations Relations. However, the first instance court when determining the amount of non-pecuniary damages erroneously applied the substantive law in awarding the amount of ... euros, and the Supreme Court held that, taking into account the importance and the purpose of compensation considered that the amount of damage should be lower than the one determined by first instance court.

c) Courts Practices from the Neighbouring Countries

Republic of Serbia

1. Procedural errors and Discrimination (judgment of the Supreme Court of Cassation Serbia REV 2537/12 from June 27 2012)
2. "Procedural errors in the internal protection procedure are not acts of discrimination because the judicial and administrative protections of individual rights are granted."

3. Non-pecuniary damages for discrimination (Judgment of the High Court Pozarevac GZ 755/13 from November 7 2013)
4. "Discriminating behaviour refers to making distinctions that are based on a personal characteristic of an individual."

5. Protection from discrimination at work (The Ruling of Appellate Court in Novi Sad GŽ 2261/12 from March 30 2012)

6. "Anyone who has suffered discriminatory procedure has the right to file a lawsuit and seek for determination that the defendant had a discriminatory manner towards him/her or others, as well as to non-pecuniary damages."

7. Harassment at work (The Decision of the Appellate Court in Belgrade GŽ no. 1270/13 from March 27 2013)
8. "Harassment at work can be a passive attitude towards the employee if it has the purpose or effect of violating the dignity, reputation, personal or professional integrity of the employee."

Republic of Croatia

1. Discrimination and harassment at the workplace (Judgment of the Supreme Court REVR 135 / 09-2 from March 10 2009)
   "Not inviting to the staff meeting, not approving annual leave immediately upon return from leave, and requesting that outside of work hours some times for the preparation of jobs systematization, does not represent the behaviour which can be defined as a violation of the dignity of workers, according to the lower instance courts, as in essence represent decisions about the management of the company and the decision on the organization of work and performing work tasks of employees, among whom was the complainant. The job title or the position does not automatically entitle salary as for another employee at the same job title, but salary depends on the actual work and responsibilities of each employee. Therefore, the difference in salary of employee complainant in such circumstances does not constitute discrimination within the meaning of Article 2 and Article 9 of the Labour Law. "
2. Damage compensation caused by direct or indirect discrimination based on nationality when seeking employment (REVR No.350 / 09-2 from July 16 2009)
   "A number of candidates were not selected, not only the complainant who fulfilled all the conditions for employment ... nothing confirms the allegations of the complainant that when selecting candidates for employment, she was placed in a disadvantaged position because of her nationality.... The actions of the defendant towards the complainant have no form of direct or indirect discrimination and there are no behaviours which are opposite to Art. 2, Paragraph 1 of the Labour Act."

3. Alternative claim for damage compensation for discrimination (Judgment of the Supreme Court of Croatia REVR 54 / 12-2 from October 10 2012)
   "Starting from the definition of harassment under Article 2 paragraph 2 of Labour Law ... the complainant was supposed to indicate any of the grounds referred to in Art. 2, paragraph 1 of the Labour Law. Given that she called upon none on the grounds from Article 2, paragraph 1 of the Labour Law, conditions for determining harassment or bullying were not met, especially having in mind allegations that the superiors treated her correctly."

d) The Practice of the European Court for Human Rights in Strasbourg

1. Case Novović vs Montenegro (Strasbour 23.10.2012 – Complaint no. 13210/05)

The applicant complained on the length of the procedure to return to work. In June 1991 the applicant was declared redundant due to what he filed two complaints to institutions seeking reinstatement and compensation.

Failing with the institutions, he initiated a lawsuit in which the basic court ruled against him, the High Court reversed the judgment and ruled in his favour. In the meantime, since he sued the two institutions, a single court proceeding was held in which the basic court ruled against

a former employer and awarded compensation to the applicant. This judgment became final in January 1995, and the proceedings against the institution (legal successor of employer) continued.
The Supreme Court overturned two convictions which were adopted in relation to the legal successor and ordered a new trial.

Basic Court ruled against the applicant, the High Court upheld such judgement and the Supreme Court rejected the applicant's request for revision. The applicant complained about the length of proceedings, and incompatibility of conditions - "reasonable time" pursuant to Art. 6, paragraph 1 of the Convention.
The Government pointed out that the applicant had not exhausted all effective domestic remedies (in particular, the control request was not filed or a complaint for the proper satisfaction, as stipulated in the Law on the Protection of the Right to Trial within a Reasonable Time)

The European Court emphasised that the purpose of the domestic remedies under Art. 35, paragraph 1 of the Convention is to afford the contracting parties the opportunity for preventing or correcting the alleged violations before the submission to court. The only remedies which the Convention stipulates to be exhausted are those that relate to the violations, or those who are at the same time available or sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in practice. If they do not have the required availability or effectiveness, the state needs to provide that such conditions are met.

In assessing the effectiveness of a remedy for complaints about the length of proceedings the decisive is :
- it was possible that the applicant was provided with direct and immediate remedy, rather than indirect legal protection that is guaranteed by Article 6 of the Convention. In doing so, the Court reiterates that the effectiveness of a particular remedy is usually related to the filed application.

The European Court expressed the view that it would not be unreasonable for the applicant to try with the control request on the basis of the mentioned law, in a case where the national proceedings were in progress for many years, before the introduction of this legal instrument, that the proceedings in question is such that it takes more than 16 years before the entry into force of the aforementioned Law, out of which more than three years after the Convention entered into force for Montenegro.

The applicant submitted the complaint in April 2005, which was more than two years and eight months before the complaint to the proper fulfilment was introduced by the mentioned law.

The European Court also pointed out that the relevant law was not enacted in response to the numerous applications in which the proceedings are pending in the European Court, or that it contained transitional provisions of any kind that would apply to applications for which the proceedings were pending in the European Court. Therefore, the Government's objection should be rejected.

The European Court reiterated that a constitutional complaint cannot be regarded as an effective remedy for the length of the proceedings, and that the Government's objection in this sense should be rejected.

The Court noted that the proceedings related to the reinstatement are of the "crucial importance" for complainants and, as such, they must be resolved "expeditiously."

Therefore, the European Court found that there had been a violation of Article 6, paragraph 1 of the Convention.

2. Independent Trade Union Aslef against United Kingdom (Strasbour 27.02.2007 – Complaint no. 11002/05)

The trade union with over 18,000 members submitted a complaint for violation of Article 11 of the Convention (freedom of association and organization).

The applicant claimed that they are unable to exclude one of its members because of his membership in a particular national party of the radical-right-wing.

Mr. L., a member of the legitimate national party, once filed a request for membership in relevant trade union, which was adopted.

Also, he applied for candidacy on the list of the National Party in local elections.

The Executive Committee of the union decided to exclude Mr. L from membership because his membership in the National Party was incompatible with his membership in the union, which also could damage reputation of the union and that was also against the objectives of the union.

Following the expulsion from the union, Mr. L had started the proceedings before the first instance court which decides in labour disputes. The Court concluded that the union may exclude members on the basis of their behaviour, but not because of membership in a political party. The same court held that Mr. L was excluded because of membership in a political party which consequently forced the union to again receive Mr. L. contrary to their own rules.

The union, as the applicant, claimed to be unable to exclude one of its members as a result of membership in a political party which advocated positions contrary to the union position.

The European Court noted that, as an employee or worker is free to join or not to join a union without penalty or negative consequences, and the union should be equally free to choose its members. When an association is composed of people who intend to strive for common goals, it would be contrary to the effectiveness of freedom not to have control over their members. Therefore, it was accepted that there was an interference with the freedom of association rights of the applicant (union), that the interference was lawful and that it strived to protect the rights of individuals, such as Mr. L's rights, to enjoy their rights and freedoms without undue interference.

The European Court specifically pointed out that the right to form a union includes the right to draw up their own rules and lead their own affairs, and that any state interference in the internal affairs of trade unions shall be prescribed by law in a democratic society.

3. Satilnis and others against Turkey (Strasbour 17.07.2007 – Complaints no. 74611/01, 26876/02 and 27628/02)

The applicants were 42 Turkish citizens who worked as cashiers at the toll collections on the bridge over the Bosporus channel in Istanbul and were unionized in K ... The applicants, as civil servants, employees with fixed-term contracts, left their jobs as part of protests due which vehicles were able to pass through the toll without charging.

Administrative authorities have filed proceedings against them for damages, and the courts ruled in their favour. The applicants complained for violation of Article 11 of the Convention (freedom of organization and association).

The European Court noted the legal basis in the law ... which provides that civil servants are forbidden to be absent from work or to purposely slow down work process. The same court further observed that the protest was organized by trade union to which the applicants belong, and that responsible authorities received warning on protest in advance. Also, the applicants exercised their freedom of peaceful assembly. The same court noted that the Government did not explain whether the union was able to defend the rights of civil servants by other peaceful means, given that the domestic provisions included a general ban on collective actions of civil servants.

The European Court held that the applicants should not be taken responsible, as the positions of Turkish courts which ruled in favour of the administrative authorities, were not necessary in a democratic society.

The relevant article (Article 11 of the Convention-freedom of association) does not explicitly include the right to strike, but includes the right of unions not only to exist, but also to strive to protect the interests of its members. Turkish authorities punished public servants for leaving the job, despite given notice of their intention to do so. Also the alternative that would enable them to exercise rights under Article 11 of the Convention was not provided.

With the above stated, the European Court found that there was a violation of Art. 6, paragraph 1 of the Convention.

4. Demir and Bajkara against Turkey (Strasbour 12.11.2008 – Complaint no. 3450/97)

Demir and Bjakara are the president and a member of a trade union, which was founded by civil servants from various communities with the aim of improving the democratic trade unionism. This union concluded a collective agreement with the municipal council G ... which regulated aspects of labour relations for employees in the municipal council. However, after some time, the union believed that the municipal council did not meet the contractually assumed obligations, especially financial ones. Due to this, the union initiated a dispute brought before the Civil Court and won the case. The Civil Court found that despite the absence of statutory provisions that recognize the right of that trade unions to conclude a collective agreement, the gap should be filled by reference to international agreements such as the ILO conventions ratified by the Republic of Turkey, since they became immediately applicable in the internal law of Turkey.

Since there was no specific legislation on that, the Turkey's Court of Cassation ruled that the freedom of entry into trade unions and the right to collective bargaining could not be achieved. In particular, because of the fact that the respective trade union was founded at a time when the existing Turkish legislation did not allow government officials to organize the unions. The Court concluded that the union since its establishment had no legal status and with that it could not initiate a judicial proceeding or participate in it.

European Court ruling that there was a violation of Article 11 of the Convention (freedom of association). The Court holds that the limitations for armed forces and state administration employees must be strictly interpreted. Therefore, the restrictions cannot bring into question the very essence of the right to organize.

5. Tillack against Belgium (Strsbour 27.11.2007- Complaint no. 20477/05)

MT is a German citizen, a journalist of the weekly magazine ... and was a correspondent from B, responsible for reporting on the activities of the EU and the activities of the European institutions. In .... he published two articles in the journal ... based on data from a confidential document from office ... The first one reported on the claims of European officials with respect to irregularities in the European institutions, and the second one concerning the internal inve-

stigations conducted due to claims reported in the first article. The official who was the source of data was not revealed and the office filed charges against the journalists to his respective country judiciary, which has launched an investigation on unknown or unidentified persons for violating professional confidentiality rules. The journalist, as applicant, complained to the European Court that the searches at his home and in the workplace where such as they constitute a violation of the right to freedom of expression under Article 10 of the Convention.

The European Court held that the searches constituted interference in the right of journalists on freedom of expression. The interference was included in the national law of the related state, when pursued the prevention of disorders and crime, and preventing the disclosure of information received in confidence and protecting the reputation of others.

On the issue whether the interference was "necessary" in a democratic society, the European Court noted that at the time of the searches, their purpose was to identify the source of the information that the applicant stated in his articles. The measures were, therefore, related to the protection of journalists' sources and information.

The European Court emphasized that the right of journalist - not to disclose their sources of information cannot be considered just for the privilege, but that was a part of the right to inform, which must be treated with great care.

The same court held that the reasons given by the national court of the state of Journalist could not be considered "sufficient" to justify the controversial searches. Therefore, this Court held that there had been a violation of Article 10 of the Convention.

6. Krivošej against Serbia (Strasbour 13.04.2010 – Case no. 42559/08)

The applicant is the Serbian citizen with foreign origin.

The applicant addressed the European Court for failure to meet a final decision on maintaining contact with a child, citing a violation of Article 6 and Articles 8 and 13 of the Convention.

Article 6 of the Convention protects, among other things, the execution or enforcement of final court decisions and rulings, and which in states with the rule of law cannot be without enforcement at the detriment of one of parties. This, regardless of whether the execution should be carried out against a private person or against a state actor. The state is obliged to take all necessary steps to carry out a final court decision or ruling.

In this case, a final decision on maintaining contacts with the child remained unexecuted. A national court only once fined N, but the punishment was never charged, and then misplaced files of the case and never took any substantial step in a period of over two years to find a new address of N.

The European Court found that the applicant did everything in executing the final court decision, and that the national authorities also failed to apply any coercive measure against N. The same court ruled that the Serbian authorities did not act with due diligence nor take sufficient steps to execute the final decision in making contact with the child. The European Court considered that the mutual contacts between parents and children are essential elements of "family life" within the meaning of Article 8 of the Convention.
Serbian authorities did not do was in their power and which was reasonable to expect from them to do. In addition, the applicant has suffered a violation of the right to respect family life under Article 8 of the Convention.

e) The Practice of Labour Inspection of Montenegro

Report of the Inspection Directorate of Montenegro for 2013 contains a section related to the Department of Labour Inspection, in accordance with the legislative framework and competencies of Labour Inspectorate.

The relevant report points out that in 2013 there were in total carried out 13,717 inspection controls.

When it comes to the domain of discrimination, only one case is recorded, and when it comes to domain of harassment there are 11 cases. The relative part of the report does not contain detailed comments, except summary indications: the number of applications in the field of labour relations and employment is 5,056, and the number of issued misdemeanour charges in the field of labour and employment is 3,132.

f) The Practice of Protector of Human Rights and Freedoms

The report for 2013 of the Protector of Human Rights and Freedoms provides a comprehensive overview-indication of rights which violation the applicants indicated in their complaints:
- The right to equality 10
- Prohibition of discrimination 71
- Gender equality 3
- Minority rights 4
- The right to a pension and invalidity insurance 22
- The right to health protection and health insurance 41

On the occasion of the right to protection from discrimination, the Protector points out: "Increasing attention to prevention of discriminatory treatment is the need for removing barriers and building democratic rule of law. It emphasises the principle of affirmative action or special measures for creating conditions for national, gender and overall equality and protection of people who are on any basis in an unequal position. The amendments to the Criminal Code stipulate that an aggravating circumstance for determining punishment for committing a criminal crime shall be considered if that is done out of hatred due to a race, religion, nation or ethical origin, gender, sexual orientation or gender integrity of another person. “

Considerable attention in this Report was paid to:
- Discrimination on the basis of nationality (briefly recalling the general and European international documents, the legal coverage of this type of discrimination in Montenegro, including the comments on 3 cases)
- Discrimination on the basis of disability (high level of unemployment rate, low level of education, difficult access to facilities and services, housing problems, inaccessibility to public transportation , multiple discrimination issue) including comments on 3 cases.
- Discrimination on the basis of gender identity and sexual orientation (strong presence of stereotypes and traditions; intolerance towards LGBT persons), including the examples of cases.
- Discrimination on the basis of gender in the area of labour and employment (especially women belonging to marginalized social groups such as Roma population, refugees and internally displaced women, women with disability, rural women, older women, single mothers ...) including the examples of cases.

- Harassment (as a special form of discrimination which is widespread at workplace in both private sector and in public institutions). It was pointed out that in 2013 there was an increase in number of complaints related to harassment and the Protector had to work on 15 complaints on the basis of harassment. The Protector pointed out companies in which complainant reported harassment. The analysis showed that the most frequent is so-called vertical harassment. However, the Protector after the procedures couldn't determine the existence of harassment, still giving examples of cases.

The Protector finds:
- That there is an improvement in promoting protection against discrimination, especially in terms of increasing visibility in creating a better environment for treatment of vulnerable social groups.
- That s small number of reported cases of discrimination is still a consequence of the lack of knowledge of human rights and protection mechanisms, as well as a fear of citizens who report this phenomenon
- That discrimination is visible and present in relation to the Roma, persons with disability, persons with different sexual orientation and members of minority groups and minority ethnic communities
- That in the field of gender equality, despite good normative and institutional preconditions, there is insufficient presence-participation of women in line with international declarations and standards for that area, especially in politics.

g) The Practice of the Agency for Personal Data Protection and Free Access to Information

The report of the Agency for 2013 points out the premise that the protection of personal data represents part of the corpus of the rights to privacy in every society according to which the actual legal mechanism are to be in place, so that every person has a right to know and to control who uses information about them, when and for what purposes, whether there is an authorisation for that, etc.

This agency is an independent supervisory authority and as such it guarantees protection of personal data of all citizens of Montenegro, regardless of nationality, race, colour, language, religion, political or other views, social origin, property, education, social status, etc.

The Constitution of Montenegro (in Articles 6, 9, 40, 42 and 43) provides legal framework for such protection and the Law on Protection of Personal Data elaborates constitutionally established guarantees. Montenegro has ratified the Convention on Protection of Individuals with regard to automatic processing of personal data, and Article 8 of the European Convention on Human Rights protects private life and correspondence of individuals.

The respective Agency maintains records on collections of personal data.

In 2013, the agency received 57 requests for an opinion either in relation with the Law on Personal Data Protection (50 of them), or in relation with the Law on Free Access to Information (5 of them).
We draw your attention to the following opinions of the agency:
- Providing access to video surveillance records on which there are other persons, represents violation of the Law on the Protection of Personal Data because the data may be submitted on the request only by the legal user.

- Consolidation of personal data related to the name or surname of an employee, or person engaged on other grounds, professional qualification, e-mail address and phone number by the authorities to be in possession of them, is not inconsistent with the Law on the Protection of Personal Data.
- Submitting copies given to the regional units of the Ministry of Interior with a list of persons who are not registered in the list of Montenegrin citizens and copies of the letter with a list of persons who are registered in the register of citizens of Montenegro ... is contrary to the Law on the Protection of Personal Data.
- Publishing payrolls of public officials, which expresses the bank credit amounts on the internet, is contrary to the Law on the Protection of Personal Data.
- Publishing names and surnames of health or educational workers and organizational units or departments in which they work, in order to review their work via internet, is in contrary with the Law on the Protection of Personal Data.
- Voluntarily installation and operation of safety cameras by companies is in contrary to the Law on the Protection of Personal Data.
- Sending information about current sales or discounts on services via SMS to the buyers of motor vehicles, to persons carrying out repair or maintenance services of motor vehicles is contrary to the Law on the Protection of Personal Data.
- Submitting admission forms of trade union members of media to determine the representativeness of the Committee for Determination of Representativity-Ministry of Labour and Social Welfare, which requires the following personal information: personal signature and personal identification number, is contrary to the Law on the Protection of Personal Data.

VI POTENTIAL ADVICES FOR PROMOTION AND PREVENTION OF DISCRIMINATION

The publication of this kind has no elements of mandatory acceptance by the members of MEF and other interested parties, but what is mentioned in the introductory part – to help overcoming obstacles in front of human rights. In addition, we note that with more attention we can avoid risks of various forms of discrimination or harassment. With that, we believe the purpose of this publication can be achieved.

herefore, we want to keep the reader's attention on the possible suggestions for application of the following laws

1. Labour Law

Act on systematization to regulate well:

- Workplaces (name, etc.., skills and work experience, the type and level of qualification and level of education and occupations, whether the work is carried out in a particularly difficult and strenuous unhealthy conditions, whether it relates to introduction of part-time work ...)

Vacancy announcements - procedures

- to publish in advance the possibility of interviews, testing and similar methods which will be carried out in a particular case.
- to especially promote the possibility of employment by affirmative action method (less employable persons)
- in announcements to avoid age requirements, photos, requests for other personal characteristics than one related to the work, unless a special law explicitly requests otherwise

Conduct interviews and tests

- to carry them out with committees not with an individual examiner, which reduces the risk of bias
- In particular, to avoid questions of a personal nature (marital status, plans for children, sexual orientation, questions about the financial status, bank account, property ownership)

Obligation to submit evidences related to signing employment contract

- not to burden with data on family or marital status, family planning, pregnancy, etc., but only evidence of direct relevance to the characteristics of tasks for which the contract is to be concluded

Probation

- As a special condition for employment, or conclusion of employment contracts, to establish probation as a possibility by the systematization act on the precise positions related to the business operation, but not to establish probation directly by employment contract.

Content of the employment contract

Prepare it to contain all necessary elements required by the law**.**

Conclusion of a contract of employment for jobs with high risk

- Prepare only for cases which are by the law and risk assessment act prescribed as jobs in which the work is performed with increased risk.

Education, vocational and professional training

- to provide it all employees, whenever it comes to the adoption and application of new methods of work organization and technologies.
- promote fairness for career development, with adequate measures of affirmative action.
- Criteria for promotion have to be known in advance to all employees.
- Decisions about career development of individual employees based on merit, contributions to the work of the company, without any other privileges.
- Maintain updated documentation on training and promotion that provides transparent access to opportunities for employees and their progress within the organization.

Annexes to the employment contract due to reallocation

- To take care of meeting requirement of "adequate job" this requires the same level of qualification and level of education and occupation

Allocation to other place of work

Only under the following conditions:

- That the business of an employer is of such nature that the work is performed in places other than the headquarter of the employer or its organizational unit;
- Less than 60 km of distance from the place where the employee works, or his place of the residence to the place that employee is to be allocated for work,
- Organized regular transportation that allows timely arrival at work and return from work;
- Provided compensation by employer for transportation charges at the ticket price for transportation by the employer.
- Additional attention to be paid for employed women during pregnancy, working woman who has a child under the age of 5 and a single parent who has a child under the age of 7, employed parent who has a child with severe disabilities, employees under 18 years of age and employed person with a disability, who cannot be assigned to work in another place outside of their permanent or temporary residence.

Shift work

- Respect the obligation that the night shift may not last longer than one working week.

Annual leave for those under 18 year of age

- Ensure the implementation of the statutory minimum to remain the same for these persons at least 24 working days, and for persons with disabilities of at least 26 working days.
- Absence from work due to donation of blood, tissues and organs
- Provide this right in a manner that is in line with the respective law provision and which is more regulated by collective agreement.

Equal incomes

- Ensure the implementation of equal income for equal work or work of equal value to both employed man and woman.
- Ensure that the "work of equal value" means the respect of the same level of education, qualifications or professional qualifications, responsibilities, skills, working conditions and performance results.

- Develop reliable models for measurements of “work results "by quantifying the scope, quality, deadlines, etc., and when" the product” cannot be exactly identified by standards. Disclose that as a valid document.

Suspension of salaries and compensation
- Provide solely on the basis of a final court decision or with written consent of an employee.

Protection when reporting corruption
- Ensure that reporting corruption by an employee cannot be a reason for termination of employment (suspension, denial or limitation of any right arising from employment)

Special protection of women, youth and persons with disability
- Ensure that employed women and employees under 18 years of age do not work in the workplace which is mainly engaged with particularly heavy physical work, work underground or under water, or on positions that would be damaging and with increased risk to their health and life.
- Ensure that women employed in industry and construction does not work at night, except if she is at the managing position or performs health, social and other protection services, or in case of natural disasters in order to prevent a damage
- Ensure that employees who are under the age of 18 do not work more than full time, or at night, except in the case natural disasters in order to prevent damage.
- Provide employee with disability with jobs that correspond to their remaining work capacity and the education level, and if it is not possible, to provide such person other rights established by law and collective agreement. And if it is not possible, then declare the person redundant with special right to (increased) severance payment.

Protection due to pregnancy and child care
- Respect prohibition of refusing an employment contract with a pregnant woman, and cancelation of such a contract because of pregnancy, including the use of maternity leave.
- Respect prohibition of termination of employment contract with an employee- a parent who works part time due to the care of children with severe disabilities, single parent who has a child under the age of 7, or with a person who uses any of the foregoing rights.
- Respect prohibition of termination of employment contract during the employee's absence from work due to child care and the use of parental leave
- Provide extension of the employment contract of working women by the end of maternity leave, and in the case when the employment is temporarily concluded.
- Respect prohibition of declaring redundant employee who works part time due to the care of child with severe disabilities, single parent who has a child under the age of 7, or a person who uses any of the foregoing rights.

Provisional allocation
The provisional allocation during the pregnancy and while breastfeeding may be done only on the basis of doctor’s findings and recommendations, for the sake of her health or the health of her child. If it is not possible, a working woman has the right on absence from work, and salary equal to one which she would receive at her job position.

Parental and maternity leave
- Respect the duration of parental leave of 365 days from the date of birth of a child and respect maternity leave which may started 45 days and obligatory 28 days before delivery.

All this with a further obligation to respect the right on compensation in the amount of salary that would be received at work.

Parents with part time job
- Provide that a parent works part time if a child needs greater care, until it turns 3 years of age, which applies to the care of a child with a disability, in accordance to the special regulation.
- Ensure that such employment is considered full-time employment.

Unjustified reasons for termination of employment
- Attention of employer must be directed to invalid reasons for termination of employment:
- Temporary inability to work due to illness, accident or occupational disease;
- The use of maternity or parental leave, absence from work due to the child care and special care for a child;
- Membership in a political organization, trade union; differences in personal capacity of employee (gender, language, nationality, social background, religion, political or other opinion, or any other personal attribute of an employee);
- Acting as representative of employees in accordance with the law;
- Addressing the trade union or authorities responsible for the protection of labor rights in accordance with the law and the employment contract;
- Addressing the competent authorities due to reasonable suspicion of corruption or filing a bona fide complaint about this suspicion;
- Reference to the employer or the relevant state authorities with regards to the environmental threats connected with the business of the employer.

Termination of contract
Means that it must be fair and reasonable, documented with reasons due to which it is to be done and conducted according to the prescribed procedures.

Reduction of the number of employees
Justified reasons for technical and structural changes (plan of technology improvement plan, plan for changing organizational structure ...). Additional attention to be paid on reduction of number of employees when it is not directly connected with previously mentioned documents.

Protection of trade union rights and protection of trade union representatives
- Provide free exercise of trade union rights which includes: requirements for efficient performance of union activities on protecting interests and rights of employees; right on absence from work with for performance of activities organized by the union with compensation of income. This is all on the basis of prior written information on the reasons for absence.
- Ensure that a representative of the trade union organization or representative of employees while conducting union activities and 6 months after termination of those activities, may not be held liable for that, made redundant, assigned to another job with another employer, or brought at a disadvantage if acting in accordance with the law and collective agreement.

2. Law on Occupational Safety

Ensure implementation of occupational safety for:

- Students when they are on mandatory production work, professional practice or training (workshops, offices, laboratories, etc..)
- Persons who are on vocational training, retraining or additional training;
- Persons on vocational rehabilitation;
- Persons who are obliged to perform certain jobs when serving a prison sentence;
- Persons on voluntary and public works organized in the public interest, labor actions and competitions;
- Persons who are on volunteer work.
- Ensure that measures related to occupational safety are at no costs for employees or for any person in equal position as an employee.
- Provide preventive measures to be taken or planned at all levels of work with an employer, in order to prevent getting hurt or damage to health of employees.
- Identify, in accordance with the risk assessment act, jobs with higher risk
- Provide periodic checking and testing of facilities, technological processes and tools.
- to determine more precisely with general act the safety measures and the manner of their implementation, and especially the rights, obligations and responsibilities of all employees, the manner of carrying out technical tasks for occupational safety, method of determining and checking the health condition of employees who work in the special work conditions and of other employees , method for training and checking abilities for occupational safety, use of tools and equipment for personal protection and other issues important for safety at work. (This is the case if a company employs more than 20 people, and if a company employs less than 20 persons, the respective elements are to be regulated by employment contract).

Ensure employee's right to refuse to work if:

- He/she has not been previously familiarized with the dangers or hazards or risks at work or if the employer has not provided a prescribed medical examination;
- There is an immediate danger for life and health because the prescribed safety measures are not implemented at assigned workplace; to the tools are not applied the prescribed safety measures and thus his/her safety and health at work are directly compromised.

To ensure implementation of obligations of employees: to implement prescribed safety measures during the operation applies, to intentionally use the tools and means and equipment for personal protection at work, to cooperate with the employer and the person in charge for safety at work in order to carry out the prescribed measures for the specific position; in accordance with their findings, to immediately notify the employer in writing or orally, through their representatives about irregularities, defects, hazards or other issues that could jeopardize their or others safety and health.

3. Law on Prohibition of Harassment at Work

Information

- Ensure that employees are, prior to their employment, in written form informed about: prohibition of harassment; behaviors that represent harassment; rules of conduct of an employer and employees at work; rights, obligations and responsibilities related to harassment; abuse of the right on protection against harassment; procedure for protection from

harassment ; the person to whom the request for protection from harassment is to be submitted and the list of mediators maintained by the employer; limitation periods for initiation of proceeding; protection of parties in proceedings.
- Mediators
- When employing 30 or more persons, determine one more persons as mediators (with prior opinion of representative trade union or employees representative), and when employing less than 30, determine one mediator through an agreement with employees.

Rules of conduct that relate to:

a) Employer:

- Ensure a working environment where jobs will be carried out in an atmosphere of respect, cooperation, openness, safety and equality,
- Develop awareness among employees about the need for mutual respect, cooperation and teamwork in tasks performance,
- Provide good example by behaving politely, with dignity and with respect toward everyone
- Enable trade unions to contribute in training and prevention of bullying,
- Enabling employees to present opinions, positions and proposals related to work performance and their opinion to be heard and they should not suffer adverse consequences.

b) Employees

- Treat other employees and employers with dignity and respect, with personal example contribute to creating a working environment without bullying, to perform tasks in an atmosphere of respect, cooperation, openness, safety and equality,
- Contribute in prevention of harassment
- Prior to initiating the procedure against bullying, if in a particular case it is feasible and possible, to clearly inform persons who are considered to carry out bullying that their behavior is unacceptable and that legal protection will be initiated if such behavior does not cease immediately;
- That the request for initiating procedure for protection from bullying should contain data: about employee who is charged with mobbing, a brief description of behavior that is believed to represent bullying, duration and frequency of behavior that is considered bullying, the date when it was last time carried out, as well as evidence (witnesses, written documents, medical reports, allowed audio and video records, etc..).

4. The Law on Protection of Personal Data

Integrated application of general principles on processing personal data shortly includes:
- The collection of personal data is to be limited in scope, and related only to information relevant for achievement of legitimate business goals or fulfillment of duties prescribed by law. That has to be done in a fair manner with the knowledge and consent of an employee, unless a special law provides otherwise.
- Personal data of an employee must be accurate, specific and updated.
- The purpose of collecting personal data of employees has to be specified before the data collection begins.
- Employer is not allowed to disclose personal information of employees or to make them available, unless the employee gives consent for that or it is provided by the law.

- Employer is not allowed to retain personal information longer than it is necessary for achievement of purposes for which it was collected, unless otherwise required by the law.
- Personal data of employees must be adequately protected from unauthorized access, use, disclosure or other forms of abuse.
- Surveillance at workplace is not generally illegal. However, it is hard at work place to separate the business and private sphere. An employer can go in private sphere only if it is within the legal limits. Information obtained by methods of technical surveillance an employer can only use for the purpose for which it is applied. These data cannot be used to control behavior or profiling of employees and cannot be criteria for the evaluation of their work engagements.

VII CONCLUSION

The authors believe that linguistic statements communicated through this publication could not be more simplified, especially taking into account the language of the domestic legislation, international instruments and in particular the practice of the European Court of Human Rights.

Prevention of discrimination at work is inseparable with the structure of Montenegrin economy, which according to the latest data shows that the small companies make 98.7%, medium-sized companies 1.1% and large companies 0, 2% of total number of registered companies.

Out of the total number of employees in real sector by individual branches the current employment situation is:

- Wholesale and retail together with repair services - 47.8 thousand employees
- Accommodation services and catering - 17, 4 thousand employees
- Agriculture, forestry and fishery – 9, 5 thousand employees
- Transport, storage and connections – 11, 4 thousand employees
- Information and communication – 5, 02 thousand employees
- Construction - 11, 09 thousand employees
- Processing industry – 14, 06 thousand employees.

The brochure is limited to legal aspects of the phenomenon of discrimination with belief of the authors that it could be a challenge for MEF to carry out a direct research on discrimination among its members in due time.

A brief presentation of regulatory scope, case law and practice of other institutions and inevitably the perception of average citizen-employee, confirm the complexity of the phenomenon of discrimination.

It is to be expected that either employers or employees will be in the first line of eliminating ambiguities, uncertainties and other inherited customary practices who will be professionally involved in legal matters, human resources and education. Their success in mastering the phenomenon of discrimination should lead to legally responsible behavior of all those who may be in situation to suffer sanctions due to actions or omissions in performing professional tasks.

The authors express gratitude to all those who helped in drafting this brochure.
„Plus actum quam scriptum valet“(What is done is more worth than what is written”).