



OPEN SOCIETY INSTITUTE  
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international gender policy network

# On the Road to the EU

Monitoring  
Equal Opportunities  
for Women and Men  
in South Eastern Europe

2006

ALBANIA  
BOSNIA AND  
HERZEGOVINA  
CROATIA  
KOSOVO  
MACEDONIA  
MONTENEGRO  
SERBIA

# On the Road to the EU

Monitoring Equal Opportunities  
for Women and Men in

## Montenegro

by *Nina Vujovic-Krgovic, Darko Curic*

2006

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## Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,<sup>1</sup> we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

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<sup>1</sup> See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.<sup>2</sup> To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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<sup>2</sup> See [www.soros.org/women](http://www.soros.org/women).

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

The Network Women’s Program of the Open Society Institute would like to acknowledge the unique role of the international experts: Roxana Tesiu (Romania), Monika Ladmanova (Czech Republic) and Enikő Pap (Hungary), in writing all Executive Summaries and being consultant to the national experts.

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## INTRODUCTION

The State Union of Serbia and Montenegro results from the constitutional restructuring of the Federal Republic of Yugoslavia after the fall of the Milošević regime. In March 2002, under EU auspices, Serbian and Montenegrin representatives signed the Belgrade Agreement on a restructured State Union. The Constitutional Charter entered into force in February 2003. Under the Constitutional Charter, the State Union of Serbia and Montenegro is made of two Member States: Serbia and Montenegro. The competence of the State Union and its authorities is very restrictive and it is mainly confined to foreign affairs (although the Montenegro has its own Ministry of Foreign Affairs), defense, international economic relations, and protection of human and minority rights. The state members Montenegro and Serbia respectively, have a wide range of competencies in relation to adopting laws and other regulations *vis-à-vis* all other issues. In the domain of criminal, family, corporate, labor, social security, and health insurance law, as well as in many other areas, Montenegro has its own legal framework and is vested with exclusive competence to adopt the laws and other regulations, as well as implement and control their implementation within its own territory.

EU integration is one of the main political objectives of Serbia and Montenegro.

Since 2001 the EU has provided its policy advice through the EU-FRY Consultative Task Force (CTF), later replaced by the Enhanced Permanent Dialogue (EPD). The EPD currently monitors and drives reforms on the basis of the European Partnership adopted by the EU Council of Ministers in June 2004 and of the corresponding implementation Plan finalized by Serbia and Montenegro's authorities in December 2004.

Formal contractual relations between the EU and Serbia and Montenegro is established through the Stabilization and Association Agreement (SAA) in the context of the Stabilization and Association Process (SAP). As confirmed in the Thessaloniki Summit in June 2003 Serbia and Montenegro is a potential candidate country for EU accession.

In its Feasibility Report of 12 April 2005, the Commission concluded that Serbia and Montenegro is sufficiently prepared to negotiate an SAA with the EU. On April 25, 2005, the EU Council endorsed the Feasibility Report and invited the Commission to submit the negotiation directives for the SAA. At the end of 2005 Serbia and Montenegro started its negotiations with the authorities of the European Union.

In line with the "twin-track" approach, negotiations will be held with the State Union or the Republics in their respective fields of competence. The pace of SAA negotiations depends on progress by Serbia and Montenegro in addressing the issues highlighted by the European Commission.

The existing legal framework in Montenegro does not provide sufficient protection from gender based discrimination in the labor market. Protection of women's human rights is still very far from being either a well known concept or practice, the only exception being the recent criminal code recodification, recognizing family violence. There is yet a great deal of work to be done in terms of gender equity legislation and its enforcement, including awareness raising *vis-à-vis* the principles of equality between women and men.

Although Montenegro and Serbia, the two constituent countries of the State Union of Serbia and Montenegro, provide for the supremacy of international agreements and laws<sup>1</sup> over domestic legislation in the entity's State Constitutional Charter of the State Union, and the Charter on Human and Minority Rights stipulates direct implementation of thereof,<sup>2</sup> when it comes to the area of equal opportunities, the important provisions that guarantee gender equality are barely applied.

Admittedly, Montenegro is a country where traditional societal roles and gender stereotypes continue to persist, yet mention must be made of positive steps the Government of Montenegro has taken in the right direction. Preparatory work has commenced to draft several legal texts related to equal treatment,<sup>3</sup> which certainly reflects an intention on the part of the Montenegro government to fulfill and implement the standards required by the long-term and demanding process of stabilization and association, and – at a later stage – integration with the European Union.

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<sup>1</sup> Article 16, the *Constitutional Charter*, the *Official Gazette* SCG, 1/2003.

<sup>2</sup> Article 7, the *Charter on Human and Minority Rights*, the *Official Gazette* SCG, 6/2003.

<sup>3</sup> The *Gender Equality Act*, the new *Family Code*, the *Domestic Violence Act*; it is expected that drafting of a “National Action in Plan on Gender Equality” is to begin shortly.

## EQUAL PAY

**Council Directive 75/117/EEC of February 10, 1975** on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

Montenegro’s legal order espoused the general principle of nondiscrimination, but does not specifically set forth the principle of equal pay for work of equal value.

#### 1.1 The Constitution

The Constitution of the Republic of Montenegro<sup>4</sup> provides that “Everyone shall have the right to work, to a free choice of occupation and employment, to just and human conditions of work and to protection during unemployment. Forced labor shall be prohibited.” The Constitution also stipulates that “All persons employed shall have the right to appropriate pay. All persons employed shall have the right to limited working hours and a paid vacation.”<sup>5</sup> “Under a mandatory insurance scheme all persons employed shall provide for themselves and members of their families all forms of social security.”<sup>6</sup> Obviously, the Constitution has incorporated the general principle of nondiscrimination, but there is no special provision in Montenegro legislation to address the issue of gender-based discrimination in employment.

#### 1.2 National legislation

The Montenegrin Labor Act<sup>7</sup> and the Salaries of Civil Servants and State Employees Act<sup>8</sup> do not explicitly incorporate the equal pay principle, but provide for protection against discrimination via the general nondiscrimination principle.<sup>9</sup> Montenegro’s

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<sup>4</sup> Article 52 of the *Constitution of the Republic of Montenegro* published in the *Official Gazette of the Republic of Montenegro* (OG RoM), No.48/92.

<sup>5</sup> Article 53, the *Constitution of Montenegro*.

<sup>6</sup> *Ibid.*, Article 55.

<sup>7</sup> *OG RoM*, No.43/03.

<sup>8</sup> *OG RoM*, No.27/04.

<sup>9</sup> Article 3, the *Labor Act*, and Article 8, the *Civil Servant Act*.

national legal order does not recognize the principle of equal pay. Since laws on the books do not specifically address the issue of sex-based discrimination in pay, there exist no direct means of redress. As regards the Council's Equal Pay Directive, Montenegro's national legal system provides solely the general principle of nondiscrimination as a point of departure.

In a separate charter entitled Constitutional Charter of the State Union of Serbia and Montenegro (Constitutional Charter)<sup>10</sup> as the most important legal document of the State Union of Serbia and Montenegro (State Union) provides, "The human and minority rights guaranteed under generally accepted rules of international law, as well as by international treaties in force in the State Union, shall be guaranteed under this charter, and be directly applicable."

### 1.3 International treaties

Serbia and Montenegro have ratified the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights,<sup>11</sup> the Covenant on Economic, Social and Cultural Rights,<sup>12</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>13</sup> the ILO Convention No.100 on Equal Pay for Work of Equal Value,<sup>14</sup> the ILO Convention No.111 on Discrimination in Employment,<sup>15</sup> and the European Convention on Human Rights.<sup>16</sup> Although these international treaties constitute part of its legal order, Montenegro's national legislation has not yet fully incorporated them.

Under Article 7 of the Constitutional Charter international treaties that are binding on the domestic legal order override domestic legislation. As regards the State Union, labor and pay issues remain under the sole authority of each member state's legal order, which, at the State Union level, has not to date incorporated the equal pay principle.

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<sup>10</sup> The *Constitutional Charter*, the *Official Gazette of Serbia and Montenegro* (OG SCG), No.1/03.

<sup>11</sup> The *Official Gazette of SFRJ* (OG SFRJ) No.7/7, ratified and became effective for the State Union April 27, 1992.

<sup>12</sup> *OG SFRJ* 7/71, ratified and became effective for the State Union on April 27, 1992.

<sup>13</sup> *OG SFRJ* 11/81.

<sup>14</sup> Ratified on May 21, 1952.

<sup>15</sup> Ratified on February 2, 1961.

<sup>16</sup> *OG SCG* 9/2003, ratified and became effective on April 3, 2004.

## SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

### 2.1 General presentation

In Montenegro's legal order there are no discriminatory statutory provisions *vis-à-vis* men and women contrary to the equal pay principle, but, equally, there are no affirmative provisions, either. In the continued absence of a Gender Equality Act, Montenegrin legislation cannot proffer better legal protections for women in various walks of life.<sup>17</sup> The Labor Act provides for equal exercise of the right to work and rights deriving from work, regardless of ethnicity, race, sex, language, political or religious belief, education, social background, and property ownership status.<sup>18</sup> Likewise, the Pay of Civil Servants and State Employees Act stipulates the following: "The pay of a civil servant and state employee shall be set by a separate document, pursuant to act of law."<sup>19</sup> Additionally, it provides that "A civil servant and a state employee shall protect the right to pay pursuant to the Civil Servants and State Employees Act."<sup>20</sup> Further, the Act provides for full public disclosure of pay,<sup>21</sup> and stipulates the application of general labor legislation (the term frequently used to refer to the Labor Act and the Employment Act) to pay allowances, and other incomes, unless the Act otherwise provides therefor.<sup>22</sup> The Civil Servants and State Employees Act,<sup>23</sup> on the other hand, does not explicitly provide for the gender equality principle or the equal pay principle. This Act also refers to general labor legislation (the Labor Act and the Employment Act)<sup>24</sup> in regard to rights it does not define.

The aforementioned constitutional and legal framework regarding the principle of equal pay sets forth standards for both the public and private sector. Accordingly, the private sector must comply with the Labor Act. However, private sector employers frequently evade the Act's provisions in their attempt to avoid all legal obligations in order to generate greater income.

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<sup>17</sup> The drafting of the *Gender Equality Act* is underway, but it is still in its early stage.

<sup>18</sup> Article 3, the *Labor Act*.

<sup>19</sup> Article 3, the *Pay of Civil Servants and State Employees Act*.

<sup>20</sup> *Ibid.*, Article 4, "Protection of Rights."

<sup>21</sup> *Ibid.*, Article 5: "The public shall have access to data on the pay of Civil Servants and State Employees."

<sup>22</sup> *Ibid.*, Article 6.

<sup>23</sup> *OG RoM*, No.27/04.

<sup>24</sup> Article 4, the *Civil Servants and State Employees Act*.

To investigate all employment irregularities, a Labor Inspectorate accountable to the Ministry of Labor and Social Welfare was established under the Labor Inspectorate Act.<sup>25</sup> The aim of the Act is to oversee employers to make sure they implement provisions of the Labor Act, other labor regulations and statutory provisions.<sup>26</sup> However, it investigates individual cases upon submission of a request for inspection or, even anonymously, a complaint (which, from the employee's perspective, can be very important).<sup>27</sup> Within the Justice Ministry, however, there is a special body, the Administrative Inspectorate,<sup>28</sup> that is responsible for inspecting and evaluating the work of civil servants and state employees and determining their transfer procedures, promotion and pay. The Administrative Inspectorate has the authority to act in the administrative sector, which is exclusively public, while the Labor Inspectorate has the authority to act in both the public and private sectors, excluding public administration bodies.

## 2.2 Job classification system

The Civil Servants and State Employees Pay Act<sup>29</sup> provides for a classification system to set the pay of state employees.

The Labor Act<sup>30</sup> and the Collective Bargaining Agreement<sup>31</sup> guarantee the right to appropriate pay for all employees in both the public and private sector. Rate of pay must reflect the cost of labor for a specific position, work performance, and time spent at work.<sup>32</sup> The *Collective Bargaining Agreement* explains in detail the procedure for calculating pay, by requiring the multiplication of the minimal wage with the appropriate group coefficient set forth in Table 1.

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<sup>25</sup> The *Labor Inspectorate Act*, *OG RoM*, No.69/03

<sup>26</sup> *Ibid.*, Article 1.

<sup>27</sup> *Ibid.*, Article 2.

<sup>28</sup> Article 120, paragraph 2, the *Civil Servants and State Employees Act*.

<sup>29</sup> *OG RoM*, No.27/04.

<sup>30</sup> Articles 65-71, the *Labor Act*.

<sup>31</sup> The Collective Bargaining Agreement, *OG RoM*, No.01/04.

<sup>32</sup> Article 66, the *Labor Act*.

**Table 1.**

Work Group	Qualifications required	Coefficient
I	None	1.00
II	1 <sup>st</sup> degree of qualifications	1.25
III	2 <sup>nd</sup> degree of qualifications	1.60
IV	High school 2 or three years (3 <sup>rd</sup> degree of qualifications)	1.95
V	4 <sup>th</sup> degree qualification	2.20
VI	Qualified worker(5 <sup>th</sup> degree)	2.45
VII	Higher education (6 <sup>th</sup> degree)	2.80
VIII	Faculty diploma or equivalent (7 <sup>th</sup> degree)	3.30
IX	M.A. or specialization (7 <sup>th</sup> – 1 degree)	3.60
X	Ph.D. (8 <sup>th</sup> degree)	4.00

Pay increases are based on prior work and for each subsequent year of work by 0.5 percent in the first 10 years, 0.75 percent for 10–20 years, and 1 percent for every year after 20 years of service. Pay is also increased for night work, overtime, and work during the holidays.

The Salaries of Civil Servants and State Employees Pay Act<sup>33</sup> provides a detailed description of rates and structure of pay in public services. As previously noted, pay reflects three things: a fixed portion, a supplementary portion, and a variable portion.<sup>34</sup>

Based on job title and years of service, there are thirty-six pay categories.<sup>35</sup>

The fixed portion of the pay is determined<sup>36</sup> “by multiplying the coefficient stipulated for the pay category into which the employee’s position has been classified with the

<sup>33</sup> Articles 7-15, Section II, “Pay of Civil Servants and State Employees,” the *Civil Servants and State Employees Pay Act*.

<sup>34</sup> *Ibid.*, Article 7.

<sup>35</sup> *Ibid.*, Article 8 includes the table.

<sup>36</sup> *Ibid.*, Articles 10 and 11, table 4 stipulates that “This sum shall be increased based on prior length of service. Supplemental pay shall be granted pursuant to the following:

1. more difficult working conditions
2. night work
3. work during state and religious holidays
4. overtime

as well as on other grounds set forth by another statutory measure.”

value of the coefficient set by the government of Montenegro for a certain period – month.”

The variable portion of pay is determined by quality of performance, and to become eligible therefore, the employee must receive the *excellent* evaluation rating.<sup>37</sup> The job classification system applies equally to both women and men. The fact that the amount of pay comprises three components, one of which is at the employer’s discretion, can possibly give rise to inequalities.

The job classification system makes no distinction between men and women.

### 2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

The Constitution of Montenegro provides for equal protection of rights and freedoms pursuant to procedure set forth by act of law.<sup>38</sup>

Litigation involving all labor disputes is handled by the Court of First Instance.<sup>39</sup> The proceedings are conducted in accordance with the Code of Civil Procedure.<sup>40</sup> In the event that the Court of First Instance’s verdict is appealed, a High Court handles the second round of legal proceedings.<sup>41</sup>

Legal procedures for labor disputes are also applicable in cases involving violation of the equal pay principle. The Labor Act entitles the employee to institute court proceedings, within 15 days from receipt of the employer’s decision in violation thereof.<sup>42</sup>

Both the Labor Act and the Criminal Code<sup>43</sup> provide for the protection of employee rights, but they set forth no provisions for or directly refer to discrimination due to noncompliance with the equal pay principle. Employees are protected by the Labor Act.<sup>44</sup> Private attorneys at law and members of the Bar Association provide legal assistance to all citizens, and are paid in accordance with the Bar Association’s tariff

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<sup>37</sup> Ibid., Article 13.

<sup>38</sup> Article 17, the *Constitution of Montenegro*, OG RoM, No.48/92.

<sup>39</sup> Article 10, paragraph 3, the *Courts of Law Act*, OG RoM, No.5/02.

<sup>40</sup> Articles 433-438, “Section on Special Procedures,” the *Code of Civil Procedure*, OG RoM, No.22/04.

<sup>41</sup> The *Courts of Law Act*, OG RoM, No.5/02.

<sup>42</sup> Article 121, the *Labor Act*.

<sup>43</sup> The *Criminal Code*, OG RoM, No.72/03.

<sup>44</sup> Article 125, paragraph 2, the *Labor Act*.

system.<sup>45</sup> The Trade Union can also provide legal assistance<sup>46</sup> (via an organized legal service), upon agreement with the represented party and his/her authorization, which must be presented at trial.<sup>47</sup> Citizens who cannot afford to support their family are, under the Code of Civil Procedure entitled to exemption from all costs incurred in court proceedings.<sup>48</sup>

All labor disputes before the court of law are free of charge and therefore accessible to all.<sup>49</sup> Labor disputes are quite frequently taken to court in Montenegro, but none of the court cases to date have involved issues related to the equal pay principle. According to the Code of Civil Procedure, all labor disputes in Montenegrin courts are considered urgent and have absolute priority in court hearings.<sup>50</sup>

Although court procedures involving labor disputes are free of charge, an employee may have to raise funds for legal assistance.<sup>51</sup> The court also has the official duty to inform the interested party who does not have a qualified representative about his/her rights in relation to the civil procedure,<sup>52</sup> so that the party would not suffer consequences related to the rules of the procedure for not having qualified legal representation.

In the event that the employee is a Civil Servant or State Employee, the separate document that sets his/her pay may be challenged in an administrative procedure initiated by the employee. Pursuant to the Civil Servants and State Employees Act, the employee can also bring an administrative dispute before the Administrative Court,<sup>53</sup> in order to prove possible irregularities in the administrative procedure.<sup>54</sup>

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<sup>45</sup> The *Attorney Practice Act*, OG RoM, No.39/94.

<sup>46</sup> There is no obligation or specific authorization for trade unions to provide such assistance under the *Labor Act*, but they regularly perform these activities.

<sup>47</sup> Article 95, the *Code of Civil Procedure*, OG RoM, No.22/04.

<sup>48</sup> Article 166, the *Code of Civil Procedure* provides that “The court shall exempt a party from paying the costs of proceedings in the event that, according to his/her general financial situation, the party cannot compensate the costs without jeopardizing the necessary support of him/herself and his/her family.”

<sup>49</sup> The *Court Fees Act*, OG RoM, No.12/01.

<sup>50</sup> Article 434, the *Code of Civil Procedure*.

<sup>51</sup> The client might have to pay a lawyer to draft the law suit. Usually it costs between EUR 50-EUR 100, depending on complexity.

<sup>52</sup> Article 12, the *Code of Civil Procedure*.

<sup>53</sup> Established in the *Courts of Law Act*, OG RoM, No.5/02.

<sup>54</sup> Article 113, the *Civil Servants and State Employees Act*.

The Criminal Code of Montenegro provides that “Anyone who deliberately violates law or any other regulation, collective bargaining agreement, and other general statutory measure on labor rights and on special protections for youth, women, and disabled persons at work, and thereby deprives another person or restricts his/her rights, shall be punishable with a fine or imprisonment of not more than two years.”<sup>55</sup> The protection for employees is provided *ex officio* by the State Prosecutor, who is entitled to initiate criminal proceedings against the employer (upon finding that the law was violated, and which usually commences with the note triggering criminal proceedings being submitted by the wronged party). In the event that the Prosecutor refuses to institute criminal proceedings, the wronged party is entitled to take charge of criminal prosecution.<sup>56</sup>

## 2.4 Out-of-court alternatives

According to the Labor Act,<sup>57</sup> an arbitration body can be established as an independent entity to solve labor disputes. The composition, procedure, and manner of functioning of the arbitration body is determined at company level via the collective bargaining agreement (concluded between a particular employer and trade union at company level).<sup>58</sup> Employer and employee alike have the right to request settlement via arbitration within 8 days from the day the (employer’s) final decision was delivered to them.<sup>59</sup> This procedure is also classified as urgent.<sup>60</sup>

Of extreme importance, and frequently used in practice, is the possibility stipulated by the Labor Act<sup>61</sup> that regardless of the procedure initiated under the employer’s auspices, relevant court or arbitration body, an employee has the right to turn to an authorized labor inspector for protection. Additionally, if the employee has already instituted legal action before court of law, the inspector can stop the execution of the employer’s decision or action, in the event that the employee’s right was clearly violated, until the court reaches a final decision.

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<sup>55</sup> Article 224, Section XX, the *Criminal Code*.

<sup>56</sup> Article 19, the *Criminal Code*.

<sup>57</sup> Articles 122-125 of the *Labor Act* explain how upon agreement between employee and employer an independent arbitration body may be established with the authority to render decision on a specific case.

<sup>58</sup> Article 124, the *Labor Act*.

<sup>59</sup> Article 123, paragraph 1, the *Labor Act*, *OG RoM*, No.43/03.

<sup>60</sup> *Ibid.*, Article 123, paragraph 2.

<sup>61</sup> *Ibid.*, Article 125.

On July 9, 2003, the Parliament of Montenegro adopted the Public Defender of Human Rights and Freedoms Act,<sup>62</sup> but, unfortunately, despite the fact that the Public Defender's office commenced operation in December 2003 (employing the Ombudsman, two deputies, and a number of legal advisors), to date it has not issued a single significant decision. Regrettably so, since this institution could have acted with regard to a significant number of cases of human rights violation, including the violation of women's rights.

## **2.5 Means of informing employees of their right to equal pay for work of equal value**

There is no provision in Montenegrin national legislation requiring employers to inform employees about their legal rights and obligations.

The Montenegrin Constitution and laws do not require of any organization or entity to inform citizens about any statutory measures besides the mandatory publishing of all enacted legislation in the *Official Gazette of the Republic of Montenegro*. It is a well known tenet of Roman law that being ignorant of law harms (*ignorantia iuris nocet*). If an employee wishes to learn about his/her legal rights or available legal procedures, he/she can seek advice and assistance from the appropriate trade union. Trade unions provide information pursuant to the general provisions of the Labor Act stipulating their obligation to represent and protect employee rights. Recently, the Trade Union Alliance published and distributed a publication on women's labor rights, detailing their options, rights, and responsibilities.<sup>63</sup> Additionally, it is important to emphasize that before Parliament adopts an act of law, the daily press publish all key information from the draft bill to inform the public thereof. Once a bill becomes law, the daily press usually provide useful information about them, frequently highlighting their pivotal provisions.

Besides the aforementioned general framework, employers are under no legal obligation to inform employees about their rights and responsibilities.

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<sup>62</sup> The *Ombudsman Act, OG RoM*, No.48/03.

<sup>63</sup> *The Labor and Social Rights of Women in Montenegro*. 2005. Trade Union Alliance, Women Today Association.

## 2.6 Role of trade unions

The Labor Act sets forth the terms of work for trade unions.<sup>64</sup> Trade unions are required to register their work with the appropriate Ministry of Labor and Social Welfare (MLSW). A trade union can elect or appoint one representative to represent that trade union before the employer.<sup>65</sup> The trade union is required to inform the employer about the elected/appointed representative.<sup>66</sup> At least once a year, the employer is required to inform the trade union about the following:

1. employee performance;
2. development plans and their impact on employees, changes in pay policies;
3. measures undertaken to improve working conditions and occupational health and safety, as well as on all other matters with significant impact on employees' situation, material and social<sup>67</sup> status.

Since the equal pay principle has not yet been incorporated into Montenegro's national legal order, trade unions cannot provide any assistance in related cases. The principle of equal pay, as set forth in Council Directive 75/117/EEC, does not constitute part of Collective Bargaining Agreements,<sup>68</sup> either. The trade unions have the authority to provide general legal assistance to workers, draft lawsuits, and frequently represent plaintiffs in court. As in any other case of court representation, trade unions have to obtain prior legal authorization from workers.<sup>69</sup>

Trade unions have the authority to advocate for equality to bolster implementation of the equal pay principle. Some trade union branch offices provide free legal assistance and representation for their members, but it is uncertain whether they are adequately trained to provide assistance in cases involving equality issues. There are four legal offices within the Confederation of Independent Trade Unions of Montenegro, providing pro bono assistance and representation.<sup>70</sup> At the national and enterprise level Collective Bargaining Agreements do not embrace the principle of equal pay for women and men, but both incorporate the general principle of nondiscrimination.

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<sup>64</sup> Articles 136-140, the *Labor Act*.

<sup>65</sup> *Ibid.*, Article 137, paragraph 2.

<sup>66</sup> *Ibid.*, Article 137, paragraph 5.

<sup>67</sup> *Ibid.*, Article 138, paragraph 1.

<sup>68</sup> The Collective Bargaining Agreement, *OG RoM*, No.01/04.

<sup>69</sup> Article 95, the *Civil Code*.

<sup>70</sup> Information provided by Rosa Popov during an interview conducted on October 27, 2005.

Trade union officials are familiar with the concept of gender based discrimination, according to Ms. Rosa Popovic, union member and President of Women Today, a trade union association for women, who nevertheless emphasizes the existence of latent discrimination.

### SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

A household survey<sup>71</sup> showed an existing pay gap, where men with lower educational qualifications (who have not graduated secondary school) earned EUR 185 per month, compared to EUR 131 for women with the same level of education. Men with a secondary school diploma earn EUR 274 net income as against women's EUR 190, while men who have earned degrees in higher education after graduating high school earn EUR 329 compared to EUR 263 for women. The official Bureau for Statistics of the Republic of Montenegro (the Bureau) has not conducted research specifically regarding the principle of equal pay for work of equal value. Nonetheless, it is obvious that both horizontal and vertical segregation are present in the labor market, since women tend to be hired more often in social, health, and educational institutions, which are underpaid. The Bureau<sup>72</sup> is now conducting broad-based research regarding women's rights that includes women aged between 15 and 49, and the results will be available in early 2006. Generally speaking, the transition process and, its wake, black market employment are responsible for the gender pay gap. Additionally, women in Montenegro are occupying fewer decision making and executive positions. Likewise, managers of successful companies are also men, which explains the inequalities in the economic welfare of men and women. There are more men than women in better paid positions, and in any position involving executive power women are outnumbered by men, regardless of their educational background (only 20 percent of women occupy decision making or managerial positions or are business owners.)<sup>73</sup>

The Human Rights Center of the Law School of the University of Montenegro conducted research<sup>74</sup> in early 2005 regarding women's economic status. When asked whether they received equal pay with men for performing the same work, 20 percent responded that they "did not," 12.94 percent reported that they "mostly did not," 17.6

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<sup>71</sup> Conducted in October 2004 by the Institute for Strategic Studies and Prognoses.

<sup>72</sup> Information available on the Bureau's official website: [www.montstat.cg.yu](http://www.montstat.cg.yu).

<sup>73</sup> *Research on Discrimination against Women in the Employment Process*. 2002. Center for Entrepreneurship and Economic Development.

<sup>74</sup> On a sample of 1,000 women from the Northern, Central, and Southern Montenegro regions.

percent believed they received equal pay, and 49.46 percent stated that “in general” they were equally paid. The same research study also found that a large ratio of women receive lower remuneration than the average monthly pay in the Republic of Montenegro – 46.87 percent reported a monthly pay of between EUR 100 and EUR 200, whereas the average for the month of August 2005 was EUR 220.51, according to the Bureau. By comparison, Bureau figures show that the cost of living in Montenegro for the same period was EUR 102.4 per person.

Research by the Human Rights Center also showed that 73.27 percent of women believed they were not adequately represented in trade union organizations.

Figures that came out of a round table event<sup>75</sup> reveal that there are between 64,000 and 80,000 people employed in the black market in Montenegro, including a high number of women. This state of affairs gives rise to a great many difficulties, as employees are unable to take their grievances before court of law in the absence of a legal basis for their employment. Additionally, lack of formal employment allows employers to dismiss an employee at will, to deny him/her annual leave, sick leave, and all other benefits provided under statutory measures.

The minimum wage in Montenegro is set by the government based on trade union recommendation and in consultation with the Bureau about the cost of living. The current minimum wage in Montenegro is EUR 50, and has not been changed/increased since 2003 despite a significant rise in the cost of living. The minimum wage is the same for both men and women.<sup>76</sup>

There can be no doubt that the equal pay principle is applied differently in the public and private sector, with the difference generally depending on the type of employment. Accordingly, women working in the private sector are often forced to accept working conditions and jobs that do not meet standards for legal employment. This state of affairs is rooted in Montenegro’s economic transition, the prevalence of the grey economy, and high unemployment (the Bureau reports that 63,600 women were employed in 2004).<sup>77</sup> Private employers usually refuse to enter into a formal work contract with women – with workers in general – since they would then have to pay all necessary payroll taxes and insurance contributions (health, pension, social assistance, unemployment). The representative of the women’s section of the trade union association regards women in the black market as being the most vulnerable.

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<sup>75</sup> Held in February 2002, on the subject of “Women in the Grey Economy,” organized by the Institute for Strategic Studies and Prognoses and the Women Today Association. Jasna Tatar of the trade union association provided the information.

<sup>76</sup> The *Government Decision on the Minimum Wage* is published in *OG RoM*.

<sup>77</sup> The information is available on the Bureau’s official Website [www.montstat.cg.yu](http://www.montstat.cg.yu).

Research conducted specifically for the needs of this report in Montenegro's largest Court of First Instance<sup>78</sup> has found that to date there has been no litigation on grounds of gender discrimination in pay.<sup>79</sup> The absence of the equal pay principle in Montenegro's national legislation explains the absence of related law suits. The problem of implementation will continue to persist even after the principle has been incorporated into Montenegro's legal order. Judging by the experience with codification of family violence, it will take quite a while until all the participants in the legal process become aware of the obligation that the principle imposes.

## SECTION 4 – Conclusions. Areas of Concern. Recommendations

### 4.1 Conclusions

Despite the existence of the Labor Act as legal framework, Montenegro's legal order makes no reference either to the requirements of Council Directive 75/117/EEC, or to any other means of protection *vis-à-vis* the equal pay principle. Research shows that existing differences between average pay for women and men are rooted in horizontal and vertical segregation in the labor market, and includes a gap in pay for equal work. Additionally, not only are there no court (or any other) cases involving violation of the principle of equal pay for work of equal value, but, ostensibly, women are not aware either of the possibility of such discrimination, or of the possibility for taking action against it.

### 4.2 Areas of concern

Women's lack of knowledge regarding their rights and the workings of gender discrimination makes them even more vulnerable and often turns them into victims. Women do not react even when discrimination actually strikes, nor do they avail themselves of existing (albeit inadequate) procedures. Additionally, since the principles of the Council Directive<sup>80</sup> have not been incorporated into Montenegro's legal order, there is no specific legal ground on which to seek protection – a disturbing state of affairs.

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<sup>78</sup> Podgorica is the capital of Montenegro and the country's largest city. The court has jurisdiction for the entire municipality of Podgorica.

<sup>79</sup> Information provided by Biljana Vuksanovi, Judge and President of the Court's Civil Division, during an interview, October 24, 2005.

<sup>80</sup> 75/117/EEC Directive.

### 4.3 Recommendations

- To ensure implementation of the equal pay principle, it should be integrated into the national legal order. In and of itself the general principle of nondiscrimination is inadequate to guarantee compliance with the principle. Further, once adopted, this piece of legislation should provide for the adequate procedures, measures, and legal retribution to ensure full implementation. The optimal solution would be to have an independent and impartial body involved solely in enforcing women's rights in the economy and provide genuine legal assistance and representation. For the time being, however, it would be acceptable to inform the existing bodies (inspectorates, courts, public administration bodies) about their international obligations regarding the equal pay principle by organizing trainings and public education campaigns.
- Legislation that explicitly incorporates the equal pay principle needs to be enacted.
- Independent bodies need to be granted authority to monitor compliance with the principle.
- Awareness raising campaigns need to be organized to educate employers and employees on existing pay gaps between men and women and about the principle of equal pay for work of equal value.

## EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING AND WORKING CONDITIONS

**Council Directive 76/207/EEC** of February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions. Amended in September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

### SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

#### 1.1 General provisions

Although Montenegro's legal framework provides for the general principal of nondiscrimination, the concept of *discrimination* is neither used nor defined and the concept of *direct* and *indirect discrimination* is missing.

The Constitution of the Republic of Montenegro<sup>81</sup> provides that “Everyone shall have the right to work, to a free choice of occupation and employment, to just and human conditions of work, and to protection during unemployment. Forced labor shall be prohibited.” The Labor Act<sup>82</sup> contains the general principle of nondiscrimination, which stipulates that

1. Employees are equal in practicing their rights deriving from employment, regardless of their ethnicity, race, sex, language, religion, political or other affiliation, education, social background, property ownership, or other personal characteristic.
2. The Employer is required to observe the rights and equality of an employee in protecting his/her rights, his/her privacy and dignity. The Civil Servants and State Employees Act<sup>83</sup> stipulates that “On the occasion of employment of civil servants and state employees, the candidates shall have equal access to all posts under equal conditions. Civil servants and state employees shall enter employment based on a public announcement of the vacancy therefor.”<sup>84</sup>

<sup>81</sup> Article 52, the *Constitution of the Republic of Montenegro*, OG RoM, No.48/92.

<sup>82</sup> Article 3, the *Labor Act*.

<sup>83</sup> Article 8 entitled “Equal Access,” the *Civil Servants and State Employee Act*, the *Official Gazette*, No.27/04.

<sup>84</sup> *Ibid.*

National legislation does not, however define the concept of *direct* and *indirect discrimination*.

The Employment Act sets forth the nondiscrimination principle in Article 3, stipulating that all “unemployed persons shall be equal, regardless of their nationality, race, sex, language, religion, political, or other orientation, education, social background, property ownership status, or other personal characteristics.”<sup>85</sup>

## 1.2 The concept of discrimination on the ground of sex: definitions and legal sanctions

The concept of discrimination on grounds of sex, as well as concepts of direct or indirect discrimination on grounds of sex, are not defined in Montenegro’s national legal system. As mentioned above, the Montenegrin legal order incorporates only the general principle of nondiscrimination.<sup>86</sup> There is no case law involving discrimination on grounds of sex in Montenegro.<sup>87</sup>

The Labor Act provides that “An employer shall not refuse to enter into a work contract with a pregnant woman, nor shall he/she terminate an existing one on grounds of pregnancy or maternity leave.”<sup>88</sup> It is the only provision in national legislation that addresses the issue of the employer’s unfair treatment of women on grounds of pregnancy or maternity leave. This treatment, however, is neither regarded, nor defined as discrimination on grounds of sex.

The Criminal Code stipulates that anyone who knowingly violates statutory measures or in any other unlawful manner deprives a person of the right to be freely employed under equal conditions in the territory of Montenegro, or restrict those rights, is

<sup>85</sup> Article 3, the *Employment Act*, *OG RoM*, No.5/02.

<sup>86</sup> There are some legal provisions in the Pension Insurance Act that can be regarded as a form of direct discrimination: in Article 17, under the section on “Retirement”, the Act stipulates that retirement is obtained upon a worker reaching the age of 65 (men) or 60 (women) and after at least 15 years of regular pension insurance contributions; and that retirement can also be obtained after 40 (men) or 35 (woman) years of regular pension insurance contributions, with the retiree’s age no less than 55 years. This could be seen as an example of direct discrimination, since this Act is not harmonized with the *Labor Act*, which provides for the same age (65) for both women and men, and pensions are significantly lower than salaries.

<sup>87</sup> Information provided by Biljana Vuksanovi, Judge and President of the Court’s Civil Division.

<sup>88</sup> Article 79, the *Labor Act*, *OG RoM*, No.43/03, “cannot refuse to enter into,” meaning on grounds of her pregnancy.

punishable with a fine or imprisonment not exceeding one year.<sup>89</sup> This is the sole legal provision that can be used as a ground for taking legal action against similar behavior by the employer. However, the lack of a clear and defined prohibition of discrimination on grounds of sex is an obvious and disturbing reality.

The Labor Inspectorate Act<sup>90</sup> empowers the labor inspector to temporarily prohibit performance of further work for an employer who violated the Labor Act by failing to employ a person with a formal work contract, by failing to employ a foreigner with a formal work contract, and under conditions provided for by special legislation, or by failing to provide all necessary insurance coverage for employees. Such violations are also punishable with fines.<sup>91</sup>

### 1.3 Legal status of harassment and sexual harassment

Neither *harassment* nor *sexual harassment* are defined in Montenegro's legal order. Although efforts were made to incorporate these forms of violence against women into the drafts of new Montenegrin legislation (the Criminal Code and the Labor Act),<sup>92</sup> they remain uncodified.

## SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

### 2.1 General presentation

The Constitution of Montenegro stipulates that “Citizens shall be free and equal regardless of any particularities or personal attributes. Everybody shall be equal before the law.”<sup>93</sup> Additionally, it is provided that everyone shall have the right to work, to free choice of occupation and employment, to just and human conditions of work, and to protection during unemployment. The Constitution prohibits forced labor.<sup>94</sup> Further, it stipulates that employees have the right to pay, limited working hours, and

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<sup>89</sup> Article 225, the *Criminal Code*, “Violation of Equality in Employment.”

<sup>90</sup> Articles 3 and 4, the *Labor Inspectorate Act*.

<sup>91</sup> The penalties vary between 50 to 200 times the minimum pay (meaning EUR 2,500 – EUR 10,000), according to Article 4 of the *Labor Inspectorate Act*.

<sup>92</sup> These efforts were made by the Office for Gender Equality, as reported by Nada Drobnjak, Head of Office.

<sup>93</sup> Article 15, the *Constitution*, *OG RoM*, No.48/92, “Freedom and Equity.”

<sup>94</sup> Article 52, the *Constitution*, *OG RoM*, No.48/92, “Right to Employment.”

paid vacation, as well as to occupational health and safety. Youth, women, and the disabled are particularly protected.<sup>95</sup> The general provisions of the Constitution are detailed in the appropriate legislation: The Labor Act,<sup>96</sup> The Employment Act,<sup>97</sup> The Civil Servants and State Employees Act,<sup>98</sup> the Education Act, and in the Collective Bargaining Agreement.<sup>99</sup> The Labor Act provides for equality of all employees *vis-à-vis* access to employment, regardless of their ethnicity, race, sex, language, religion, political or other opinion, education, social background, possession of goods, or other personal characteristics.<sup>100</sup> It also stipulates that an employer be required to observe the rights and equality of employees in asserting their rights, as well as their dignity and privacy.<sup>101</sup> The Employment Act<sup>102</sup> also provides that unemployed individuals are also equal in exercising their right to employment, irrespectively of all the grounds mentioned in the Labor Act. As mentioned before, the Civil Servants and State Employees Act<sup>103</sup> provides for equal access to jobs under equal terms. The Collective Bargaining Agreement does not include any provision on the subject either of equal access or gender equality.

The appropriate legal provisions of all the aforementioned acts of law are equally applied to the employment selection process. The Labor Act<sup>104</sup> prescribes that the work contract between employer and employee can be concluded if the job applicant fulfills the general and special conditions set by the Law, other regulations and, the employer's organizational chart. The only restriction related to the right to work in the Act is stipulated for persons younger than 15, whose access to the labor market is strictly forbidden as a protective measure.<sup>105</sup>

As regards the issue of job advertising, the Labor Act<sup>106</sup> stipulates the employer's obligation to advertise positions through the Employment Office of Montenegro,

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<sup>95</sup> Article 53, the *Constitution*, *OG RoM*, No.48/92, "Rights of Employees."

<sup>96</sup> *OG RoM*, No.43/03.

<sup>97</sup> The *Employment Act*, *OG RoM*, No.5/02.

<sup>98</sup> *OG RoM*, No.27/04.

<sup>99</sup> *OG RoM*, No.01/04.

<sup>100</sup> Article 3, paragraph 1, the *Labor Act*.

<sup>101</sup> Article 3, paragraph 2, the *Labor Act*, *OG RoM*, No.43/03.

<sup>102</sup> Article 3, the *Employment Act*, *OG RoM*, No.5/02.

<sup>103</sup> Article 8, the *Civil Servants and State Employees Act*.

<sup>104</sup> Article 10, the *Labor Act*.

<sup>105</sup> *Ibid.*, Article 10, paragraph 2.

<sup>106</sup> *Ibid.*, Article 18.

whose obligation under the Employment Act<sup>107</sup> is to advertise the position within 5 days from the day of receiving notification from the employer. These provisions are mandatory for both the public and private sector. However, for a position in Public Administration, the Civil Servants and State Employees Act<sup>108</sup> stipulates that an applicant must also fulfill certain special, primarily personal, requirements for a specific position (such as citizenship, age, health, no criminal record that could make him/her unsuitable, and so forth).

Montenegrin legislation does not prohibit advertisements that specify the desirable/required sex of the job applicant.

Since the national legal order does not recognize sex based discrimination other than in the category of discrimination in general, no specific institutional framework currently exists under which prohibition of such discriminatory advertising could be enforced. The Labor Inspectorate<sup>109</sup> is not authorized to conduct investigations in this area. The Office for Gender Equality<sup>110</sup> does not hold the requisite authority, either. Nonetheless, regular court procedure against an employer's decision involving right to work/rights arising from work is always an option, albeit it is not specifically intended and provided for sex-based discrimination. Admittedly, due to lack of specific measures and legal protections, procedure to substantiate sex-based discrimination would be extremely difficult. Accordingly, the efficiency of these bodies in tackling gender discrimination is questionable, albeit they are not to blame, since there is not insufficient legal ground to address the issue.

## **2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men**

All labor disputes first go before the Court of First Instance.<sup>111</sup> These courts handle procedure in such disputes pursuant to the Code of Civil Procedure.<sup>112</sup> The Court of

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<sup>107</sup> Article 22, the *Employment Act*, *OG RoM*, No.5/02: "As an exception, positions shall not be advertised: if the employee has previously received a scholarship from the employer, in the case of take over agreement, if the employee has passed the required additional training, if the employee has been certified as disabled, and for reasons of emergency."

<sup>108</sup> The *Civil Servants and State Employees Act*, *OG RoM*, No.27/04: the public announcement for this position is stipulated in Articles 19-21, which provide detailed content of the announcement.

<sup>109</sup> The *Labor Inspectorate Act*, *OG RoM*, No.69/03.

<sup>110</sup> The definition and authorization of the Office for Gender Equality provided in Section 3.

<sup>111</sup> Article 10, paragraph 3, the *Courts Act*, *OG RoM*, No.20/95.

First Instance will always take in consideration the need for urgent action in labor disputes.<sup>113</sup> The Code of Civil Procedure<sup>114</sup> allows for appeal of the Court of First Instance's ruling, which must be filed within an eight day time limit, while the usual time limit for regular civil disputes is 15 days.<sup>115</sup>

The Criminal Code provides for protection, as explained in Part I, Section 2, 2.2. Additionally, this act of law stipulates that "Anyone who deliberately violates regulations, or in any other unlawful manner deprives a person of the right to be freely employed under equal conditions in the territory of Montenegro, or restricts that right, shall be punishable with a fine or imprisonment not exceeding one year."<sup>116</sup>

As regards administrative authorities, the Civil Servants and State Employees Act<sup>117</sup> stipulates that oversight be performed by the appropriate ministry (Ministry of Justice) via the Administrative Inspection.<sup>118</sup>

An Administrative Inspector also derives his/her authority (from the general description of authority) to oversee equal treatment.<sup>119</sup> When it comes to court

<sup>112</sup> Articles 433-438, the *Code of Civil Procedure, OG RoM*, No.22/04, Section on "Special Procedures."

<sup>113</sup> *Ibid.*, Article 433.

<sup>114</sup> *Ibid.*, Article 437.

<sup>115</sup> In the appeals procedure, the Higher Court has the authority to render a decision, and the third tier of the appeals procedure takes place before the Supreme Court. Pursuant to Article 438 of the *Code of Civil Procedure*, revision of decision is allowed in cases involving employment, entering into and terminating employment.

<sup>116</sup> Article 225 entitled "Violation of Equality in Employment," the *Criminal Code, OG RoM*, No.70/03.

<sup>117</sup> Articles 119-121, the *Civil Servants and State Employees Act, OG RoM*, No.27/04, "On Overseeing the Enforcement of the Act."

<sup>118</sup> Further, it stipulates that "An administrative inspector, in performing oversight of the implementation of this Act, shall have the right to access the entire documentation and records about Civil Servants, i.e. State Employees.

The Administrative Inspector shall specifically inspect:

- regularity and timeliness of data delivery to the Central Personnel Records, and the maintenance of the reference collection of the documents related to personnel records;
- timeliness of issuance of individual documents;
- the employment procedure;
- the job advertising procedure;
- the procedure for the evaluation of work and professional quality, as well as promotion and transfer procedures;
- conducting of reorganization procedures;
- procedures for assessing the capability of Civil Servants and State Employees;
- and other matters related to their rights and obligations." – Article 120.

proceedings, access to courts is free of charge for all labor disputes, which makes them easily accessible for all persons who believe their rights are violated.

All legal redress, including for loss and damage sustained by a person whose rights have been violated as a result of sex-based discrimination, are subject to court procedure, with the Court of First Instance being the appropriate court.<sup>120</sup> The applicable law in this instance is the Obligations Act.<sup>121</sup>

According to the Code of Civil Procedure,<sup>122</sup> all individuals, proven a justified legal interest, are entitled either to institute court action or to join an already existing one. Each act of representation before the court, regardless of representative and represented party, has to be done on the basis of legal authorization, issued by the represented party. Associations, organizations, or other entities do not have the right to become involved in support or on behalf of complainants.

### **2.3 Protective measures with regard to women's participation in the labor market**

According to the Labor Act,<sup>123</sup> an employer cannot terminate a work contract with a female employee on grounds of her maternity leave. The Labor Act<sup>124</sup> also stipulates that the employee who has availed herself of her right to maternity leave be entitled to additional professional training, if technological, economical, or structural changes have occurred in the employer's working process during her maternity leave.

### **2.4 Prohibition of dismissal**

The Labor Act<sup>125</sup> stipulates that, regardless of proceedings initiated before the employer, competent court or arbitration body, an employee has the right to ask the appropriate Labor Inspectorate for protection. Additionally, if an employee has already initiated proceedings before court of law, the inspector can suspend the execution of the employer's decision or action in the event that he/she believes that the employee's

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<sup>119</sup> The *Civil Servants and State Employees Act*, *OG RoM*, No.27/04.

<sup>120</sup> Article 10, paragraph 2, the *Courts Act*, *OG RoM*, No.5/02.

<sup>121</sup> The *Obligations Act*, *OG RoM*, No.31/93. The reference Articles are 185-191.

<sup>122</sup> Article 89, the *Code of Civil Procedure*, *OG RoM*, No.22/04.

<sup>123</sup> Article 79, the *Labor Act*, *OG RoM*, No.43/0.

<sup>124</sup> *Ibid.*, Article 89, paragraph 3.

<sup>125</sup> *Ibid.*, Article 125.

right has been demonstrably violated, until the court reaches a final decision. Further, the Labor Act<sup>126</sup> sets forth the following for trade union representatives: “A trade union representative and a representative of the employee shall not be dismissed, recognized as redundant, assigned to a different job, or transferred to a more difficult position in any other manner in the course of performing their trade union activities and for six months subsequently to the cessation of those activities, provided they act in compliance with the Labor Act and the Collective Bargaining Agreement.”

## 2.5 Women’s and men’s jobs

There are no legal measures to prevent jobs from being classified as specifically women’s and/or men’s jobs, but there are, in actual fact, no jobs that are classified as such, either. There are no examples of jobs that are legally inaccessible for women or men. The sole exception involves jobs with special health risks, which women are not allowed to perform<sup>127</sup> as a protective measure. Admittedly, this does not mean that in practice certain jobs are not being considered as men’s or women’s, as a remnant of traditional belief.

There are no legally inaccessible jobs for women, except those under the ground and underwater, and jobs requiring extreme physical strength, that women are not allowed to perform as a protective measure.<sup>128</sup> The Labor Act stipulates that female employees, persons under 18, and disabled persons be entitled to special protection, in accordance with provisions thereunder.<sup>129</sup> Additionally, the Act provides that women cannot be hired for jobs where extremely hard physical labor is required, for work under the ground, underwater, or on any working position where their health and life could be harmed or under risk. A female employee working in industry and construction cannot be assigned to work in night shifts, unless she had previously taken a break of at least 12 hours. As an exception, for women working in executive positions or in health and social services, or in cases when the process of work is interrupted due to a natural disaster, this prohibition does not apply.<sup>130</sup> These provisions are valid for women in general, regardless of their pregnancy or breastfeeding status. However, the Labor Act stipulates that based on competent medical opinion, a pregnant or breastfeeding

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<sup>126</sup> Ibid., Article 140.

<sup>127</sup> The *Labor Act, OG RoM*, No.43/03, stipulates that women cannot be hired for jobs where extremely hard physical labor is needed, for work underground, underwater or on any working position where their health and life could be harmed or at risk.

<sup>128</sup> Article 75, the *Labor Act, OG RoM*, No.43/03.

<sup>129</sup> Ibid., Article 74.

<sup>130</sup> Ibid., Articles 75 and 76.

woman must be transferred to a different position, if her or her child's health require so. If the employer is not able to provide such a transfer, then the woman is entitled to take paid leave in accordance with the Collective Bargaining Agreement, which cannot be lower than the usual amount she is paid in her position.<sup>131</sup>

### SECTION 3 – Gender Equality Bodies

The Office for Gender Equality of the Government of Montenegro was established during the government's session on March 27, 2003.<sup>132</sup> The Office is a part of the Government Secretariat. The government of Montenegro applied for assistance to the Stability Pact, with a project called "Establishing Mechanisms for Equal Opportunities in the Government of Montenegro" and received a donation from the Italian Government for the first year of operations.<sup>133</sup>

The Office for Gender Equality<sup>134</sup> provides expert assistance related to implementation of the equality principle, implementation of international agreements, and conventions, for the needs of the government, and coordinates government actions with regard to this field of activity. The Office partners with all NGOs working on women's rights and women's equality issues. The general purpose of founding the Office is to coordinate government activities and partnership with NGOs aimed at eliminating all forms of discrimination against women, violence against women, and violation of the human rights of women.<sup>135</sup>

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<sup>131</sup> Ibid., Article 80.

<sup>132</sup> The Decree was published in the *Official Gazette*, No.20/03. It defines the duties of the Office.

<sup>133</sup> Information is available at the official [www.gender.vlada.cg.yu](http://www.gender.vlada.cg.yu) website.

<sup>134</sup> Article 2, the *Decree on the Establishment of the Office for Gender Equality, OG RoM, No.20/03*.

<sup>135</sup> According to Article 2 of the *Decree* of March 27, 2003, the Office's tasks also include creating a database on gender diversity and conducting a research on women's position in all spheres of life,

- creating a database on international practice in the process of implementing gender equality;
- initiating changes in existing or drafting new legislation which would improve women's position in family, economy and politics;
- starting a broad based awareness raising campaign on general issues of gender equality, issuing print materials, and other forms of public information on the enforcing of women's human rights.

Although the office is a governmental body, the government does not supervise its work.<sup>136</sup> The Office is grappling with a staff shortage and lack of official authority to make any binding decisions. Above all, the place of the Office within the state administration system has not yet been finally determined.

The Office is completely dependent on government funding for its routine operations, its employees being paid by the government who also provides the necessary infrastructure for its work. As regards organization of courses, seminars, round tables and trainings, separate fundraising is conducted for each specific project, and occasionally receives funding from international funds and organizations. The Office, however, has a separate bank account, which is very important for its financing and functioning, and can have a positive effect on its independence, since it is thus capable of raising monies for any kind of activity, without needing government approval or additional public funds.

Even though the Office has not accomplished major breakthroughs in raising public awareness *vis-à-vis* women's rights, it has launched a number of significant campaigns.<sup>137</sup>

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<sup>136</sup> According to Article 5 of the *Decree*, mentioned in footnote 127, the Office will draft an Annual Report, and deliver it to the Government.

<sup>137</sup> The Office for Gender Equality has introduced the following initiatives:

- gathered gender related statistics on the current situation of gender equality and its perspective, to appraise the situation; this data has provided information on the social and economic status of women in Montenegro, and the results were presented on March 17, 2004;
- provided sociological analysis of the data on the appointment of women to positions at the state and local level, in the period 1990–2003, presenting it at the “Women in Power” round table;
- in cooperation with NGOs and the delegation of the European Commission organized basic education on gender equality for the employees of the government of Montenegro's Ministries;
- took part in creating the Poverty Reduction Paper, which is available at the Government's official website: [www.vlada.cg.yu](http://www.vlada.cg.yu);
- implemented a project on promoting IT literacy among women, in cooperation with NGOs;
- the Office representative is on the project board of the fight against human trafficking;
- published the magazine *Početnica*, explaining where to find education, consulting services, loans for women who decide to start their own business;
- on December 12, 2004, the Office signed a Memorandum of Understanding to launch a National Action Plan for reaching Gender Equality in Montenegro. Women's NGOs through workshops, round tables and interviews collected data, set priorities, and made recommendations for effective solutions. The expert work on the National Action Plan is in its final phase. Financial assistance is provided by UNIFEM and UNDP.

The Office is currently working on drafting the Gender Equality Act.

Currently, it employs a staff of two: an Executive Director appointed by the government, who at present is one of the first women in politics in the post-Communist era, and her assistant. Despite their enormous efforts, they alone simply cannot perform all the work that needs to be done.

## SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

### 4.1 Research and statistics on women's access to and presence in the labor market

Bureau<sup>138</sup> statistics show that there were 143,485 employed persons in Montenegro in 2004, of which 63,600 were women. There were 36,873 unemployed women and 34,886 unemployed men. The research carried out in October 2004<sup>139</sup> reveals that as time spent looking for a job increases, so does the percentage of women in that group. When asked if they feel equal regarding access to employment, 19.8 percent of women responded that they were and 28.06 percent said they were not, with 62.14 percent responding that it depended on the type of job.<sup>140</sup> General unemployment was identified as a main obstacle to women's labor market access,<sup>141</sup> which makes it difficult for both men and women to find a job. There are no available statistics on the number of women employed under short-term contracts, the main reason being that short-term contracts provide the same obligations and rights to workers as indefinite ones. In consequence, the Employment fund or any other related organization do not collect separate statistics for workers on short-term contracts.<sup>142</sup>

There are no proactive governmental programs or measures to increase women's participation in the labor market.

The only government-initiated program to eliminate inequalities based on the socioeconomic conditions engendered by privatization is a program of assistance for women workers who have lost their jobs due to privatization and have remained without work just few short years before retirement. Since they are not able to switch

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<sup>138</sup> Information is available on the Bureau's official Website [www.montstat.cg.yu](http://www.montstat.cg.yu).

<sup>139</sup> By the Institute for Strategic Studies and Prognoses.

<sup>140</sup> As informed by the survey of Human Rights Center.

<sup>141</sup> Information provided by Rosa Popović from the trade union association.

<sup>142</sup> Information provided by Rosa Popović.

profession at that age, the Government has provided sufficient funds to pay for these women's additional pension insurance coverage, which they need to be able to retire.<sup>143</sup>

## 4.2 Women in the labor market after maternity leave

There are no statistics on women's status in the labor market after maternity leave. The length of the maternity leave ranges from 45 days minimum to 365 days maximum. Even though there is no research on how this period of time affects their return to the labor market, women are very satisfied with this provision since they can choose to avail themselves fully of the 365 day period, or they can return to work any time after the first 45 days subsequently to delivering a child.<sup>144</sup>

## 4.3 Discriminatory job advertisements

There is no research on discriminatory job advertising, and discriminatory advertisements are not considered violations of the principle of equal treatment. Moreover, the relevant legislation does not prohibit advertisements that discriminate on the basis of a prospective employee's sex.

## 4.4 Sexual harassment

The only research regarding sexual harassment in Montenegro was conducted in November 2003.<sup>145</sup> It included two questions regarding harassment. The first question was "Were you sexually harassed during your job interviews?" (69 percent answered they were not, 1 percent answered they were, 1 percent refused to answer, and 29 percent did not provide any answer). The second question was "Have you noticed any harassment/sexual harassment at your work place?" (86 percent answered they have not, 5 percent said they have, and 9 percent did not answer.)

Sexual harassment is not known to the general public in Montenegro as a form of sex-based discrimination, but, rather, is a subject that people avoid talking about, as they are either not aware of the possibility of its existence or do not want to admit it exists.

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<sup>143</sup> Information provided by Rosa Popović.

<sup>144</sup> Article 82, the *Labor Act, OG RoM*, No.43/03.

<sup>145</sup> Conducted by the SCAN agency and initiated by the Office for Gender Equality, available at the official website [www.gender.vlada.cg.yu](http://www.gender.vlada.cg.yu).

## SECTION 5 – Conclusions. Areas of Concern. Recommendations

### 5.1 Conclusions

There are no legal obstacles for women's employment in any job, in either the public or private sector. In practice, however, employers prefer to employ men, especially when it comes to executive positions. Remnants of a traditional society pose an additional obstacle and continue to persist quite strongly in rural/northern parts of the country, frequently preventing women from getting a quality education and forcing them to leave their homes to look for jobs.

### 5.2 Areas of concern

Montenegro's legal order does not provide for a definition of *sex-based discrimination*, or for protective measures to enforce nondiscrimination. This gives rise to serious problems, since there are no legal grounds on which a wronged person can take his/her case to court claiming grounds of sex-based discrimination. This, coupled with the absence of definitions for *direct* and *indirect discrimination*, is a very concerning fact as well as the lack of definition of sexual harassment gives rise to grave concern, only underscored by lack of public understanding of the issue. The most alarming finding, however, is that large numbers of women are employed in the black labor market, without any kind of social protections or security. The awareness of this issue is very low.

### 5.3 Recommendations

Using existing legal measures, members of decision making bodies should be educated and trained in equality issues, in order to attain a nuanced understanding of issues related to gender discrimination. The trade unions should make available the necessary assistance/training to carry out the task of raising awareness and support public education campaigns. They should also be empowered to provide assistance in gender equality matters, including assistance to victims. Once the principle enters the legal system, a special body should be established to monitor cases of discrimination involving equal treatment. It is also necessary to empower the existing Office for Gender Equality to adopt and enforce a quality Gender Equality Act, in addition to establishing and funding government programs to increase the ratio of women in executive positions.

## PREGNANCY AND MOTHERHOOD PROTECTION

1. **Council Directive 92/85/EEC** of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

### Measures and Improvements at Work of Pregnant Workers, Workers Who Have Recently Given Birth, or Are Breastfeeding

#### SECTION 1 – Legal and Conceptual Framework

The legal system in Montenegro does not provide for a legal definition of *pregnant worker*, a *worker who has recently given birth*, or a *worker who is breastfeeding*, as set forth in Council's Directive 92/85/EEC.

#### SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer's Obligations

##### 2.1 Assessing the risk to the safety or health of a pregnant worker

The Occupational Safety and Health Act<sup>146</sup> contains general protective measures and specifies explosives, burning, oxidizing, poison, contaminating, corrosive, carcinogen, and radioactive substances as dangerous and damaging agents, the production, use, or storage of which during the work process is governed by occupational health and safety standards and regulations, which, additionally, cover all other substances containing those substances that could impose a threat to the life or health of employees. The Occupational Safety and Health Act does not make specific reference to pregnant workers or workers who are breastfeeding, and applies to all employees.

##### 2.2 Employer's obligation

There is no specific legal provision regarding employer's obligation to assess the nature, degree and duration of exposure to the agents, processes and working conditions involving specific risks to the safety and health of a pregnant or breastfeeding worker. The assessment of risk is obligatory for every position as set forth by the Occupational

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<sup>146</sup> Article 5, the *Occupational Safety and Health Act*, OG RoM, No.79/04, Article 5.

Safety and Health Act. Under the Act the employer is required to issue a document on assessment of risk for all positions, with proposed measures intended to reduce those risks.<sup>147</sup>

Employers who fail to comply with the Act's assessment of risk obligation are punishable with a fine to the tune of 10 to 30 times the minimum wage in Montenegro.<sup>148</sup>

All employees have the right to be informed about possible risks at work, pursuant to the Occupational Safety and Health Act.<sup>149</sup> This information must include details regarding safety risks, health risks, preventive and protective measures, first aid measures, labor medicine rights, labor hygiene, ergonomic and health dangers at work, plans, measures, and decisions regarding air pollution, noise, or vibrations that could negatively affect employees' health.

In the event that an employee has not been informed about possible risks, or if his/her life is in danger because necessary measures have not implemented, which consequently endangers his/her life and health, the Occupational Safety and Health Act stipulates that the employee has the right to refuse to work until such measures are implemented. The refusal must be submitted to the employer in writing, asking him/her to comply with the requisite occupational health and safety measures. If the employer assesses that the request is unjustified, he is required to inform the Labor Inspection about his decision<sup>150</sup> immediately.

The Labor Code only sets forth a general provision to protect pregnant and breastfeeding workers,<sup>151</sup> and it contains no special provision to protect pregnant workers.

The employee cannot be assigned to a specific position, night work or to overtime work, in the event that the competent medical authority issue an opinion that such work would be harmful or worsen his/hers health.<sup>152</sup>

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<sup>147</sup> Ibid., Article 15.

<sup>148</sup> Ibid., Article 46, paragraph 8.

<sup>149</sup> Ibid., Article 22.

<sup>150</sup> Ibid., Article 28.

<sup>151</sup> Article 80 of the *Labor Code* stipulates that "based on findings and recommendation of a medical doctor, a pregnant or breastfeeding woman shall be transferred to another workplace, in the event that her health or her child's health requires so. In the event that the employer is not able to provide for such a transfer, the woman shall be entitled to take leave of absence, provided her pay, guaranteed under the Collective Bargaining Agreement, which will not be less than the usual amount she received at her job."

<sup>152</sup> Article 73, paragraph 1, the *Labor Act*.

### SECTION 3 – Cases in Which Exposure is Prohibited for Pregnant Workers and Workers Who Have Recently Given Birth

There is no provision in the legal system of Montenegro regarding exposure to agents for pregnant or breastfeeding workers as set forth in Annex II, Part A of Council Directive 92/85/EEC.

### SECTION 4 – Night Work

The Labor Act stipulates that a woman worker during her pregnancy, as well as a woman who has a child under three years old, not be required to work overtime or in night shifts. As an exception, a woman with a child older than two may work night shifts if she provides her own prior written consent thereto.<sup>153</sup> There is no available data on government measures regarding this issue, and the Labor Inspectorate is the public agency in charge of enforcing the prohibition of night work.<sup>154</sup>

The Labor Act stipulates that pregnant and breastfeeding women be transferred to another position upon medical recommendation. In the event that this is not feasible, she is entitled to extend her leave. This provision can likewise be applied to night shift work.

All protective measures related to the work process are set forth under the Occupational Safety and Health Act,<sup>155</sup> which also puts the Labor Inspectorate in charge of enforcing these provisions. There are no special provisions regarding pregnant workers or workers who are breastfeeding.

Additionally, as discussed above, the Labor Act<sup>156</sup> provides for the general protection of pregnant and breastfeeding workers by stipulating the possible transfer of such a worker to another position based on medical recommendation.

### SECTION 5 – Maternity Leave and Time Off for Prenatal Examination

Under the Labor Act a working woman is entitled during pregnancy, childbirth or childcare to a maternity leave of 365 days, commencing from the first day of the leave. Based on a medical doctor's recommendation, the woman may commence her

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<sup>153</sup> Ibid., Article 81.

<sup>154</sup> The *Labor Inspectorate Act*, *OG RoM*, No.69/03.

<sup>155</sup> Article 43, the *Protection at Work Act*.

<sup>156</sup> Article 80, the *Labor Act*, *OG RoM*, No.43/03.

maternity leave 45 or 28 days prior to childbirth at latest.<sup>157</sup> In the event that she would wish so, a woman may start working again before the 365 days maternity leave expire, but under no circumstances can she return to her job before a period of 45<sup>158</sup> days from childbirth. Should she return to work prior to completion of the 365 days of her maternity leave, a working mother has the right to an additional 60 minutes of time off work to breastfeed her baby over and above to regular daily breaks during the work day.<sup>159</sup> When maternity leave is interrupted voluntarily, the woman is not allowed subsequently to return to it later.<sup>160</sup> Additionally, the Labor Act stipulates that one of the child's parents has the right to part-time work even beyond maternity leave, until the child reaches three years of age, in the event that the child's health condition requires so.<sup>161</sup> Further, parents of children suffering from paraplegic, dystrophic, muscular, or neuron muscular diseases, or other severe disorders, are entitled to unlimited part-time work, with no impact to their pay (their work hours are regarded as being full time),<sup>162</sup> and there is no limitation by the age of the child. The maternity leave can be switched between a woman and a man – father of the child – equally, but to date there have been no reports yet of a single such case. This possibly due to the fact that the Labor Act uses the term *maternity* instead of *parental* leave, which makes men even more unwilling to opt for it. The employee must inform the employer in writing about her/his intention to take up maternity leave at least one month prior thereto.<sup>163</sup>

In short, maternity leave must commence at least 28 days before childbirth and may last for 365 days.<sup>164</sup>

The right to maternity leave is set forth under the Labor Act and the Collective Bargaining Agreement, which are used as a cornerstone for all work contracts. That is to say, any specific, individual work contract must comply with these acts of law and cannot incorporate fewer rights that they do. In short, there is no need for a work contract to specifically refer to the right to maternity leave, since the provisions of the Labor Act is a legal instrument prevail over those of the work contract in the event of conflict between the two.

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<sup>157</sup> Article 82, paragraph 2, the *Labor Act*, *OG RoM*, No.43/03.

<sup>158</sup> *Ibid.*, Article 82, paragraph 3.

<sup>159</sup> *Ibid.*, Article 82, paragraph 4.

<sup>160</sup> *Ibid.*, Article 82.

<sup>161</sup> *Ibid.*, Article 84.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*, Article 89.

<sup>164</sup> *Ibid.*, Article 82.

The Labor Act clearly stipulates that “during their maternity leave, women shall, pursuant to act of law, have the right to the same pay.”<sup>165</sup> The act of law in this case is the Social and Child Insurance Act, which provides that “during maternity leave, the employee is entitled to receive pay.”<sup>166</sup> Additionally,<sup>167</sup> it is set forth that the employee receive the same amount of pay he/she would in the event that he/she were at work. To be eligible to this pay, the employee must previously have been in formal employment for at least six months.<sup>168</sup> If the period between the maternity leave and the work contract is shorter than six months, the worker is entitled to 70 percent of his/her regular pay.<sup>169</sup>

The Social and Child Insurance Act provides for supplementary maternity allowance.<sup>170</sup> This allowance is received upon childbirth, in the fixed amount of EUR 100.

There is no special legal provision regarding time off for antenatal examinations.

## SECTION 6 – Prohibition of Dismissal and Defense Rights

Under the Labor Act an employer may not refuse to hire a pregnant woman on grounds of her pregnancy, nor can he/she terminate an existing work contract on grounds of pregnancy or use of maternity leave.<sup>171</sup> The Labor Act also prohibits an employer from dismissing a part-time female employee who is taking care of a child with severe illness or dismiss a single parent with a child younger than seven years old, or a disabled child.<sup>172</sup> An employer does not have the right to dismiss these persons on grounds of technology, economy, or structural changes.<sup>173</sup> The employee has the right to interrupt maternity leave and the employer is required to receive her back to work and assign her to an appropriate position, within a month from receiving notification of her intention to return to work.<sup>174</sup>

<sup>165</sup> Ibid., Article 82, paragraph 6.

<sup>166</sup> Article 51, the *Social and Child Protection Act, OG RoM*, No.79/04.

<sup>167</sup> Ibid., Article 53.

<sup>168</sup> Ibid., Article 55, paragraph 1.

<sup>169</sup> Ibid., Article 55, paragraph 2.

<sup>170</sup> Ibid., Article 44.

<sup>171</sup> Article 79, the *Labor Act*, Article 79.

<sup>172</sup> Ibid., Article 79, paragraph 2.

<sup>173</sup> Ibid., Article 79, paragraph 3.

<sup>174</sup> Ibid., Article 89, paragraph 2.

The legal means of redress in cases of unlawful dismissal of a pregnant worker and a worker who has recently given birth are the same as those available for all other labor disputes.<sup>175</sup>

## SECTION 7 – Conclusions. Areas of Concern. Recommendations

### 7.1 Conclusions

As regards protection of pregnancy and motherhood, the Montenegrin legal system offers good solutions and provides satisfactory conditions for women, albeit the definition of *pregnant worker*, *worker who has recently given birth*, and *worker who is breastfeeding* is missing from the national legal framework. The lack of provision regarding time off for antenatal examinations is of negligible significance, since in practice employers do not hesitate to provide for this kind of leave for women.

### 7.2 Areas of Concern

All the aforesaid benefits of legally guaranteed protection, are, however, provided to for employees with signed work contracts. Pregnant workers in the black labor market are usually fired as soon as their employer notices that they are expecting a child. In consequence, they often remain without sufficient and necessary financial support.

For the past two years, numerous inspections of private employers have been carried out, who were subsequently compelled to enter into formal work contracts with employees who had not previously been legally employed. The announced amendments to the Labor Act are not expected to effect maternity leave and protections for pregnant women, bearing in mind that the adopted solutions are optimal.

### 7.3 Recommendations

To guarantee and enforce legal protections for pregnant working women, workers who have recently given birth, or are breastfeeding, Montenegro's government should continue along the path of actively legalizing the work force in the black market. This action is the responsibility of the Ministry of Labor and Social Welfare, with oversight authority resting with the Labor Inspectorate.

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<sup>175</sup> General labor disputes procedures are described in Section II, 2.2.

## PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

**Council Directive 86/613/EEC** of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

### SECTION 1 – National Legal Framework on Self-Employment: General Provisions

The Labor Act provides general provisions for equal treatment in exercising rights deriving from employment.<sup>176</sup>

The social rights of self-employed persons are not specifically referred to in the national legislation. Consequently, general labor legislation also applies to self-employed persons.

The concept of *self-employed workers* is not defined by law. However, bearing in mind the definition of the Council Directive, it does apply to the category set forth in Montenegro's national legislation as *entrepreneur*. The company established by a single person is regulated by the Business Organizations Act, which provides that "An entrepreneur shall be an individual engaged in entrepreneurship, in order to gain profit, and pursuing all activities for his/her own account. The entrepreneur shall be responsible with his/her entire property for obligations connected to the company. In the event that the entrepreneur does not conduct his/her activity under his/her own name, but someone else's, he/she shall be required to register it, in compliance with this act of law."<sup>177</sup> This is the only existing legal provision in the national legal framework that can be applied to self-employed workers.

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<sup>176</sup> Article 3, the *Labor Act*, *OG RoM*, No.43/03.

<sup>177</sup> Article 5, the *Business Organizations Act*, *OG RoM*, No.6/02, "The Entrepreneur."

## SECTION 2 – Social Rights of Spouses of Self-Employed Workers

### 2.1 Formation of companies by spouses

There are no special provisions related to the formation of companies by spouses in Montenegro and, therefore, general provisions on forming a company are to be applied.

### 2.2 Recognition of the work of spouses

There have been no legal initiatives in the country aimed at finding out under what conditions recognition of the work of spouses could be encouraged, nor have any appropriate steps been taken therefor. Within the social security system, there are no special provisions regarding the working spouses of self-employed persons (who are not employees or partners) and the general provisions governing social security are to be applied.<sup>178</sup>

### 2.3 The rights of self-employed workers whose work activity is interrupted due to pregnancy and motherhood

All persons are entitled to social security schemes under the same conditions, without special or additional social security system for self-employed workers.

Social security eligibility requirements under the Social and Child Protection Act do not provide for any contributory social security schemes.

Self-employed working women are entitled to receive pay pursuant to the Social and Child Protection Act,<sup>179</sup> which stipulates that “pay during maternity leave shall be provided to self-employed female workers, in the amount for which the employee had paid all necessary insurance contributions.” To become eligible for pay during maternity all prior tax obligations must have been met and all social insurance contributions fully paid in the course of self-employment work. All women who have recently given birth are entitled to a one-time maternity benefit of EUR 100.<sup>180</sup>

The Health Insurance Act<sup>181</sup> provides for health insurance for entrepreneurs and self-employed professionals. Family members of the individuals eligible for insurance are also eligible for health insurance, in the event they are not able to provide it on their own.<sup>182</sup>

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<sup>178</sup> The *Social and Child Protection Act*, *OG RoM*, No.79/04.

<sup>179</sup> *Ibid.*, Article 54.

<sup>180</sup> *Ibid.*, Article 44.

<sup>181</sup> Article 8, the *Health Insurance Act*, *OG RoM*, No.39/04.

## SECTION 3 – Legal Means of Redress

In Montenegro's legal framework, there are no special provisions for self-employed persons to pursue a claim of noncompliance with the equal treatment principle over and above the general measures set forth therefore in labor legislation.

## SECTION 4 – Related Research and Statistics

### 4.1 Social perception of self-employed women and men

According to statistical data available from the official website of the Bureau dated October 2004, there were 31,328 self-employed workers in total, 22,485 of whom were men and 8,843 women.<sup>183</sup>

Compared to men, women are mostly engaged in small business activities such as hairdressing, beauty care, tailoring, food production and distribution, childcare, and small groceries. As shown and substantiated in a research project,<sup>184</sup> women tend to work in areas traditionally regarded as women's work. Research shows<sup>185</sup> that out of 100 women who owned companies, 56 percent were involved in retail, 22 percent in services, 14 percent in production, and 6 percent in wholesale trade.

There are no statistics showing the percentage of married couples owning companies together, but it does not happen very often. In most cases, one of the spouses is the one taking the initiative. This research also showed that companies owned by women are generally established as micro companies, with one or two employees.

### 4.2 Research on women in agriculture

There are no available data on women in agriculture in Montenegro; no comparison is made between men and women, either. No research to date has been conducted in this field. The number of women in agriculture is not known, because there is no legal registration of women in agriculture, and secondly, even when they are engaged in the field of agriculture, they do it as a family activity, working together with their

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<sup>182</sup> Ibid.

<sup>183</sup> Information is available at the official Website [www.montstat.cg.yu](http://www.montstat.cg.yu).

<sup>184</sup> Undertaken by the Center for Entrepreneurship and Economic Development, published by CEED in 2003.

<sup>185</sup> Undertaken by CEED.

husbands. The husbands are the ones who apply for micro credits, so there are no data or any trace of women's presence in agriculture in that regard, either.

### **4.3 Research on the status and rights of self-employed women**

No research has been conducted to date on the issue of women assisting their spouses and that of self-employed women during their pregnancy and motherhood.

There is no data regarding discrimination against women assisting their spouses, but, clearly, the general legal provision provides fewer protections when it comes to the social rights of women assisting their spouses and self-employed women, due to the nature of labor relations in the work of women assisting their spouses and in that of self-employed women.

In practice, self-employed women have the same right to maternity leave as all other working women, provided they regularly pay all their taxes and social insurance contributions. However, as a business owner, it must be difficult to leave a business unattended for 12 months. There are no proactive measures encouraging self-employed women to get more involved in their business activities while on maternity leave.

## **SECTION 5 – Conclusions. Areas of Concern. Recommendations**

### **5.1 Conclusions**

For self-employed women the situation is even more difficult than for self-employed men, in an environment of economic and political transition, uncertain incomes, and market fluctuations. The data provided in 2001<sup>186</sup> shows that 43 percent of women were starting new businesses. Even though there is sufficient interest among women to start self-employment projects, in practice they face enormous challenges, due to lack of education, difficult access to loans, lack of experience and consequently of courage.

### **5.2 Areas of concern**

Even when women succeed in starting their own business, they face several problems, above all the high taxes they must pay. A small business owner generally gets discouraged by state mandated obligations, such as taxes and fees, numerous permits are required, confirmations, decisions, not to mention that the administrative

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<sup>186</sup> By the Institute for Strategic Studies and Prognoses.

procedure is slow and often complicated. The traditional society does not respond well to women running their own businesses and its mentality is often a barrier to further progress. Of special concern is also the work women undertake as housewives at home, which never counts as legitimate work.<sup>187</sup> The work that women do at home (household, childcare, cooking, cleaning) is underestimated and taken for granted.

### **5.3 Recommendations**

It would be very useful to improve self-employed women's access to funds/credits. Additional vocational training and education in entrepreneurship would also be beneficial for women, since they have little experience in managing their own companies. Social security and health insurance schemes could provide more protection. The equality principle likewise needs to be emphasized as a priority.

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<sup>187</sup> Rosa Popovic's opinion.

## ANNEX

### List of Legislation Screened

The Constitutional Charter of the State Union Serbia and Montenegro, the *Official Gazette* SCG, No.1/2003

The Charter on Human and Minority Rights and Civil Liberties of the State Union Serbia and Montenegro, the *Official Gazette* SCG, No.6/2003

The Constitution of the Republic of Montenegro, the *Official Gazette of the Republic of Montenegro*, No.48/92

The Labor Code, *OG RoM*, No.43/03

The Criminal Code, *OG RoM*, No.72/03

The Code of Civil Procedure, *OG RoM*, No.22/04

The Courts of Law Act, *OG RoM*, No.5/02

The Attorney Practice Act, *OG RoM*, No.39/94

The General Administrative Procedure Act, *OG RoM*, No.60/03

The Obligations Act, *OG RoM*, No.31/93

The Administrative Dispute Act, *OG RoM*, No.60/03

The Employment Act, *OG RoM*, No.5/02

The Labor Inspectorate Act, *OG RoM*, No.69/03

The Occupational Safety and Health Act, *OG RoM*, No.79/04

The Court Fees Act, *OG RoM*, No.12/01

The Civil Servants and State Employees Act, *OG RoM*, No.27/04

The Salaries of Civil Servants and State Employees Act, *OG RoM*, No.27/04

The Social and Child Protection Act, *OG RoM*, No.79/04

The Business Organizations Act, *OG RoM*, No.6/02

The Health Insurance Act, *OG RoM*, No.39/04

The Ombudsman Act, *OG RoM*, No.48/03

The Education Act

The Collective Bargaining Agreement, *OG RoM*, No.01/04

The Decree on the Establishment of the Office for Gender Equality, *OG RoM*, No.20/03

## List of Documentation Screened

*Household Survey Report*. October 2004. SSP

*Research on Discrimination of Women in the Employment Process*. 2002. Center for Entrepreneurship and Economic Development.

*Labor and Social Rights of Women in Montenegro*. 2005. Published by the Trade Union Alliance, Women Today Association.

*Challenges Facing Women Entrepreneurs in Montenegro*. 2003. CIPE and CEED