



DISCRIMINATION IN TERMS OF EMPLOYMENT IN MONTENEGRO

Podgorica, December 2016



Impresum

Publisher

NGO 35 mm

Publisher

Darko Ivanović

Authors

Boris Raonić

Milan Radović

Zoran Vujičić

Edin Koljenović

Translation

Jelena Ristović

The Organization for Security and Co-operation in Europe (OSCE) Mission to Montenegro supported the development of this report. The information and views set out in this report are those of the author(s) and do not necessarily reflect the official opinion of the Mission.



TABLE OF CONTENTS

I Introduction

II Legal standards

III Previous research and information

IV Views of citizens

V Views of representatives of public institutions, employers, NGOs and trade unions

VI Conclusions and recommendations



I Introduction

Since its establishment, the Civic Alliance (CA) and its founders - Youth Initiative for Human Rights (YIHR) and the NGO "35mm", have been investigating discrimination cases and providing free legal aid to citizens in cases of discrimination. This Report presents the results and conclusions of the research that the NGO "35mm" conducted from 1 July until 1 September 2016. The Organization for Security and Co-operation in Europe (OSCE) supported the development of the research.

The aim of the research was to determine the types of discrimination in terms of employment, than the most frequent discriminatory practices in this regard, the role of public bodies and other stakeholders and the identification of key problems in this area.

During the research, CA found a number of examples of direct discrimination, for which we believe there are grounds for inconsistencies with legislation, and they are presented in the following pages.

The results obtained by this research provide the basis for the adoption of a set of measures and plans for the improvement of the employment system, where transparency and the adoption of clear procedures will be essential. In order to sustain adequate and socially acceptable processes, it is important to organize a debate of all interested parties.

For the needs of this research, the CA team used several methodological techniques and the research itself had numerous phases. Firstly, we reviewed the legal standards. Afterwards, our team surveyed the representatives of public institutions, NGOs, trade unions and employers, using a standard questionnaire. Citizens also completed questionnaires and participated in focus groups, where citizens discussed their experiences regarding employment procedures.

CA used the Law on Free Access to Information, in order to obtain data from public institutions. The collection of data lasted until 1 September 2016.

Finally, we would like to thank all the persons who helped, co-operated, and sent information during the implementation of this research.



II THE LEGAL CONCEPT OF PROTECTION FROM DISCRIMINATION IN MONTENEGRO

(Non) discrimination

A large number of people across the whole world are faced with various forms of discriminatory behaviour every day. Such behaviour often prevents people from exercising their basic rights. This also makes their life harder than the life which is enjoyed by the rest of the population. It also prevents discriminated people from participating in decision making processes on vital matters for them and the community they live in.

When it comes to such circumstances, it is not pretentious to conclude that discrimination represents a negation of all the fundamental values of civilized society. However, what is the definition of discrimination? At first glance, this very basic problem becomes so complex because the lack of a definition often produces additional problems in the sphere of the legal regulation of already recognized and guaranteed moral principles.

The term discrimination, from the Latin “discriminare” means “to separate, to distinguish, to make distinction”.¹ This meaning is insufficient to explain the essence of this social and legal phenomenon, as the term is practically related to all areas of social life and the entire private sphere of man. Thus, discrimination occurs as a special form of social activity directed towards specific group or individual, in the form of unacceptable behaviour according to an arbitrary approach², as the limitation of rights and opportunities based on race and ethnical group, impermissible distinctions on the grounds of age, gender, language, religion, political or other beliefs, or other characteristics.

Discrimination as a part of the human rights protection system

Principally observed, the modern concept of human rights is based on the heterogeneity of legal sources and the coexistence of various organizational forms, where rights are created and where human rights and freedoms are protected. Until recently, it has been generally legal, political, philosophical and moral principles which have become part of the modern instruments that catalogue fundamental human rights and freedoms, or establish a specific legal order, where the abovementioned principles are legally formed, and find their material and legal basis in acts which create appropriate protection mechanisms.

The fact that the evolution of international law on human rights is taking place concurrently in different legal systems³, does not deny the conclusion on the form of harmonization of rules by avoiding collisions between international legal forms. However, this proves the fact that in the framework of the largest number of documents related to international law on human rights provisions may be found that indicate that none of its parts can be interpreted as derogating the already achieved level of human rights and freedoms, whether it is achieved by national regulation or the fact arises from previously concluded contracts on human rights. For example, Article 5 of the International Pact on Civic and Political Rights, Article 16 of the International Convention on Abolishing of All Forms of Racial Discrimination, Article 53

¹ M. Vujaklija, *Leksikon stranih reci i izraza*, Prosveta – Beograd, 1991., page 227 111

² V. Spajić-Vrkaš, M. Kukoč, S. Bašić, *Interdisciplinarni rječnik*, Zagreb, 2011, page 111

³ Including national legal orders.



of the European Convention on Protection of Human Rights and Fundamental Freedoms⁴, Article 32 of the European Social Chart, Article 53 of the Charter on Fundamental Rights of the EU and so on.

Certain international documents contain comprehensive lists of human rights and freedoms, such as the UN Universal Declaration on the Rights of the Human. However, large parts of these documents contain partial lists that are often defined as specific dimensions of human rights and freedoms. Other documents are directed towards the protection of specific groups or beneficiaries. This confirms the nature of the act and the rationale for its adoption, when it comes to international treaties.

Similarly to this approach, at the level of internal law, countries mostly create a system of rights and freedoms through constitutional arrangements containing a comprehensive catalogue of human rights. At the level of legal texts, and for specific areas, specific norms are reserved that regulate the material and legal framework of human rights and freedoms. Besides those already mentioned, common legal rules and judicial or quasi-judicial practice constitute an important legal source for human rights.

Observing the entirety of this system, its elements do not exclude one another, but complement one another in accordance with the national legal tradition and the organization of power, noting that rights cannot derogate in that manner and the beneficiary cannot be given a lesser level of protection than the level prescribed by international treaties, or documents about human rights. Independently from the system, or model of the implementation of human rights and freedoms, it is only in the entirety of this context that human rights standards may be understood and implemented as adequate legal norms. As S. Gajin noted, human rights are not only a legal abstraction, but primarily a reservoir of specific rights and freedoms, related to certain manifestations of human existence, such as physical and psychological integrity, expression of opinion, religion and privacy and so on.⁵

Under these circumstances, anti-discrimination clauses are now present in all relevant international treaties, making them an inseparable part of material and legal concept of human rights. Depending on the nature and content of the international treaty, anti-discrimination clauses act in relation to already established rights and freedoms, or are defined as general legal norms applied to each right prescribed by a certain legal framework⁶.

However, the real scope of protection from discrimination can only be known after the implementation of appropriate standards created through the judicial and quasi-judicial practice of international bodies, and additional inputs that make up the norms of so-called soft law with legally non-binding but surely complementing content that helps in the determination in specific situations, towards vulnerable groups or other areas they are related to.

⁴ In this text, the European Convention for the Protection of Human Rights and Fundamental Freedoms is called the European Convention on Human Rights, and in one part of the text simply the European Convention or the Convention. Regardless of this, where mentioned, these terms are related to the initially mentioned source of human rights of the Council of Europe.

⁵ S.Gajin, *Ljudska prava-Pravno – sistemski okvir (Human rights-Legal and systemic framework)*, Beograd, 2012, page 17

⁶ For example, a general clause of prohibition of discrimination such as the one contained in Article 1 of Protocol 12 within the European Convention on Human Rights.



International instruments in protection from discrimination

Before mentioning the most important legal sources that contain the basis of anti-discrimination law, we should first mention that they are different in their scope and geographical boundaries, and sometimes in their content. This primarily depends on the time dimension, when the legal order of human rights and freedoms has evolved or risen towards higher protection standards.

Certainly, all modern instruments for the protection of human rights and freedoms are inspired by the UN Universal Declaration on Human Rights, as the first non-binding document of human rights and freedoms. However, this Declaration already has a different status in international law.

In its text, the Declaration has several anti-discrimination norms. Thus, Article 1 of the Universal Declaration states:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Article 2 also states:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Several further clauses have arisen from these norms, which prescribe equality in terms of some or all personal characteristics. For example, provisions on the availability of public service on equal grounds or the right to an equal salary for equal work without differences.

The International Covenant on Civil and Political Rights through Article 2 states that Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, Article 3 of the Covenant says that State Parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

General comment number 18⁷ of the UN Committee for Human Rights emphasized that non-discrimination, jointly with equality before the law represents a fundamental and general principle of human rights protection, and that Article 2 obliges all contracting parties to protect all, notwithstanding their personal characteristic prescribed in this provision. According to the previous General Comment no.3 of the same body, that cannot be achieved simply by adopting laws but rather through the undertaking of measures aimed at fulfilling precise and positive obligations.

The International Covenant on Economic, Social and Cultural Rights in Article 2 says that “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour,

⁷ CESCR General Comment No.18 – Non-discrimination, HRI/GEN/1/Rev.9 (Vol.I), pg.195.



sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

One of the universal instruments of a declarative character, *The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*⁸ in Article 3 defines discrimination as “an affront to human dignity and a disavowal of the principles of the UN Charter”.

*The UN Convention on the Elimination of All Forms of Racial Discrimination*⁹ defines “racial discrimination” as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 5 of the Convention states that State Parties are obliged to guarantee civil, political, economic, social and cultural rights and freedoms, without racial discrimination. However, the rights and freedoms mentioned in Article 5 do not make the list of rights and freedoms complete. At the top of these rights and freedoms are the rights and freedoms arising from the *Charter of the United Nations* and the *Universal Declaration on Human Rights*, as confirmed in the preamble of the *Convention*. Most of these rights are elaborated in various *international pacts on human rights*.

All State Parties are obliged to recognize and protect the enjoyment of human rights, but the manner of the introduction of these obligations into the legal decisions of State Parties may differ from country to country. Except for the requirement of the guarantee that the exercising of human rights would be released of racial discrimination, Article 5 of the Convention does not prescribe civil, political, economic, social or cultural rights, but rather presumes the existence and recognizing of these rights. The Convention obliges all countries to prohibit and revoke racial discrimination in the enjoyment of these human rights.¹⁰

The UN Convention on the Elimination of All Forms of Discrimination against Women defines “discrimination against women” as

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

Besides this, Article 13 of the Convention prescribes that all States Parties shall take “all appropriate measures in all areas, especially political, social, economic, cultural and legislative, to provide full development and progress of women, in order to ensure exercising and enjoying of rights and fundamental freedoms on a basis of equality with men”.

Article 6 of the *Declaration on the Right to Development* from 1986 says that “all States should co-operate with a view to promoting, encouraging and strengthening universal respect

⁸ Resolution of the UN General Assembly 36/55, from 25 November 1981

⁹ Adopted and opened for signing and ratification by the Resolution of the UN General Assembly 2106 A (XX) from 21 December 1965, and came into force on 4 January 1969

¹⁰ General Recommendation number 20 of the Committee for Elimination of Racial Discrimination, document A/51/18



for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion”.

Furthermore, Article 8 says that “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process”.

The UN Convention on the Rights of Persons with Disabilities and Facultative Protocol with the Convention came into force on 3 May 2008. The purpose of the Convention is the improvement and protection of all human rights and fundamental freedoms of persons with disabilities, or to respect the dignity of all the people. Aside from this, the Convention is an essential instrument for the functioning of social development. The Convention acknowledges people with disabilities as subjects exercising their rights, able to decide on their own lives autonomously and freely, as active members of society.

Although the Convention does not give a precise definition of disability, it may be concluded from its preamble that it is a developing process that arises from the interaction of these people with a new environment, or obstacles that exist in that environment, which prevent their full and effective participation in social events equally with other members of society.

The Convention is focused on discrimination in various situations, including those when a person is not a direct victim, but its status derives from direct and close relationship with people with disabilities. In the framework of the general principles mentioned in Article 3 of the Convention, the prohibition of discrimination is mentioned, and *General Comment number 12 of the Committee for Rights of Persons with Disabilities confirms the content of Article 12, which says that persons with disabilities are on an equal basis with others.*

Article 12 does not define any additional rights for people with disabilities, but simply describes the specific elements which all State Parties should take into consideration in order to provide the right to equality before the law for people with disabilities, and on equal basis with others.

Equality, as the antipode to prohibited discrimination, in any case represents a universal moral, political, legal and philosophical value. Equality is the basis of the concept of distributive justice and as such gives legitimacy to the rule of democracy.¹¹ Understood in this manner, the concept of anti-discrimination is rooted in European legal heritage in the widest sense. Before that, two extensive concepts or approaches should be mentioned in defining equality and non-discrimination.

This is the approach of the so-called *formal equality* related to the main idea that individuals should be equally treated in the same or similar situations. Formal equality is focused on equal treatment, based on the similarity of situations, regardless of the wider context within which such treatment is applied. According to this approach, the law and practice perceive different treatment in the same or similar situations, as the source of direct discrimination.

¹¹ N. Smith, *Basic Equality and Discrimination – Reconciling Theory and Law*, Ashate Publishing Limited England, 2011, page 1



Formal equality neglects other structural factors, which may bring certain group an unequal status, in comparison with the rest of population.¹²

Substantive equality refers to the notion that individuals in different situations should be treated differently. It encompasses two distinct ideas – equality of results and equality of opportunity. Equality of results requires that the result of the measure under review must be equal. It recognizes that apparently identical treatment can in practice reinforce inequality because of past or ongoing discrimination or differences in access to power or resources.

Under this approach, the effects as well as the purpose of a measure must be taken into account. ‘Equality of opportunity’ suggests that the law can ensure that all individuals have an equal opportunity, taking into consideration their different starting positions, to gain access to the desired benefit. Equal opportunity aims to provide equal chances but not results.¹³

Countries that participate in international and legal contract arrangements have double obligations – both negative and positive. A negative obligation implies that countries have to refrain from all activities which unjustifiably bring a person into an unfavourable position in comparison with the rest of the population. A positive obligation requires from the country to undertake active measures to prevent any situation that might lead to discrimination or that might have influence over the elimination of prohibited discrimination or the remediation of consequences.

As can be seen from the overall context, discrimination in terms of specific behaviour does not mean the violation of principles in every situation, or of those principles protected by international and national law. Therefore, the concept of discrimination is related to the principle of permissibility, unreasonableness, and inadmissibility as elements relevant to the establishing of anti-discrimination standards.

The European Legal Framework

The continuous development of international law on human rights has resulted in the adoption of a number of regional documents that contain anti-discrimination clauses, either in terms of individual rights contained in such documents, or as a general principle and legally binding standard for all areas covered by national legislation, as is done in European law, or in the *European Convention on Human Rights (Article 14) and its Protocol number 12*.

Actors working for the improvement of the European system of Human Rights, or documents that were developed as the expression of this activity, perfectly demonstrate the convergence strategy of different legal frameworks as a concept of immanent in the European legal heritage. That this is really sufficiently convincing, is demonstrated by fragmented statements from the preamble provisions of various European legal documents:

- The preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: “Considering that the aim of the Council of Europe (CoE) is the achievement of greater unity between its members and that one of the methods by

¹² Interights – Non-discrimination in International Law, London 2011, page 17

¹³ *Ibid*



which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms”.

- The preamble of the European Social Charter states: “Considering that the aim of the CoE is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms...”
- Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and in the Protocol thereto, signed in Paris on 20 March 1952, the member States of the CoE agreed to secure to their populations the civil and political rights and freedoms therein specified.”
- The preamble of the Charter on Fundamental Rights of the European Union (EU) states: “This Charter reaffirms...the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, from the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the EU and by the Council of Europe, and the case-law of the Court of Justice of the EU and of the European Court of Human Rights.”
- Article 1 of the Addition with the Resolution Res (2002)8, which proclaims the Statute of the European Commission Against Racism and Intolerance, defined the mission of this body, related to the “fight against racism, racial discrimination, xenophobia, anti-Semitism, and intolerance in larger Europe, from the perspective of human rights protection, in the light of the *Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols and appropriate court practice.*”

This should contribute to achievement of the following goals:

- Legislation reform, policies and other measures of the member states in fight against racism, xenophobia, anti-Semitism, and intolerance, or its impact,
- Proposing of further activities at local, national and European level.”

The above-mentioned statements result in the relationship between what are formally and legally separate, but essentially and in a material and legal sense actually very clearly connected systems.

The primary text of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* contained one provision (Article 14) that prohibited discrimination in relation to the exercising of rights and freedoms guaranteed by provisions of this Treaty.

This meant that the concept of the prohibition of discrimination based on the Convention may not spread to areas that are not regulated by the Convention, or to rights that are not guaranteed by the Convention itself. Article 14 of the European Convention for the Protection of Human Rights and Freedoms does not have any independent nature (i.e. it *does not exist independently*), which means that independent violation of Article 14 cannot be confirmed before the *European Court of Human Rights*.

In practice, this right is called an “accessory right to equality in enjoying substantial rights and freedoms guaranteed by the Convention”. Decisions of the *European Court of Human*



Rights have contributed to the wider scope of efficient and anti-discriminatory protection, under the auspices of the CoE and in the framework of *the Convention right itself*.

The conclusion of additional protocols with the *European Convention on Human Rights* marks the evolution of the treaty itself, but also the road of development of European standards in the protection of human rights and freedoms. In comparison with the concept of the prohibition of discrimination, the conclusion of *Additional Protocol number 12 of the European Convention on Human Rights* is of great importance from the material and legal aspect of spreading guaranteed rights and freedoms, and the aspect of the initiating and adopting of this Protocol, in which other bodies of the CoE participated, especially the *European Commission Against Racism and Intolerance*.

In the meantime, from the adoption of the Convention and until the adoption of Protocol 12, the Parliamentary Assembly of the CoE adopted more than six recommendations, requesting from the Committee of Ministers of the CoE, to expand the scope of the prohibition of discrimination, by the adoption of appropriate additional protocols. The persistence in rejecting such an initiative was justified by the legal insecurity that would result in the adoption of a document on the general prohibition of discrimination, based on all the provisions of the national legislation.¹⁴

According to pragmatists who were convinced by this justification of the adopting of the new Protocol, the situation during the Nineties was the result of the long-term process of the maturing of the anti-discrimination concept, under the auspices of the CoE. In that regard, the role of the evolution of the practice of this body was important, indicating that the basis for protection from discrimination is not the requirement for the same treatment, but the need for protection from different treatment when there is no justified reason for that. In other words, difference of treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be released'.¹⁵

European Court of Human Rights case law allows countries a wide margin of appreciation with regard to the fact of whether and to which extent there were differences in similar situations, and whether they were justifiable and/or allowed. *The margin of appreciation* depends on several factors, foremost the circumstances surrounding the case, i.e. the facts concerning each specific case.¹⁶

An additional report with explanations of *Protocol 12* states that Article 1 of the Protocol of the Convention provides protection from discrimination in the following cases:

- Exercising of each right recognized for the individual in national legislation of the State Parties,
- In the exercising of a right arising from clear obligations of the power in national law, when public power is obliged to act in a specific manner,
- When public power has discretion in the decision making process (for example, when it approves subventions),

¹⁴ M. Head, *The Genesis of Protocol No.12 – Non-discrimination: a Human Right*, COE Publishing, 2006, page 37

¹⁵ *Abdulaziz, Cabales and Balkandali v. United Kingdom*, verdict of the European Court of Human Rights from 28 May 1985, series A, No.94, paragraph 72

¹⁶ Verdict of the European Court of Human Rights in the case *Rasmussen v. Denmark*, Series A, No. 87, Paragraph 40.



- In acts and omissions of public power, for example, when police officers control riots.¹⁷
- One of the rare and among the first cases related to Article 1 of the Protocol 12 was the case *Sejdić and Finns against Bosnia and Herzegovina*, where the Court stated that it did not find the reason to give up of interpretation of “discrimination”, according to Article 14 of the Convention, in the enforcement of the same term according to Article 1 of Protocol 12.¹⁸

Taking into account Article 14 of the Convention as well as Article 1 of the Protocol 12 to the Convention, the entire context constitutes an objective legal order that contains standards of protection from prohibited discrimination. Such a legal framework is applied to the different bases of discriminatory behaviour that can be committed due to ethical origins, race, skin colour, religion, gender and the representation of some minority group, language, political or other belief, sexual orientation, status as a child in comparison with the marital status of parents¹⁹, property status, social origin, level of disability or other personal characteristics.

The Convention itself has no precise *definition of “discrimination”*. Instead, the European Court of Human Rights and Freedoms develops in its practice criteria for the creation of standards of (non)discriminatory behaviour, or the prohibition of discrimination. Thus, in the case *Kjelden v. Denmark* (1976), the Court emphasizes in Paragraph 56 that Article 14 prohibits “discriminatory treatment that is based on the characteristics of a person (status), which differ a group or an individual from others”.

The European Court of Human Rights in its practice promotes the concept of the prohibition of *direct discrimination* that is based on the idea of formal equality and represents less favourable acting towards individual or a group based on one of the prohibited grounds.²⁰ Thus, the Court states that the term *discrimination*, according to the meaning of Article 14 covers general cases, where an individual or a group are treated less favourable than another individual or a group, with no reasonable justification, even if the Convention does not define the favourable treatment of the last ones.²¹

Although Article 14 obviously covers direct discrimination, the Court has not drafted a precise analysis of direct discrimination in cases if applicants claim they had suffered the consequences of seemingly neutral measures. Direct discrimination occurs when practice, rules, requests, or conditions are seemingly neutral, but disproportionately influence certain groups, unless the practice, rules, requirements and conditions are justified.

In the case *Hugh Jordan v. United Kingdom* (2001) the European Court suggests that the Convention covers direct discrimination. The applicant in this case stated that the circumstances in which his son was murdered indicated discrimination. He claimed that the security forces had killed 357 people from 1969 until March 1994. Most of these people were men from the Catholic or national (Irish) community.

¹⁷ J. Omejac, Prohibition of discrimination in practice of the European Court of Human Rights, Anthology of the Faculty of Law in Zagreb, 59 (5), 2009, page 881

¹⁸ *Sejdić and Finns against Bosnia and Herzegovina*, verdict of the European Court of Human Rights, from 22 December 2009, paragraph 55.

¹⁹ Children born in or outside of marriage.

²⁰ J. Omejac, page 919

²¹ *Abulaziz, Cabales and Balkandali v. United Kingdom*, Paragraph 82



Comparing this data with the number of murdered members of the Protestant community, and considering the fact that there were few court cases (31) and very few rendered verdicts (four, until the moment when he filed application), this clearly indicates a discriminatory use of deadly force and the absence of legal protection of the part of society, based on nationality or on connection with a national minority.

In the verdict in the case of Kelly and others v. United Kingdom (paragraph 148 of the verdict from 4 August 2001) it states:

“Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group. However, even though statistically it appears that the majority of people shot by the security forces were from the Catholic or nationalist community, the Court does not consider that statistics can in themselves disclose a practice which could be classified as discriminatory within the meaning of Article 14. There is no evidence before the Court which would entitle it to conclude that any of those killings, save the four which resulted in convictions, involved the unlawful or excessive use of force by members of the security forces.”

Court practice in certain cases has confirmed the acceptability of so called *positive discrimination*, which allows different action or justified action, in order to provide the full exercise of rights guaranteed by the Convention to certain groups, which is not in violation of Article 14 that prescribes the prohibition of discrimination. Such measures may be directed towards the promotion of equality or the correction of inequality based on facts, as the Court concluded in the Belgian Linguistic case (Verdict of 23 July 1968, Paragraph 10).²²

Discrimination in its essence is hard to prove, thus, it is important to indicate the legal and factual framework that defines discrimination. Thus, the European Court of Human Rights uses a test for making the conclusions of (non)existence of discrimination. The Court starts with few elements where the first one is related to Article 14, if a discriminatory case can be considered by some of the rights guaranteed by the Convention.

This does not necessarily require the determining of a violation of some other rights defined by the Convention, but the existence of discrimination itself should be based only on the context of the respecting of some of the rights guaranteed by this document. This means that some questions and disputable facts from this case should be covered by material law which is related to one or more provisions of the Convention.

In cases when one or more of the fundamental/independent guarantees of human rights is violated, the Court gives up inquiring into the existence of discrimination, finding that the determining of a violation of a right is enough. In that manner, the Court applies the *principle of subsidiarity* of Article 14 in relation to other provisions of the Convention, or of the violation of rights guaranteed by other articles of this contract.²³

²² Prohibition of discrimination in accordance with the European Convention on Human Rights (Article 14) – A Guide for lawyers, Interights/London UK, 2006, page 12

²³ For example, Airey v. Ireland, verdict of the European Court of Human Rights, from 9 October 1979, Paragraph 29



The principle “fundamental importance of the case” indicates that the Court examines an alleged violation of Article 14, only if “*there is clear inequality in acting within exercising of the convention right on which the whole thing is*”. The next element that should be determined is *inequality in acting*, which represents “the typical” requirement for protection from discrimination. To that purpose, the Court intends to find an analogy by comparing situations that are examined, as the party required.²⁴

Finally, each discriminatory behaviour does not lead to a violation of right from Article 14 of the European Convention of Human Rights. To make such a conclusion, the following conditions should be fulfilled - (non) justified acting and (dis)proportional means used in comparison with the goal that is supposed to be achieved.²⁵

The Law of the European Union

Although the status of the European Convention on Human Rights was not confirmed formally and legally in the law of the communities (the Union), in the first decade of its development, the implementation of convention standards started via the legal reasoning of the European Court of Justice (the EU Court of Justice) in the implementation and explanation of fundamental communitarian principles, especially the implementation of the so-called four major freedoms (the freedom of movement, including freedom of enterprising and business establishment, the freedom of movement of goods, the freedom of provision of services and the freedom of movement of capital) and the concept of general legal principles, common to all the legal traditions of the member states.

A very important turn in communitarian policy and practice (in terms of written sources) occurred after the adoption of the Treaty on the Establishing of the European Union in Maastricht (1992), when human rights were mentioned for the first time in treaties, which explicitly called on the European Convention through the provisions of Article 6 of the Treaty, Paragraph 1 and 2 which state:

“The Union has been established on principles of freedom, democracy, respect of human rights and fundamental freedoms, and the rule of law. These principles are the same for all member countries. As its general legal principles, the Union respects fundamental rights guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, based on conventional traditions joint to all member countries.”

Following the mentioned principles, the Union adopted the Charter on Fundamental Rights in the form of a legally non-binding act, at the end of 2000. This document clearly indicates the relationship with the Convention, which was previously expressed at the Ministerial Conference on Human Rights that took place on 3 November 2000, on the topic “What is the future of protection of human rights in Europe?”, through the Declaration, by which the Union members:

“...Emphasize the need (in relation to the European Charter on Fundamental Rights) to find means to avoid the situation of competitiveness and potential conflict of the system for human rights protection, which would weaken

²⁴ Lithgow and others v. United Kingdom, verdict of the Lithgow Court of Human Rights from 24 June 1986, Paragraph 182

²⁵ The case National Trade Union of the Belgian Police against Belgium, verdict of the European Court of Human Rights from 27 October 1975, Paragraph 47-49



overall efforts for the protection of human rights in Europe; express the tendency for the CoE to unite all European countries and invite them on progress in exercising of democracy, the rule of law, and human rights, aiming at better unity in areas that are of key importance for stability of the overall continent; reaffirm the leading status of the European Convention as the central constitutive instrument of the European public order on which depends democratic stability of the continent.”

From 1950 until 1980, *the European Court of Justice* applied some of the general legal principles in its work: the right to legal security, the principle of equal treatment and non-discrimination, the principle of disproportionality, the principle of legal security, the principle of protection of legitimate expectations, the principle of protection of fundamental rights, and the right to a defence.²⁶

When the Lisbon Treaty came into force at the end of 2009, the Charter received a new status and became equal with treaties. This specificity is especially emphasized because the very text of the Charter was not mentioned in one of the two treaties constituting the treaty legal order of the Union²⁷, but the provision of Article 6 of the Treaty on the EU recognized the legal equality of the set of rights, freedoms and principles from the Charter with other treaties, whereas its provisions cannot extend the competences of the Union out of areas defined by the treaty. In addition, this article gives specific legal status to the official explanations added to the Charter and which function to provide for its interpretation²⁸.

The general principle and the doctrine of equality are clearly mentioned in the case of the *EU Court of Justice* from July 1983.²⁹ After this, the principle has been consistently applied and was finally included in the text of the currently valid Treaty on the Functioning of the EU, which in its first part *Principles* (Article 10) prescribes that in defining and implementing policies and activities, the Union shall strive to fight against discrimination based on gender, racial or ethnic representation, religion or belief, disability, age or sexual orientation.³⁰

In *Part Two – Non-discrimination and Citizenship of the Union*, Article 18 any discrimination on the grounds of nationality shall be prohibited. Article 19 of the same part says that without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.³¹

Title IV³² or Article 45 of the Treaty states that freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. Article 157 of this Treaty says that each Member State shall ensure that the

²⁶ T. Tridimas, *The General Principles of EU Law*, Second Edition, Oxford EC Law Library 2006, page 6

²⁷ The Treaty on the EU and the Treaty on the EU functioning.

²⁸ In line with its Title VII.

²⁹ The case 152/81 *Ferrario and others v Commission*, verdict from 4 July 1983

³⁰ Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union C 115/47 as of May 9, 2008

³¹ M. Janjević, Consolidated Version of the Treaty on the European Union, Official Gazette, Belgrade, 2009, page 65

³² Free movement of persons, services and capital, Chapter 1/Workforce.



principle of equal pay for men and women workers for equal work or work of equal value is applied.

For the purpose of this Article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.³³ As prescribed in Article 214 of the Treaty, operations in the field of humanitarian aid shall be conducted in compliance with the principles of international law, and with the principles of impartiality, neutrality and non-discrimination.

Theoreticians indicate the *four fundamental values of the Charter on Fundamental Rights of the European Union* systematized in its text: dignity, freedom, equality, and solidarity. The Chapter *Equality*, in which most provisions may be considered to include different dimensions of human rights³⁴, connects the principles of equal treatment to the fundamental principle by which everyone is equal before the law³⁵

The principle of the prohibition of discrimination explicitly defined in relation to gender, colour of skin, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.³⁶

Another important aspect of communitarian legislation is the content of two directives: the Directive of the Council of Ministers EU 2000/43/EC, which applies the principle of equal treatment of people, regardless of racial or ethnic origin; and the Directive of the Council of Ministers of the EU 2000/78/EC that establishes the general framework for equal treatment in the employment and labour area. Both directives are of great importance, not only for the development of communitarian legislation and its court practice, but for the standardization of principles of equality and non-discrimination in the national and international legal order, including in areas that are not covered by these directives.

Pursuant to Directive 2000/43/EC, direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds of race or ethnic origin. Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put people of a race or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment shall be deemed to be discrimination when unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. An instruction to discriminate against people on grounds of race or ethnic origin shall be deemed to be discrimination.

³³ Ibid, page 121

³⁴ Non-discrimination, cultural, lingual and religious diversity, equality of man and women, rights of children, rights of elderly and integration of people with disabilities.

³⁵ Article 20 of the Charter.

³⁶ Article 21 of the Charter.



Directive 2000/78/EC includes similar standards and definitions and is applied in the areas of employment and labour. It also sets out beliefs, disability, age and sexual orientation as areas in which discrimination can occur.

The EU Court of Justice (the former European Court of Justice) used general legal principles in its reasoning and argumentation of verdicts rendered in earlier phases of its work. In that manner, respect for human rights and freedoms, or the standards of the European Convention for the Protection of Human Rights and Freedoms, make for a long term source of adjudication in the work of this Union body. Acting on such complaints, the Court firstly announced as incompetent in terms of *ratione materiae* as it was authorized to *interpret the Treaty and make decisions in relation to content of establishing Treaty*. The discontinuity of legal reasoning and earlier practices in the work of the Court of Justice came into effect at the end of the 1960s.

The investigating of a case of direct discrimination in the procedure of court protection in communitarian law is methodologically more or less the same as the one implemented by the *European Court of Human Rights*. So, the existence of discrimination in this proceeding is determined through several elements. Among others: the existence of appropriate norms on which the complaint request of a party is based, a protected area of discrimination defined by communitarian legislation³⁷, unfavourable treatment to which is party exposed in relation to other users of rights, comparator, or comparative case in the same or similar situation³⁸ and finally the (un)justification of the proceeding in view of goal achievement, used means, and its proportionality in comparison with the aim that is about to be achieved.

In comparison with indirect discrimination, the first identifying requirement is the existence of an apparent neutral rule, criteria or practice related to everybody.³⁹ The next element is related to a significant negative element which has this rule, criteria and practice in a protected group and brings it into an unfavourable position compared to other users of the same right. When it comes to statistical indicators which prove the existence of unfavourable treatment, the EU Court of Justice requires the existence of facts that prove a huge disproportion of damage to representatives of the group that seeks protection from discrimination.⁴⁰

Finally, *harassment or the provoking of discrimination*, as a part of the behaviour prohibited by communitarian legislation, has less grounds in the court practice of the EU. This form was earlier treated as the form of direct discrimination, and then found its position as a specific form of discrimination in directives, primarily because of damaging consequences, not because it had or has a different conceptual meaning.

³⁷ European Court of Justice, *Maruko v. Versorgungsanstalt der deutschen Bühnen*, case C-267/06 (2008) ECR I-1757, 1 April 2008

³⁸ See the case of the European Court of Justice, *Allonby v. Accrington and Rossendale College*, case C-256/01 (2004) ECR I-873, 13 January 2004

³⁹ European Court of Justice, *Hilde Schönheit v. Stadt Frankfurt am Main and Silvia Becker v. Land Hessen*, joined cases C-4/02 and C-5/02 (2003) ECR I-12575, 23 October 2003

⁴⁰ European Union Agency for Fundamental Rights / European Court of Human Rights - Council of Europe, *Handbook on European Non-discrimination Law* - Luxembourg: Publications Office of the European Union, 2011, page 30



Thus, the EU Directive 2006/54/EC⁴¹ defines harassment as unwanted conduct related to the sex of a person occurring with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. When it comes to sexual harassment, defined as unwanted verbal, non-verbal or physical conduct of a sexual nature, one additional element is that such behaviour is offensive to the victim of discrimination.

In terms of this Directive, one more principle has been confirmed, immanent in human rights, and it is the so-called principle of positive action that requires from States to maintain or adopt measures which would in practice provide full equality between men and women in working life.⁴²

Montenegrin national legislation

When it comes to the legal system of Montenegro, discrimination is prohibited, primarily by the Constitution and different international treaties which, by ratification and publishing, become a constituent part of the national legal order, which have primacy in comparison with laws and which are directly implemented when regulating relations differently than other national laws⁴³

The international and legal framework, as a part of the legal order, contains all the important international treaties directly related to discrimination or contain in their texts so-called anti-discrimination clause or clause of equality in the implementation of all the provisions of each specific treaty. Montenegro accessed to most of these treaties after restoring independence.

Over recent years, the dynamic international activity of the country in terms of signing and ratifying other treaties that already existed in or after 2006 has continued. Among these documents was the Agreement on Stabilization and Accession with the European Communities (EC) as an important source of law for all national institutions, regardless of some interpretations that deny the legal nature of this act, with the explanation that the obligations prescribed by the Agreement and their impact on national law are related to the accession of Montenegro to the EU.

The legal framework of non-discrimination in Montenegro

The Montenegrin legal order is constituted by the norms of local legislation and ratified and published international treaties directly applied when relations are regulated differently than in national legislation (Article 9 of the Constitution)⁴⁴. However, Article 17 of the Constitution says that rights and liberties shall be exercised on the basis of the Constitution and confirmed international agreements and that all people shall be deemed equal before the law, regardless of any particularity or personal feature.

⁴¹ Directive 2006/54/EC of the European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in matters of Employment and Occupation (recast) (5 July, 2006), Article 2.

⁴² Article 3 of Directive 2006/54/EC)

⁴³ Article 9 of the Constitution of Montenegro

⁴⁴ The Constitution is published in the Official Gazette of Montenegro, no. 1/2007, with amendments I until XVI Official Gazette no. 38/2013



Article 8 of the Constitution prohibits the infliction or encouragement of hatred or intolerance on any grounds as well as direct and indirect discrimination on any grounds. Regulations and the introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and the protection of people who are in an unequal position on any grounds shall not be considered discrimination.

Alongside the above-mentioned, the Constitution guarantees by Article 18 the equality of men and women and the development of the policy of equal opportunities. The Constitution also guarantees the right to the equal protection of rights and freedoms. In contrast to comparative experiences, and the concept of human dignity immanent in the Charter on Fundamental Rights of the European Union, the Constitution of Montenegro relates this institute only to the mental and physical integrity of personality, in the part of guarantees no arbitrary deprivation of liberty, protection from torture and prohibition of slavery or status as a slave.

Bearing in mind the dependent character of the clauses on protection from discrimination, it should be emphasized that the whole range of rights guaranteed by the Constitution and international treaties may be covered by the unique clause of non-discrimination, in terms of their exercising in internal law by people with some specific personal features.

After all, this is the quality that arose from the adoption of Additional Protocol Number 12 with the European Convention for the Protection of Human Rights and Fundamental Freedoms that prescribes the prohibition of discrimination on any grounds such as, for example, gender, race, skin colour, language, religion, political or any other beliefs, national or social origin, connection to national minorities, property, birth or any other status, in terms of exercising of any right prescribed by law.

Anti-discrimination clauses or clauses on equality are not an absolute novelty that arose from the constitutional reforms or the innovation of legislative acts in recent times. Such provisions existed in a number of laws earlier. However, neither the administration nor court practice confirmed the validity, appropriateness, value and quality of such solutions. So, anti-discrimination clauses existed in laws on education, regulations in healthcare and health protection areas, labour and employment, and others. These provisions exist nowadays in laws and represent the norms of *lex specialis* legislation, which amend or at least should amend provisions of systemic laws.

The Law on Gender Equality⁴⁵ was the first systemic law that dealt comprehensively and generally with the matter of equality based on personal characteristics. The Law installed the concept of gender equality that implies the equal representation of women and men, and people of different gender identities in all areas of public and private life, equal status and equal opportunities in the exercising of all rights and freedoms and the use of knowledge and ability for the development of the society, and the achieving of equal use from the results of work.⁴⁶

According to the Law, for the purpose of gender equality, public bodies, bodies of public administration and local government, public institutions, public enterprises and other legal

⁴⁵ The Law was published in the "Official Gazette of the Republic Montenegro", no.46/2007 and the "Official Gazette of Montenegro", no. 35/2015.

⁴⁶ Article 2 of the Law.



entities with public competences, commercial entities and other legal persons and entrepreneurs, are all obliged to assess and evaluate the impact of their decisions and activities on the status of women and men in all phases of planning, adopting and enforcing decisions, and undertaking activities from these competences. The latest amendments of the Law have referring norms that indicate the procedure of protection, prescribed by the General Law on the Prohibition of Discrimination, while the part on institutional competences refers to the institution of the Protector of Human Rights.

The Law also defines gender, equal opportunities, unequal treatments, direct and indirect discrimination based on gender, violation based on gender, harassment and sexual violation based on gender. The key aspect of the Law is the initiating of general and certain measures for achieving gender equality.⁴⁷ During 2015 this Law was amended. Afterwards, the system of dealing with discrimination complaints based on gender was delegated to the Protector of Human Rights and Freedoms of Montenegro, who, in any case was already competent to act in discrimination cases based on gender. The quality of this solution comes from the fact that a number of cases of citizens' applications were previously filed to the line ministry – the Ministry of Human and Minority Rights (MoHMR), according to the law.

The first general anti-discrimination law was adopted in 2010 (amended in 2014)⁴⁸ as part of the efforts to define this area in a unique manner, regardless of the specific personal characteristics of victims of discrimination, the implementation area, responsible subjects, or type and form of discrimination. Unfortunately, in such efforts, the Law confusedly defined certain institutes, which can be easily confirm the review of its structure with notable misunderstanding of terms of types, forms, areas and grounds of discrimination, composed of elements of the unique system of material and process anti-discrimination law.

The Law defines “prohibition and protection from discrimination, promotion of equality with implementation of regulations and other laws defining prohibition and protection from discrimination on certain grounds or in relation with exercising of certain rights, and promotion of equality unless they are opposite to this Law”.

The key aspect of the anti-discrimination system contained in Article 2 of this Law says: “Any form of discrimination, on any grounds, shall be prohibited”.

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

⁴⁷ S.Bajic, N. Drobnjak, Gender equality in theory and practice – Podgorica, 2011, page 40.

⁴⁸ Law on Prohibition of Discrimination published in “Official Gazette of the Republic Montenegro”, no. 46/2010 and 18/2014



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

Indirect discrimination exists if an apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of people into an unequal position with respect to another person or group of people, on any grounds referred to in Paragraph 2 of this Article, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved. The incitement or giving instruction to discriminate against a certain person or a group of people on any grounds referred to in Paragraph 1 of this Article shall be deemed to be discrimination.”

The Law is applied to both the public and private sector, or all types of organizational forms, equally to all private and physical entities. The text of the Law has the norm related to the protection of people who report, give statements before competent bodies or offer evidence at the proceeding, which investigates a case of discrimination. In addition, the Law has the principle by which the consent of a person to discrimination does not relieve of responsibility of the person who commits discrimination, who gives instructions or incites on discrimination.

It cannot be clearly explained why some institutes have been listed as specific forms of discrimination, although it is clear that they are related to some other elements⁴⁹, here are mentioned as forms recognized in theory and practice and are stated in Law as harassment and sexual harassment, segregation and hatred speech. When it comes to the form of law, the impact of the Equality Directives of the CoE is notable, and also the standards of the European Commission against Racism and Intolerance⁵⁰

According to the definitions in this Law:

- *Harassment* of a person or group of people on one or more grounds referred to in this Law, exists when such behaviour has the purpose or consequences such as violation of personal dignity, or causes intimidation, feelings of humiliation or offensiveness or creates a hostile or degrading environment.
- *Sexual harassment* is any unwanted verbal, non-verbal or physical behaviour of a sexual nature which has the purpose to violate the dignity of a person or group of people, or which causes such an effect, and especially causes intimidation, creates a hostile and degrading environment, or produces feelings of humiliation or offensiveness.
- *Segregation* is every act, activity or failure to perform an activity, which causes the forced or systemic separation or differentiation of people on any grounds from this Law.

⁴⁹ Primarily areas and grounds of discrimination such as discrimination in the use of objects for public use, discrimination in the provision of services or discrimination against people with disabilities.

⁵⁰ A Council of Europe body.



- *Hate speech* is any form of expression of ideas, statements, information and opinions that spreads, stirs up, encourages or justifies discrimination, hatred or violence against a person or group of people because of their personal characteristics, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in the form of nationalism, discrimination or hostility against minorities.
- *Racial discrimination* is any differentiation, unequal treatment or bringing into an unequal position of people with the belief that race, skin colour, language, nationality or national or ethnic origin, justify the depreciation of a person or group of people, or justify the idea of the superiority of a person or group of people compared to those who are not members of that group.
- *Discrimination based on religion or belief* is any treatment which is against the principle of freedom of religion, that is every unequal treatment, differentiation, or bringing into an unequal position of people on the basis of religion or personal belief, as well as on the basis of belonging or not belonging to a certain religious community.

The Law also established a central body for the protection from discrimination – the Institution of the Protector of Human Rights and Freedoms, competent to:

- 1) Act on complaints relating to discriminatory treatment committed by any authority, business entity, other legal person, entrepreneur and natural person, and undertake measures and actions to eliminate discrimination and protect the rights of discriminated person, if the court proceeding is not initiated;
- 2) Provide the required information to the complainant who believes they have been discriminated against by any authority, business entity, other legal person, entrepreneur and natural person, about his/her rights and duties, as well as about options in terms of court and other protection;
- 3) Conduct the conciliation proceeding between the person who believes they have been discriminated against, with his/her consent, and any authority, business entity, other legal person, entrepreneur and natural person, referred to in the complaint about discrimination;
- 4) Initiate the procedure for protection against discrimination in court or appear in that proceeding as an intervener if the party makes probable, and the Protector assess that respondent performed discrimination by the treatment on the same grounds toward a group of people with the same personal characteristics;
- 5) Warn the public on appearances of severe forms of discrimination;
- 6) Keep separate records of submitted complaints with regard to discrimination;
- 7) Collect and analyze data on cases of discrimination;
- 8) Undertake activities for the promotion of equality;
- 9) Submit to the Parliament, in a separate section within the annual report, a report on the activities conducted regarding protection from discrimination and the promotion of equality;
- 10) Perform other tasks related to protection from discrimination prescribed by the separate law governing the competences, powers, manner of operation and acting of the Protector.

Aside from the above-mentioned, the Protector is obliged to collect statistical data in the same manner as all public bodies which conduct proceedings for the protection from discrimination, including inspection surveillance and court protection.

The proceeding before the Protector after a complaint should be and is flexible, free of charge, confidential and adapted to make the proceeding easier for the parties that require protection from discrimination. Besides, the intention is to provide mediation during the whole



procedure, or an informal type of mediation that should eliminate both the discrimination and its consequences.

Parties can also use court protection that can be provided through court proceeding based on the rules of litigation procedure, with certain derogations in terms of the rules of evidence. Unlike usual litigation, in proceedings for protection from discrimination the so-called reverse or divided burden of evidence is used, where it is up to a victim of discrimination to prove that discrimination occurred, and it is also up to the accused to prove that the act or action were not of a discriminatory nature or that act or action did not constitute discrimination.

Parties may request the following in the litigation procedure:

- Confirmation that the defendant acted in a discriminatory way against the plaintiff;
- Prohibition of the action that bears the potential treat of discrimination, i.e. prohibition of the repetition of the discriminatory activity;
- Elimination of the consequences of discriminatory treatment;
- Compensation for damages, in accordance with the law;
- The publishing of the judgement in the media, which confirms discrimination at the expense of respondent in the media.

In the cases referred to in the first three paragraphs, the lawsuit may be proceeded together with claims for the protection of rights, where it is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.

The subjective deadline for the submission of a lawsuit is one year from the day when it was discovered that discrimination occurred but the objective deadline expires three years from the day when the discrimination happened.

Finally, the Law gave an important role to inspection bodies in terms of surveillance of discrimination. In the domains of its competences in areas of labour and employment, protection in the work place, health protection, education, construction, traffic, tourism and other areas, inspection bodies are obliged to conduct surveillance affairs in order to determine facts and undertake measures for protection from discrimination, in accordance with the Law. This procedure includes the issuing of misdemeanour orders or the initiating of requests for the conducting of misdemeanour procedures in discrimination cases.

In June 2015, the Government adopted the Law on the Prohibition of Discrimination of Persons with Disabilities, intending to raise the level of standards in protection from discrimination.⁵¹ The Law presumes the implementation of law provisions which define the prohibition of discrimination and other laws defining prohibition of discrimination of people with disabilities, unless they are contrary to this Law. Furthermore, the Law defines a person with disability as any person having long-lasting physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder the full and effective participation of this person in society on an equal basis with others.

For the needs of this Law, group of people with disabilities is the term for several people with disabilities who in the same situation, and at the same time, are subjected to discrimination by

⁵¹ The Law has been published in the Official Gazette of the Republic of Montenegro, no.35/2015. The Law came into force on 15 July 2015



the same person, as well as several people with disabilities who are subjected to the same form of discrimination by the same person in different situations.

The fundamental principles of this Law have been derived from the UN Convention on Rights of Persons With Disabilities and are related to: the respect of human rights and dignity, the exercising of rights to make decisions on their own and the right to independence; full and effective participation and inclusion in all areas of social life; inclusion in all processes where decisions on their rights and duties are made; equality in the exercising of rights and duties with other persons; and respect and adoption of differences in all areas of life.

Discrimination based on disability shall be any legal or factual, direct or indirect, intentional or unintentional distinction or unequal treatment, or failing to act toward a person or group of people with disabilities compared to other people, as well as excluding, limiting or giving preference to one person compared to a person with disabilities, because of what the person with disabilities is hindered or denied in terms of the recognition, enjoyment or exercise of human rights and freedoms in civil and political, educational, economic, social, cultural, sports, civil and other areas of public and private life.

Discrimination based on disability shall be considered to be inviting, helping, encouraging or inciting, giving instructions, harassing, as well as announced the possibility to expose to discrimination a certain person or group of people with disabilities.

The Law has additional explanations and definitions of institutions and categories included in its provisions, such as:

- **Facilities in public use** are: facilities for trade, catering and/or tourist purposes; facilities that provide postal and telecommunications services, bank and other financial services; facilities in which are located the state organs, organs of the national government, organs of the local government and other legal people which, within the public powers they perform, provide services to citizens; educational and health institutions; institutions for social and child protection; museums and other institutions in the area of culture; facilities intended for sports, recreation and entertainment; religious facilities; airport facilities, railway and bus station facilities, ports and other facilities of transport infrastructure, used by citizens; facilities where people with disabilities are often staying; facilities in which are located official premises of associations, societies or associations of people with disabilities; institutions for rehabilitation; institutions for accommodation of people with disabilities, and so on;
- **spaces and areas for public purposes** are: pedestrian squares, streets, trails in the park, children's playground and walking areas; pedestrian passages, overpasses and pedestrian bridges; street crosswalks and the like;
- **furniture for people with disabilities** represents a standard element of a temporary nature, marked with a special label for the exclusive use by people with disabilities, and can include: beach furniture (platforms and ramps for access to the beaches and water, deck chairs for people with disabilities, lift for the transfer of people with disabilities) and other elements of a temporary mountable-demountable character used for the access, movement and stay of people with disabilities in public facilities and public areas⁵²:

⁵² Vertical lifting platforms, obliquely lifting platforms, access ramps, advertisements panel with labels in Braille, advertisements board in Braille, tactile lines.



- **Braille script** is a relief script for people with impaired vision;
- **public transport** is road⁵³, rail, maritime and air transport, in accordance with the special laws governing the requirements for performance, safety and security in traffic;
- **appliances** are: different types of technical-technological and electronic devices, medical-protective utensils and appliances, trained guide dogs and assistants, and other types of modern items and devices that as far as possible enable the independent living of people with disabilities and are considered an integral part of the person who uses them;
- **medical appliances** are: orthopedic, eye and tiftotechnical, hearing and appliances enabling loud speaking, dental and other appliances in accordance with regulations governing the health care and health insurance; and
- **Universal design** is the design of products, environment, programmes and services so that everyone can use them, to the greatest extent possible, without the need for additional adaptation or special shaping for people with disabilities, which does not exclude the existence of auxiliary means and appliances for certain categories of people with disabilities when such means are needed.

The Law prescribed specific types of discrimination such as hate speech, degradation, grouping⁵⁴, limiting personal mobility and limiting the right to independent living and life in the community. The Law also covered specific areas where certain forms of discrimination are manifested, with features that are characteristic for obstacles people with disabilities are faced with. Finally, the sanction provisions prescribed by this Law are more severe than the ones prescribed by the General Law. This implies the urgent harmonization of sanctions, which will lead to the harmonization of the sanction policy.

In the comparison between criminal and legal protection from discrimination, it is important to indicate the relatively new provisions of Article 42a of the Criminal Code, which establishes a general clause stating if a criminal offence is committed from hate based on the race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating except when it is not stipulated as a feature of the criminal offence. Such circumstances have a double meaning:

- 1) From the aspect of the application of material law and
- 2) From the aspect of the monitoring and registering of court decisions, as it indicates the possibility that a large number of prescribed criminal acts may be considered as discriminatory, although discrimination as such may not be recognized “at first sight” from the description and elements of the criminal acts that are considered at the trial, without revealing the motives on which the criminal offence is based. This argument is therefore related to the very end and result of any criminal proceeding, which is of significance for statistical records in this area.

Besides the above-mentioned examples, a whole range of criminal acts may contain discriminatory elements, such as for example:

- The murder of a pregnant woman or a child (Article 144 of CC);

⁵³ Urban, suburban, intercity and international)

⁵⁴ Discrimination based on disability shall be deemed to be any grouping that is the planned, systematic or continuous separation of a person or group of people with disabilities and their merger into one or more groups in a given situation, when in the same or similar situation such separation and merging is not performed for another person or group of people.



- Infringement of equality from Article 159 CC; infringement of freedom of confession of religion and performance of religious rites from Article 161 of CC;
- Violation of the reputation of nations, a minority population and other national minorities from Article 199 of CC;
- Rape from Article 204 of CC;
- Sexual intercourse with a helpless person from Article 205 of CC;
- Sexual intercourse with a child from Article 206 of CC;
- Sexual intercourse by abuse of official position from Article 207;
- Extra-marital community with a minor from Article 216;
- Depriving of a minor from Article 217; the omission of maintenance from Article 221 of CC;
- The violation of equality in employment from Article 225 of CC; causing national, race and religious hatred, divisions and intolerance from Article 370 of CC;
- Racial or other discrimination from Article 443 of CC; and
- Family violence and violence over women that have been defined as a specific form of discrimination, according to the CoE Convention on Preventing and Combating Violence against Women.

When it comes to misdemeanours, two characteristic observations should be mentioned here. The first one is that a large number of cases in the area of family violence and violence against women, as a specific form of discrimination, are dealt with before these bodies, which are deemed as the ones that resolve problems of so-called petty crime. However, they are mostly the real bearers of the protection system, based on the Law on Protection from Family Violence⁵⁵, due to the opportunistic behaviour of other bodies to qualify such cases as criminal acts. The second is that violations of public peace and order cover several torts deriving from the concept of inequality or correspond to criminal acts on discriminatory grounds (Article 19⁵⁶ and Article 20⁵⁷ of the Law on Public Peace and Order⁵⁸).

It is certain that the system of protection from discrimination is not entirely covered by the above-mentioned laws. However, the fact is that all other norms indicate or are based on concept found in these laws. Besides, these laws are themselves based on the standards of the current legislation of the EU and the Council of Europe. Thus, it is natural that other areas have to take into account these legal solutions, while the decisions of public bodies in these areas should not deviate from the ones adopted in the above-mentioned areas, at least when it comes to discrimination and its side effects.

The institutional framework of protection

The Protector of Human Rights and Freedoms has the function of the central body for protection from discrimination. The role of the Protector is related to process and legal protection in acting on complaints, initiating and participating in court proceedings,

⁵⁵ The Law was published in the Official Gazette of Montenegro, no.46/2010

⁵⁶ Anyone who offends another person in a public place by speech, sign or using other means, on the grounds of national, racial, or religious affiliation, ethnic origin, or other personal characteristic, shall be fined from 250 to 1,500 euros or punished by as sentence of 60 days imprisonment.

⁵⁷ A legal person that produces or distributes or makes available to the public a character, drawing or an object that offend other on the basis of national, racial or religious affiliation, ethnic origin or other personal characteristic, shall be punished with a fine from 1,000 to 15,000 euros.

⁵⁸ The Law was published in the “Official Gazette of the Republic Montenegro”, no.64/2011



functioning to reconcile according to the filed complaint for discrimination, informing the public, collecting and analysing data related to discrimination, and finally keeping records on filed complaints and providing insight into data from the certain registry kept by public bodies, in accordance with the Law on the Prohibition of Discrimination.

The role of court bodies and the Constitutional court is very important, as the key actors in the creation of legally obliged standards and judicial practice. The case of court proceeding and proceeding before the Constitutional court are trials after requests for the protection of a subjective right, or procedures for checking constitutionality and legality and individual constitutional and court protection, where international standards created in the practice of international shrivelling bodies and the decisions of the European Court of Human Rights and the EU Court of Justice have to be implemented as relevant and equally legally obliged, excepting only national legislation and practice.

While interpreting some institutes and the application of material law, the decisions of national courts have to be taken into account, especially those of EU member countries, where practice and legislation are developed and which are authorized to implement the directly appropriate material and legal regulations of the EU legislation.⁵⁹

The Law on the Prohibition of Discrimination has defined the competences of inspection bodies, and with the general principles has authorized inspections competent for certain areas to conduct inspection surveillance in relation to discrimination. Such an open legal norm carries the risk of the (dis)orientation of inspection bodies in law implementation, as the standards of discrimination in this phase of development of legal framework are hardly implemented and enforced by judicial and other national bodies that have the final word in law enforcement.

In addition, the activity of the MoHMR on promotion and protection, and registering in the area of protection from discrimination, especially in the normative part, as well as monitoring the implementation of strategic documents related to various vulnerable groups that are in constant risk from discrimination is both very important and defined by law.

⁵⁹ From the Report on the work of the Protector of Human Rights and Freedoms of Montenegro for 2015.



III Previous research and information

Studies on discrimination have shown that citizens believed that generally, and even in the process of employment, discrimination was highly present. However, the number of examples of discrimination in practice is high.

On 30 September 2015, the records of the Employment Agency, counted 33,773 unemployed people. Out of this number, 16,690 or 49.42% were women.⁶⁰ The same report stated that the number of unemployed people up to 25 years old, was 5,850; the number of unemployed people from 25 to 30 years old was 5,816; the number of unemployed people from 30 to 40 years old was 7,741, from 40 to 50 years old the number was 5,952, while the number of unemployed people who were more than 50 years old was 8,414.

The Report on the Analytical Review of the Harmonization of Legislation in Montenegro, of 6 February 2014, stated that the second Action Plan for achieving gender equality for the period 2013-2017, was adopted in January 2013. The Action Plan envisaged a rise in the rate of employment of women, the introduction of gender sensitive education at all levels, the prevention of gender stereotypes, and the introduction of gender equality in the media and culture. The Action Plan also stated that NGO representatives participated in the development of the Action Plan and its monitoring. Action Plans for gender equality were also adopted at the local level. The report also stated: “Self-employed women made up 10% of the overall number of self-employed people, which was supported through preferential loans, especially for women.

When it comes to employment opportunities, professional development, and professional progressing, and conditions for work, the Law on Labour defines the prohibition of discrimination and the definition of direct and indirect discrimination. Free job positions have to be announced so that people of both genders may apply. According to the competent national bodies, women are protected especially during pregnancy and maternity. Harassment and sexual harassment are also defined by the law. In cases of discrimination based on gender, the burden of proof lies with the employer. The court decides on the amount of compensation.” It is also defined that the employer may not refuse to employ a woman due to her pregnancy, to cancel her labour contract, or to move her to another job position.

When it comes to human rights in Montenegro, the Civic Alliance has often indicated status of women in society, in its research on discrimination. Discrimination against women is reflected through various issues. Men perform the three most important functions in the country – the President of the country, the Prime Minister and the Speaker of the Parliament. The number of women ministers in the composition of the Government is small.

The Parliament has always had a small number of women members – less than 30%. The law obliges political parties to put women on their lists at a minimum rate of 30% for election of MPs, but does not contain a norm which prescribes that at least 30% of MPs should be women in the Parliament. For that reason, which was also confirmed by recent elections, parties put women at the end of the list, which guarantees they cannot enter the Parliament. Currently, the Parliament has 14 women MPs, out of 81 MPs in total. The available data show that women have smaller salaries to men.

⁶⁰ Employment Agency of Montenegro: Records on unemployed people, the report on work for nine months, 2015

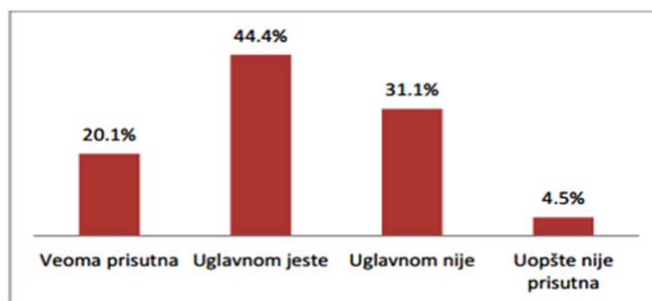


The study by CEDEM on discrimination from November/December 2015⁶¹ showed that 64.4% of respondents believed that discrimination was present in Montenegrin society.

Graphic 1

In your opinion, up to which extent is discrimination present towards different groups and people in Montenegro?

Grafik 1 Uopšteno govoreći, u kojoj mjeri je po vašem mišljenju diskriminacija prema različitim grupama i ljudima u Crnoj Gori prisutna? -%

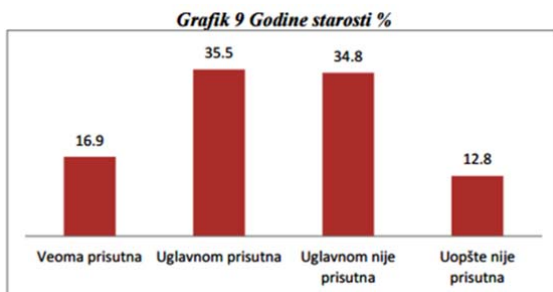


Very present/Mostly present/Mostly not present/Not present at all

The same research showed that 33% of citizens believed that discrimination based on gender was mostly present while almost 18% of respondents believed that discrimination on this criterion was very present. On the other hand, 37% of respondents said there was no discrimination based on gender, while 10% of them said that this type of discrimination was not present at all.

The results of the research by CEDEM showed that citizens believed that discrimination based on age was very common:

Graphic 9 Age %



Very present/Mostly present/Mostly not present/Not present at all

Finally, one specific aspect in the research by CEDEM was determining the perception of discrimination, in terms of employment. Here, 46.2% of respondents said that discrimination in terms of employment was very evident, while 34.5% said it was not evident, but was certainly present. Discrimination in terms of employment is mostly evident due to political

⁶¹ See this link for more information:

http://www.cedem.me/images/jDownloads_new/Izdavastvo/Publikacije/IZVJETAJ_Diskriminacija_2015.pdf



beliefs (81.8%), disability (69%), age (66%), sexual orientation (58%), nationality (57%), religion (50%), and gender (48%).

Aida Petrović, from The Montenegrin Women's Lobby announced the results of the research related to discrimination against women early for Radio Free Europe. Ms Petrović said: "49% of respondents said they were asked about their marital status and the number of children. This is so common and such a natural question for people who employ women, but such an unusual and discriminating question for women who are searching for a job. Almost 35% of women had to answer questions from employers about whether they planned to have a child, and if they planned to have a family. In cases where they plan to have a family before the employer starts to make plans about work, they will be fired, although this is not prescribed by Law or a contract. Mobbing is so common, and mobbing is the new term for something that has happened for years and is called psychological violence. In addition, 67% of employed women said they were victims of sexual harassment at work, while 1% of victims were men."⁶²

The research of the Civic Alliance about the implementation of the National Strategy for the integration of Roma and the Action Plan for the Decade of Roma Inclusion in Montenegro⁶³ from 2014 stated that Roma were classified as hardly employable people at the Employment Agency, because of their status, discrimination and level of education. The results of the research showed that Roma and Egyptian women were especially marginalized in local communities, because they belong to patriarchal minority communities. In comparison with the majority of population, these communities as socially marginalized at all levels: spatial, political, cultural, and educational. The difficult position of Roma women is manifested through employment, self-employment and business.

DAMAR also conducted research about discrimination in 2013. The research showed that citizens believed that discrimination was present.⁶⁴ The results of the research showed that women (35.6%) and elderly people (30.2%) were most frequently discriminated against. Out of the overall number of respondents, 15.6% of them said they were discriminated against in terms of employment.⁶⁵

The research of CA about discrimination on the grounds of gender, and age during employment in 2015 showed that discrimination was widely evident. According to this research, discrimination occurred in both the private sector and public institutions and bodies. Furthermore, one of the conclusions was that vulnerable groups were particular victims of discrimination.⁶⁶

⁶² See

http://www.slobodnaevropa.org/content/diskriminacija_u_crnoj_gori_zene_teze_do_posla_i_unaprijedjenja/24508011.html

⁶³ See more at: http://www.gamn.org/images/docs/cg/civil-society-monitoring-report_me.pdf

⁶⁴ See more at: <http://damar.co.me/wp-content/uploads/2015/02/Rezultati-istra%C5%BEivanja-o-diskriminaciji-u-Crnoj-Gori.pdf>

⁶⁵ This part of the text has been taken from the CA Report, Discrimination on the grounds of gender and age during the employment, 2015, (http://www.gamn.org/images/docs/cg/Istrazivanje-diskriminacije-po-osnovu_pola-i-starosti.pdf)

⁶⁶ *Ibid*



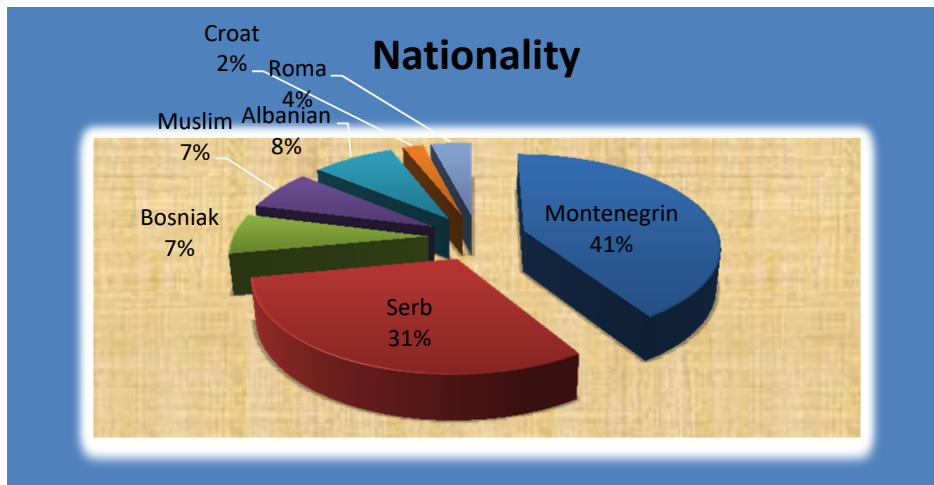
IV Standpoints of citizens on discrimination in terms of employment

The standpoints of citizens on discrimination in terms of employment were obtained through questionnaires and focus groups. The goal of the research was to find out the viewpoints of unemployed people on discrimination in terms of employment; thus the sample was weighted to include 80% unemployed people. The results do not represent the viewpoints of the overall public opinion but rather predominantly of unemployed people. The report shall also present their standpoints on discrimination according to the period of their status as an unemployed person.

Questionnaire

The questionnaire was completed by 507 people. It was organized in Podgorica, Bijelo Polje, Ulcinj, Berane, Mojkovac, Bar, Niksic, and Herceg Novi. The youngest participant was 18 years old, and the eldest was 67 years old. The questionnaire was answered by a gender split of 54.4% men compared to 45.6% women. We believed it was important to hear the views of members of the national minority population. Graph 1 shows the nationality structure of our respondents:

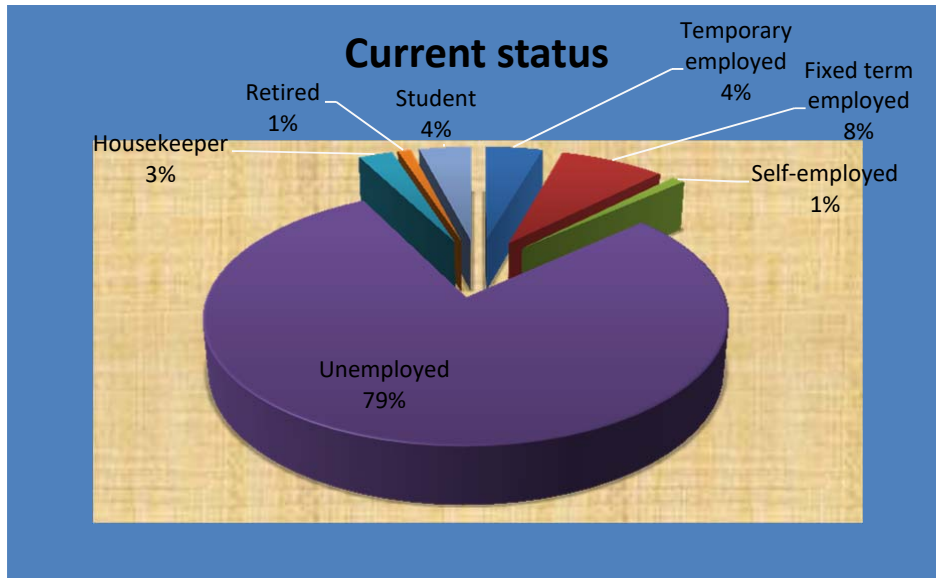
Graph1



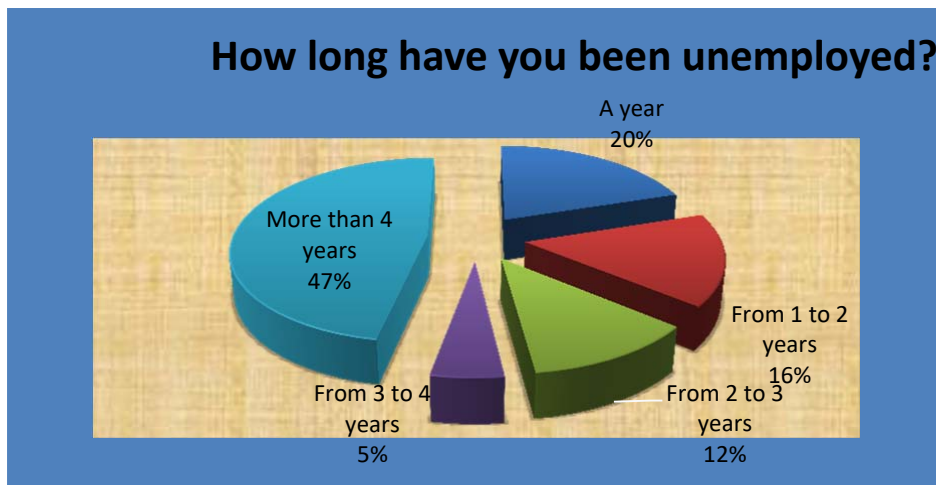
In our focus were citizens who were unemployed at the moment when the research took place, totalling 79% of respondents. However, by the accidental selection of respondents, answers to our questionnaire were also given by employees for indefinite time (4%), temporary employees (8%), students (4%), housekeepers (3%), self-employed (1%), and retired people (1%).



Graph 2



Graph 3



The citizens mentioned their reasons for unemployment, and they mostly spoke about discrimination and corruption during employment, political unsuitability, poor employment policy, a poor education system, and the large number of candidates for the same profession, the undeveloped nature of the country, especially in northern areas and the lack of job positions, as well as the large number of closed and bankrupted factories. Some answers acknowledged problems related to legal status. Graph 4 presents the answers given by all respondents to the question “What is your opinion about discrimination in terms of employment in Montenegro?”

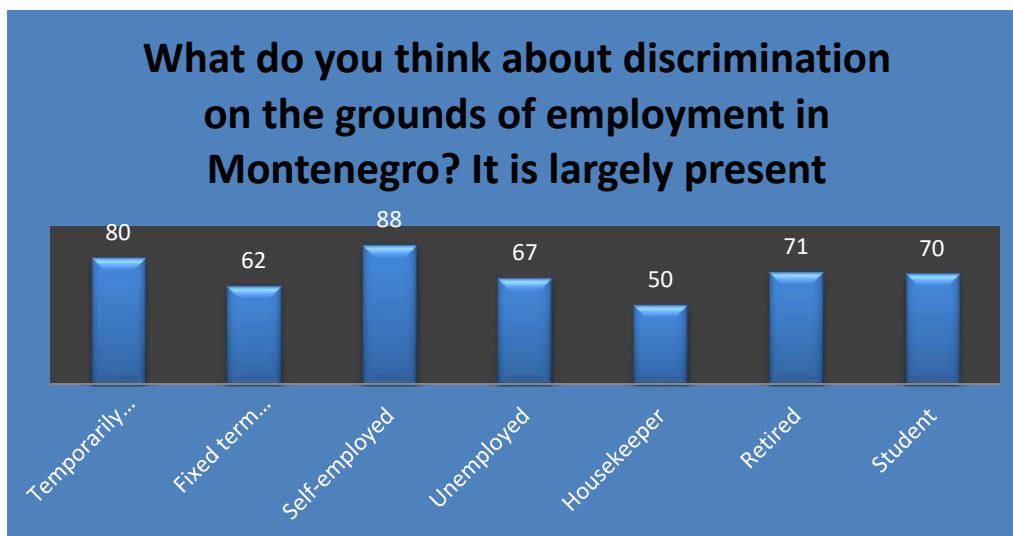


Graph 4



Graph 5 presents answers saying that discrimination is largely present. The answers given by respondents according to labour status were as follows:

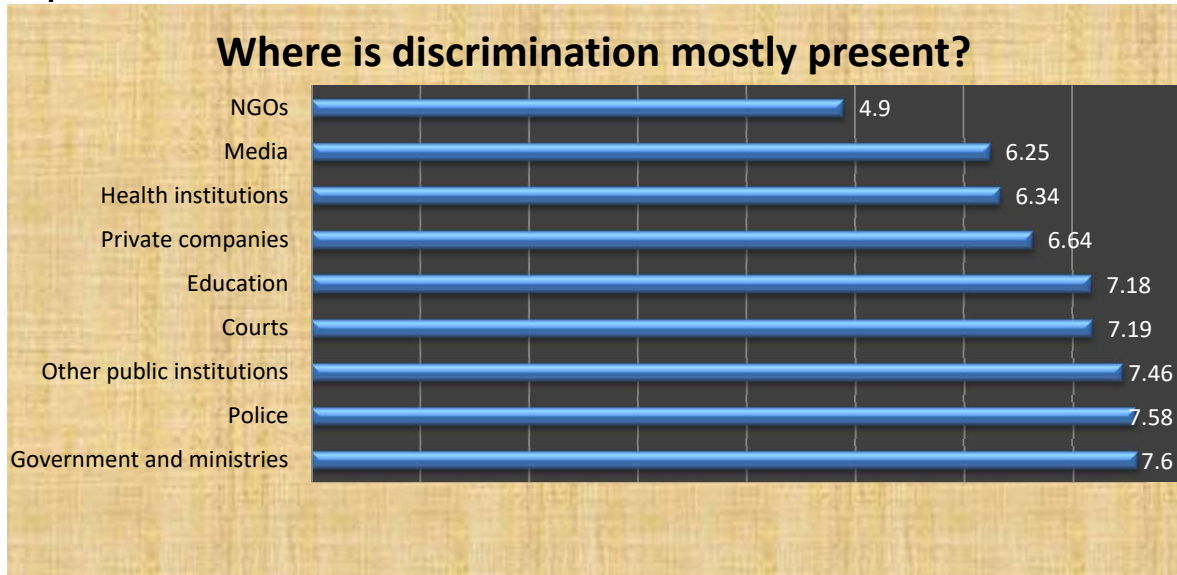
Graph 5



Unemployed people, or 67.5% of respondents, said that discrimination was largely present, and the same answer was given by 80% of fixed term employed. In answers to the question “Where is discrimination mostly present?”, respondents used a scale from 1 to 10, with the maximum at 10. Middle assessments are described in the Graph below:

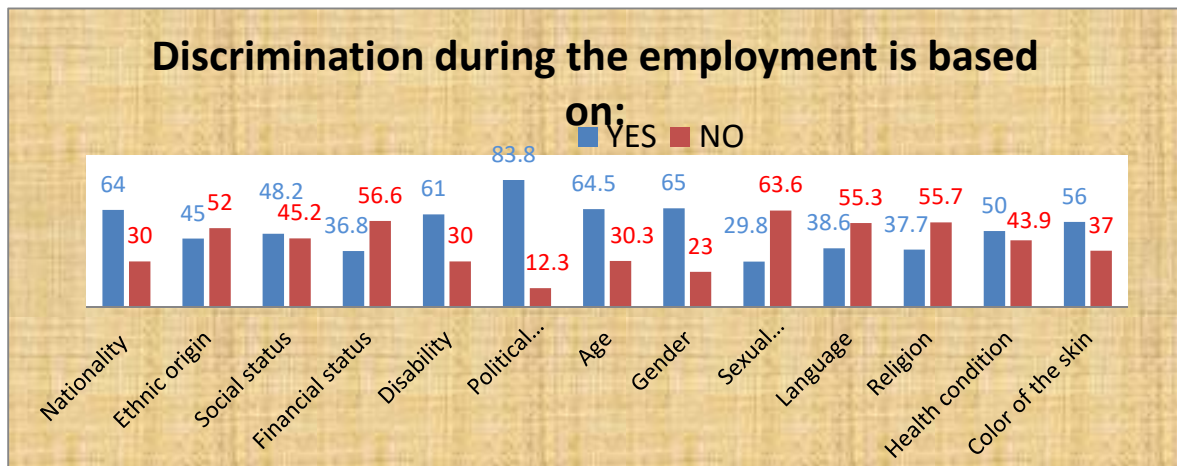


Graph 6



We also asked questions about the causes of discrimination. Respondents answered that political representation was mostly present. Of the 13 offered causes of discrimination, mentioned in the Law on Prohibition of Discrimination, respondents could answer with *Yes*, *No*, and *I don't have an opinion*. Answers given as *I don't have an opinion* are not presented in the Graph.

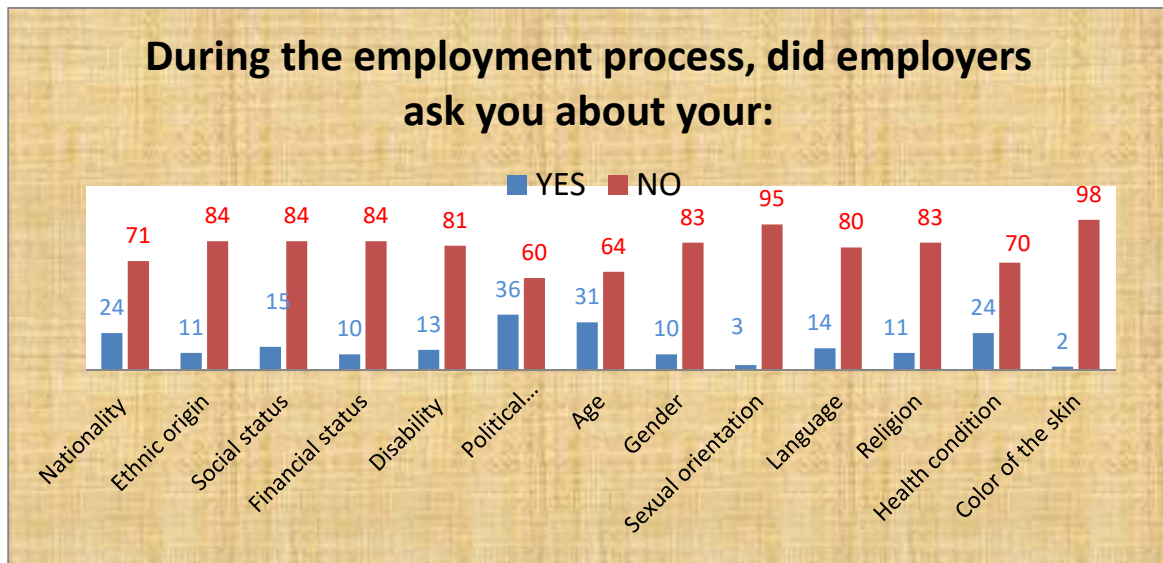
Graph 7



We asked interviewees about their experiences during the employment process. We asked them if employers had asked them about any of the above-mentioned personal characteristics, and their responses are presented in Graph 8. Only the answers “Yes” and “No” are given, as in the previous graph.

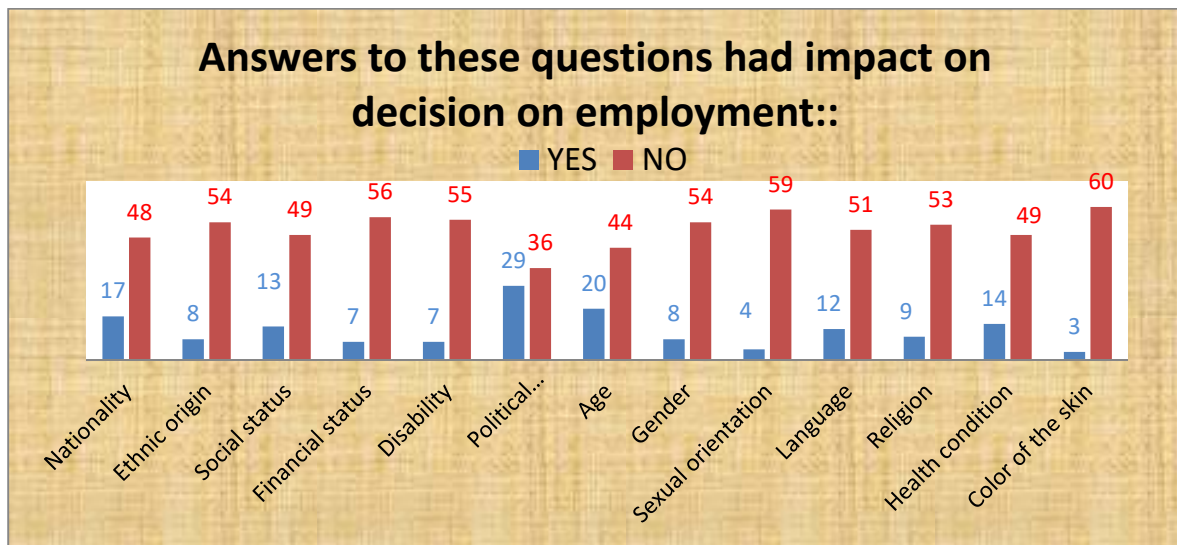


Graph 8



Here are respondents' views when asked if the answers given to this question during interviews had impact on the decision making process and offers of employment:

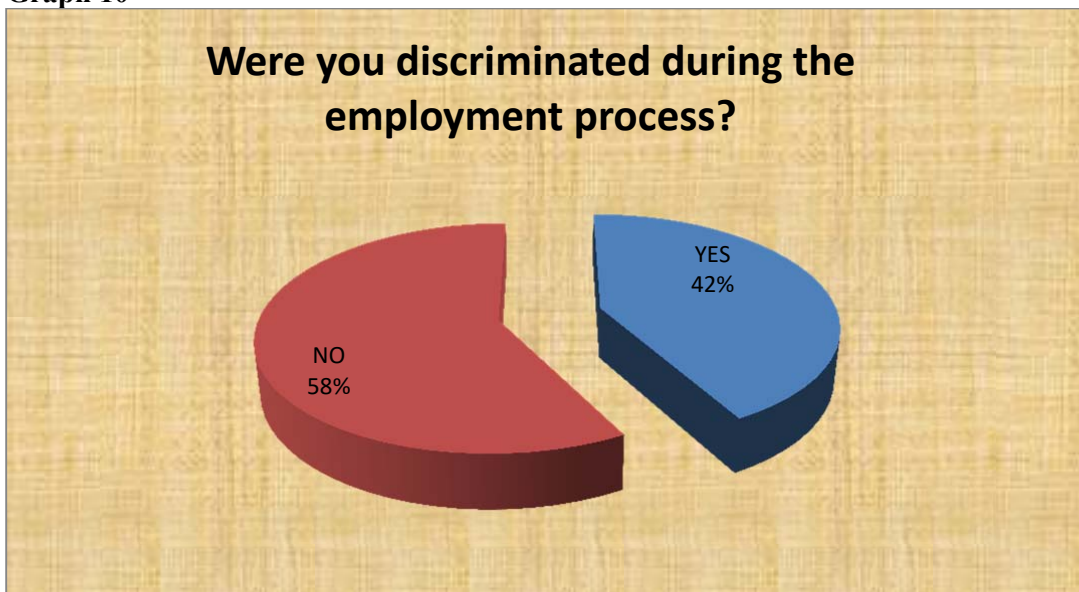
Graph 9



On the question of whether they were discriminated against during their employment, we received the following answers:

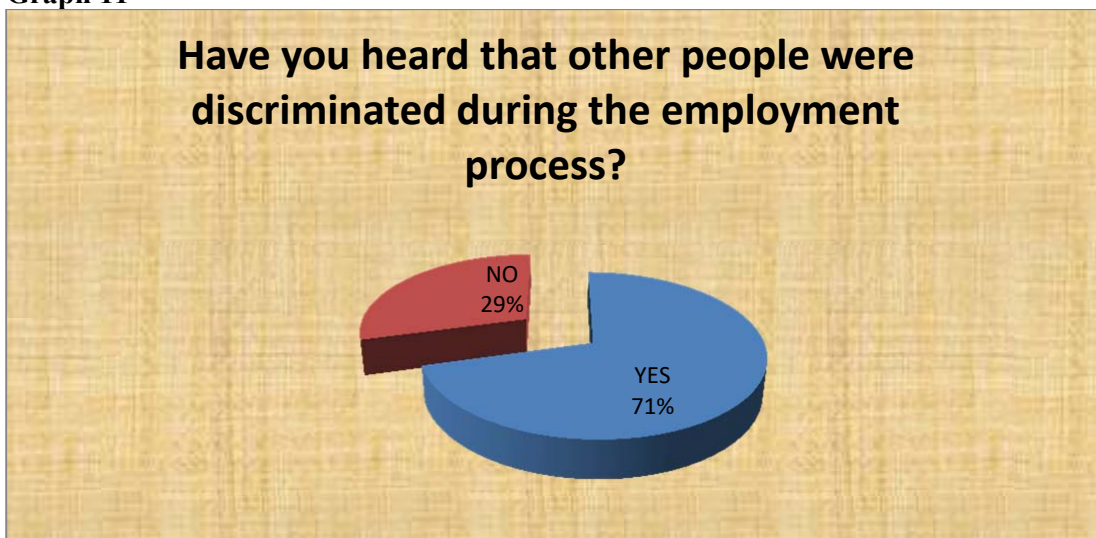


Graph 10



Most respondents said they were not discriminated against during the employment process, but we notice that even 42% of them said they were. We asked them if they had heard that other people were discriminated against during their employment. The graph below presents the answers to that question:

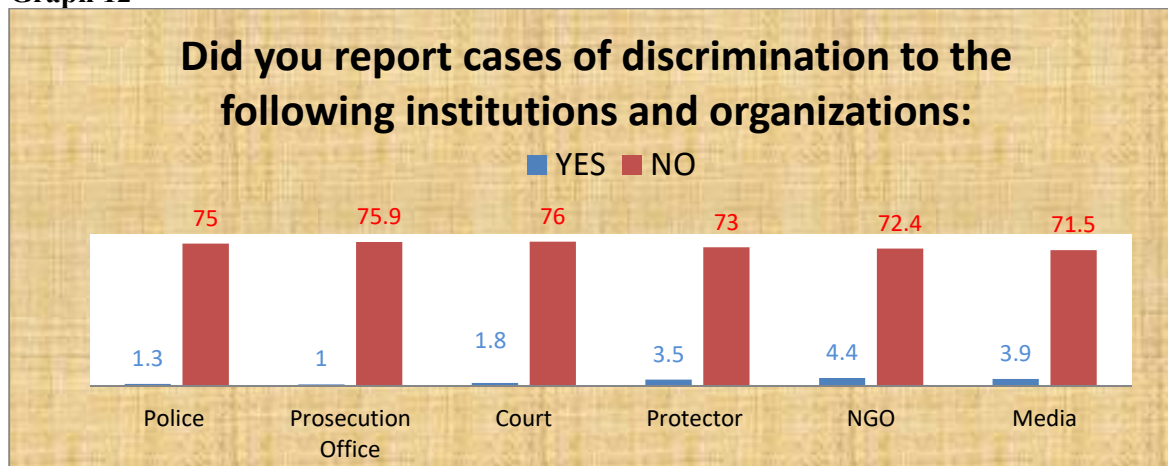
Graph 11



Respondents did not even inform the competent institutions about cases of discrimination related to employment. In the Graph below we can see where and in what percentage respondents reported cases of discrimination:



Graph 12



They said they did not report discrimination cases for the following reasons: They did not know the procedure – 8.8%. They did not know it was punishable and prohibited – 3.5%. They did not believe that the report would be examined and processed – 53.5%, while 34.2% did not give a reason.

At the end, we asked interviewers to assess the work of the competent institutions, organizations and the media in this area. The following Graph has average scores. Respondents gave assessments from 1⁶⁷ to 10⁶⁸:

Graph 13



a) Focus groups

⁶⁷ The lowest score.

⁶⁸ The highest score.



For the needs of this study, we organized three focus groups. The focus groups were organized in Podgorica, Bijelo Polje and Ulcinj. Ten unemployed citizens participated in each focus group, and each had been reported at the Employment Agency as unemployed people for more than three years. The focus groups were moderated by trained activists from the NGO "35mm". Their communication lasted for one hour and a half.

The goal of the focus group was to obtain information and views on discrimination during the employment process and specific examples in practice. The communication had three phases. Firstly, examinees assessed and expressed their attitudes about the overall situation in their towns and in Montenegro in general. They also spoke about the process of employment, procedures and the role of those institutions competent for protection of rights of unemployed persons. At the end, examinees had the opportunity to give recommendations for improving the situation in this area.

The NGO "35mm" is grateful for help of Employment Agencies in Bijelo Polje and Ulcinj and their co-operation during the implementation of these activities.

The economic situation in Montenegro

Citizens who participated in the focus groups assessed the overall situation as poor and hard, especially for unemployed people. They also emphasized that the political structures lacked capacities and that they were dishonest when speaking about their efforts in this area.

Respondents said that the economic and political situation had suffered hard failures during the last 20 years, which were followed by a lack of adequate reactions on the part of competent institutions aiming to protect the rights of all citizens and unemployed people. One of the respondents said that "from an economic aspect, despite the official data on progress and if we take into account the last ten years, the crisis has deepened, public debt rose, the unemployment rate is constantly high, and the privatization moves of the country are so poor and followed by indications of corruption." The "Snimak" scandal was also criticized. "From an employment perspective, some cases are still unresolved, such as the "Snimak" scandal, which clearly indicates discrimination and corruption during the process of employment".

Additionally, respondents from Ulcinj and Bijelo Polje assessed the situation in their municipalities as worse than in other municipalities, and especially than in Podgorica. "Ulcinj Municipality has been in a political and economic crisis for years." For that reason, they said that, in terms of employment, the situation was harder than in Podgorica, where the offer of job positions was better. "My son got a job with graduated from the Electrical and Engineering High School in Podgorica, but, if the public call was in Bijelo Polje, he would not get the job, that's for sure."

Respondents from Podgorica said that the labour market in this town was better than in towns in the north, but they thought that it was hard to find the job with adequate conditions. "You have to beg people to hire you, for a 300 euro salary. You need to have connections. If you succeed, problems occur. Hard jobs, you have no rights as a worker, no free days, you work all day long, and the issue is if the employers pay contributions at all. It is especially hard for people who arrive here even from the north and a lot of them come to work for small salaries and inadequate conditions. I don't mind if they come here, but that surely puts us in a



difficult position. Simply, the situation is that the owners of private companies can do anything they want.”

Respondents emphasized that politicians were more often accused for corruption and criminal activities, at both local and national level. They mentioned Budva as an example of significant corruption and crime and they also believed that public institutions forgive those people who are identified as the responsible ones, by requiring from them to return to this municipality part of the money they illegally earned. ”characteristic of the justifications for such acts of individuals or a party was the accusation of corruption against the other party.

These accusations were not only for political corruption, the most serious accusations were of a corruptive nature⁶⁹. However, not a single case was seriously investigated, nor were there final judgements.” Serious scandals, such as Valdanos, Solana, and non-transparent and harmful privatization, which devastated the economy of Ulcinj, and caused job losses, are used by local political parties only the ambience of pre-election rhetoric; they do not process or advocate for revealing or at least remedy the harmful consequences.”

At the end, they concluded that the impression is that a climate of arbitrariness at the national level and the existence of informal centres of power serve as the alibi for those responsible in the local administration that were not doing their job and acting according to the law.

Employment – the situation in practice

Respondents said that the employment process was controlled by different centres of local and national power; that the procedures were formal, unclear and non-transparent, and that the results of vacancy announcements were known even before the announcements were published. “The employment mechanism exists and is only formally respected via the opening of vacancy announcements, but everything is already known, because someone hires him/her, and we only participate in their movie.” “Discrimination is very widespread. It is present in all spheres.” “No need to leave your documents, because someone already works there.”

Generally, all the participants in the focus group do not have confidence in the institutions that conduct the employment process, nor do they believe in the institutions that protect the rights of unemployed people. “Ulcinj Municipality is well known for malfeasance. The only qualification in local administration is if you have someone who guarantees a job position for someone he/she knows.” “There is no person who has not met or heard that someone was employed because he/she had connections, or that a person did not run into a rigged vacancy announcement or was faced with the most primitive manner of discrimination, whether the person was aware of it or not.” “I don’t believe anything can change for the better, because the employment system is totally disturbed, employment through connections has become normal for people.” “You do not have anyone to report discrimination to. I wanted to file a complaint because I was rejected, but they only told me if I did that I could forget the job and that I was finished.”

They considered political employment as the most problematic and that it was mostly reflected in the overcrowded services of local governments and the employment of family members who have more votes. “There is a budget overload within the public sector,

⁶⁹ Spatial plans, tenders, unjustified and uncovered accounts, and so on.



especially at the municipal level.” “The most common were fictitious jobs due to the employment of politically suitable people, whose family or whose pre-election ability or manipulation draws on large number of votes.” “Practically, most employees or those newly employed in municipality over the last couple of years were taken because of their political representation.” “To get the job, it is not enough to be a member of a party, you have to collect votes, you have to agitate.” “You need the support of the local administration, which implies membership of a party and activism and a strong connection from the Ministry, and they tell you ‘between us’.”

Respondents believe that for implementation of an efficient employment policy based on needs and qualification, an essential opening up of this issue is needed, which would be based on the rule of law and the prevention of political employment.

According to the views of respondents, a large amount of funds were spent on employment, through various programmes for qualifications of highly educated people, but, its efficiency was low. They mentioned as an example ‘the programme for the education of highly educated persons’, and added that a small number of them kept the job when the programme ended, or else, when the period of internship ended, they lost their jobs. They believed that employers, private enterprises or public institutions, exploited university graduates who worked hard for small salaries and who practically represented a free workforce for employers.

One of the participants in the focus group said that she had been trying for four years to finish an internship at court. However, she had not succeeded like students who had finished university after her. “I am always on the list created by the Human Resource Management Authority, but I have never been employed, while other people were allowed to choose between Bijelo Polje and Podgorica. Average grades have never been taken into consideration.” Respondents spoke about their experience in the process of employment in the education area.

“Specific problems occur in the process of employment in education. You have no chance of employment if you don’t have approval from both the local authority and the Ministry. I fulfil all the conditions, I always give my best, but it’s pointless. Directors and schools do not cooperate. Although people meet the conditions for retirement, they never retire, because their salaries are higher than their pensions would be. The education inspectors do not do their job adequately.”

One of the respondents also said: “I am a teacher of English. When I submitted my documents after the publishing of a vacancy announcement, a secretary told me: ‘You don’t have to leave your documents, this position has already been filled, because a colleague already works here according to the professional development programme, and when she finishes it, she will get the job.’ Later, I found out that her father also worked at that school, which was the reason for her employment by that school.”

As one of the problems of unemployment, respondents mentioned the education system as being insufficiently planned and one which awards more diplomas in one sector than it is really needed by the labour market for that profile of university graduates. They also mentioned that the problem is the large number of diplomas. “It is well known in Ulcinj Municipality that a lot of people were employed after receiving diplomas in Shkodra and at various suspicious private universities in Montenegro and the region, whose ability to work



was not controlled during the employment process, and the manner in which they received diplomas.”

Respondents believed that the role of the Employment Agency had to be more efficient. “The role of the Employment Agency should be reflected through the creation of better conditions for employment, and as an institution, the Agency should be in position to offer jobs to individuals. Currently, the role of the Agency is to contact people from the list of unemployed, with regard to their regular communication with the Agency. They often offered jobs as waitress and chambermaids to people with finished universities and who have Masters Degrees.

The Agency practically serves for the health insurance of individuals, which is the only reason for their regular communication with the Agency, without expectations that the Agency would find them a job or make finding of job easier.” “The Agency may be defined as the mediator, as an institution that makes illegal employment legal, as it is aware of what is happening in the case of opening a vacancy announcements for only a day, primarily by local administration and public bodies, but they do not react or report these cases of nepotism, corruption, discrimination or the violation of fundamental human rights, to competent institutions.” “As some companies serve for ‘money laundering’, so the Agency serves for the ‘laundering of illegal employment’, primarily in local administration.”

When it comes to employment in private companies, respondents said that the situation was not better than in public institutions. “Owners of private companies consult powerful local people from the public sector about whom to employ.” “The employment policy in private companies is even worse, because they publish vacancy announcements when workers start to work, even though they formally have a conversation with them. For that reason, the publishing of free job positions at the Employment Agency is formal and only if an individual is in the Agency at the moment of vacancy announcement does he/she have the opportunity to be informed about the potential job position, although it is highly possible that the job position has already been promised to someone or is taken.”

As participants in the focus group said, a one day announcement is the practice in public bodies and institutions. “When it comes to public institutions, or Ulcinj local administration and its companies, public announcements last for a day, in order to formally respect the procedure, or the announcement is published on the official web site. The real assessment of the situation shows that 99% of job positions at the local administration are set up or promised to politically suitable individuals who do not pass tests for the areas or positions in which they were employed.”

Respondents problematized the procedure in terms of the lack of clearer and elaborated rules during the employment process. They believed that the procedures were general and based on only a few criteria, which makes discrimination easier. “Public calls are based on education profile or having a diploma, which implies that the name of the diploma is the only qualification for get the job.” “Regardless of experience and professionalism, only a person who has the name of a completed university on paper is required.”

Respondents also said that during employment, discrimination based on language and national representation was present. “You mention your nationality at each company, but you don’t have to if you don’t want to. However, I wrote it.”



They also believed that gender discrimination is widespread. “A type of discrimination often occurs and is based on gender, because people avoid employing women because of potential pregnancy, which requires additional costs from the employers, primarily in the private sector.” “I am a mother of two children. For that reason I cannot get the job, because people consider you may often ask for sick leave.”

Participants of the focus group think that urgent reforms should be conducted in order to improve the process of employment. This implies improved mechanisms for the implementation of the rule of law in policies that directly influence the employment process. They also believed that criminal responsibility had to be established, for individuals who search for connections and for those who serve as the connection for employment.

“Discrimination should be reported, even the clue of discrimination, which would contribute to the process of legal employment. On the other hand, we need institutions that act on these charges truly and according to the law.”

Citizens believe that the Employment Agency must play a better role in revealing discrimination during the employment process and that it has to co-operate with the competent institutions, or that it has to report all doubts about illegal processes and discrimination. Respondents believed that the role of citizens was inadequate and that they always accept the discrimination they are face with. Therefore, it is important to raise the awareness of citizens about the necessity of fight against discrimination during employment, and the corruption which leads each citizen into the grey zone, which does not comply with the law.

Some of the respondents assumed that the situation was so bad that there was no way out. “I think there is no way out of this situation.” “You should learn English and German and go to one of these countries.” “It is so sad that young people leave Montenegro for these reasons.” “I’ll wait for a while, hoping the situation will be better and that something will come up, but it’s becoming worse.” “You need support even for a private family business, but if you’re not suitable, inspectors will knock on your door until they decide on closing them fully.”

Finally, the respondents concluded that it was necessary to establish a system of employment only according to abilities and knowledge, not on the grounds of connections and political necessity.



V THE VIEWS OF REPRESENTATIVES OF PUBLIC INSTITUTIONS, EMPLOYERS, NONGOVERNMENTAL ORGANIZATIONS AND TRADE UNIONS

For the needs of this study, the NGO “35mm” organized interviews with representatives of public institutions, trade unions, association of employers and NGOs. Their experiences were very useful for observing the phenomena of discrimination during the employment process, as they deal, on a daily basis, with discrimination processes, as well as acting on reports and providing free legal aid to citizens.

Almost all the respondents said they had recognized and identified discrimination through different indicators, such as the testimonies of citizens or decisions of institutions dealing with the monitoring of reports. According to their viewpoints, it is hard to prove discrimination and so, it is important to improve the system of protection of citizens who are discriminated against. They also added that decisive “connections” are exceptionally common, whether political and family connections.

Sinisa Bjeković, the Deputy Protector of Human Rights, considers that “generally speaking, discrimination during the employment process exists.” Mr Bjeković told to 35mm researcher that the Institution dealt with cases related to discrimination during the employment process. As he said, the main problem was that these cases were hard to prove.

Representatives of the General Public Prosecution Office in Bar say they investigate all reports and applications from citizens or NGOs, and then they make decisions according to the evidence they collect. They also inform applicants about the decisions. If the case is related to a criminal act, they give instructions to the citizen about adequate protection. Representatives of the General Public Prosecution Office in Bijelo Polje said they resolved all requirements in a timely manner, and to prove these offences they did not have particular problems. In order to resolve certain professional issues, representatives of the General Public Prosecution Office in Bijelo Polje seek help from the Inspectorate for Work and Labour Relations.

On the other hand, citizens only rarely submit reports of discrimination in terms of employment to the relevant public institutions. Representatives of the Public Prosecution Office told us they had a small number of criminal charges brought against citizens related to discrimination in employment. The General Public Prosecution Office in both Berane and Bar did not receive even a single charge over the previous two years.

The Human Resources Management Authority (HRMA); which is responsible for monitoring the implementation of measures aimed at achieving proportional representation of minorities and other ethnic groups in public bodies, equal representation and the employment of people with disabilities, announced that they had not received any report or complaint of discrimination during employment.

“People usually complain about discrimination on a political basis, and family connections”
“We mostly face discrimination based on gender. What often happens is that women are asked inappropriate questions during the job interview.”

Political representation, disability, nationality, ethnic representation, social status, financial situation, age, gender, sexual orientation, language, religion, health condition, skin colour, and



minority representation, are reasons which interviewed people mentioned and recognized as reasons for discrimination during the employment process.

However, a large number of respondents said that discrimination during the employment process was based on political representation as well. Respondents often related this issue with national representation. Osman Nurković from the Bosniak Council pointed out discrimination caused by national representation. He did not believe in the existence of efficient mechanisms that would prevent it.

“Legal provisions should be implemented appropriately and breaching the law should be sanctioned. Legal provisions on proportionality and the representation of minorities should also be implemented. Analysis of the situation should be developed, not only declaratively but specifically. There should also be an imperative order to change it”, said Mr Nurković.

The NGO sector also believed that this type of discrimination was present. They believed that nationality was openly and secretly controlled⁷⁰, which was used for conclusions as to political suitability. Representatives from the NGO sector believed that these problems were emphasized in the public sector and in private companies which have the support of the country.

According to the views of respondents, discrimination during the employment process based on gender was the second most common type. Ana Jaredić, from the Women’s Rights Centre said: “Employers sometimes directly ask women during the job interview if a woman has a family, if she plans to have a family, they ask some personal questions. Women who have children are usually asked if they have somebody to help them, or other similar questions. In this regard, I believe that discrimination is present. Women who are more than 35 years old can hardly find a job, especially the ones who are older, who are ‘victims of the transition’, who lost their jobs. And even when they can find a job, they are employed on the black market and enter the zone of the grey economy. Then, they have no protection, and are discriminated against without the opportunity to complain.”

Representatives of the NGO Parents conducted research during 2012. In their answers to the question: “Have you ever been discriminated against at work, or while you were looking for a job, because you were pregnant, or because you planned a pregnancy, or because you were in a marriage, or had a child with disabilities or because you were a single parent?”, 33% of respondents responded affirmatively, but three quarters of respondents said they knew someone who was discriminated against for one of these reasons.

According to the results of the research, parents or people who planned to become parents were discriminated against in terms of conditions of employment and the selection of candidates for certain jobs – 37%. Almost 63% of respondents answered the following question negatively: “Does the company you worked for and/or work for enforce the positive discrimination (making differences, exclusion, or giving the primacy in comparison with a specific job) of people with the status of parents, future mothers, mothers, wives, single parents or parents of a child with disabilities?”

⁷⁰ Especially Montenegrin-Serbian.



Dejan Bašanović, Secretary General of the Paraplegics Association Podgorica said: “When it comes to employment, we believe that people with disabilities, and people of Roma nationality, are mostly marginalized. This view also proves the fact that many of the employers of these marginalized groups are organizations dealing with their protection. Employment is often for a fixed period, or until finalization of project activities. This means that their further engagement depends on funds of donors. One of the reasons is also the prejudices of employers, which still exist, in terms of the work abilities of people with disabilities and people of Roma nationality.”

Nataša Borović, President of the Paraplegics Association Podgorica said that, when it comes to the employment of people with disabilities, discrimination in most cases occurs on two grounds. Firstly, discrimination arises from the inaccessible environment, including inaccessible buildings, which prevents the arrival and staying of people with disabilities at work (meaning that the Law on Spatial Development and the Construction of Structures is not applied). Apart from this, employers also have prejudices about the work abilities of people with disabilities.

Marina Vujačić, Executive Director of the Association of Youth with Disabilities, said that people with disabilities were not discriminated against only during employment, but are also discriminated against while they work when discrimination is emphasized.

Representatives of the Employers Federation said they had insisted on professionalism and knowledge as the conditions for employment, and representatives of the Paraplegics Association said that most persons with disabilities were employed by NGOs, primarily by organizations working for people with disabilities, and by private companies. They did not have data on employment in the public sector.

Dražen Laković, the Co-ordinator at NGO 4 life said: “Former prisoners are mostly discriminated against. Unless they get the opportunity to integrate into society, to be employed, they have no other option but to go back to crime. Thus, the crime rate will never fall, until the system changes.”

Kristina Mihailović, from the NGO Parents said that mothers were especially endangered in the labour market. They made such conclusion due to large number of complaints and calls they received from them.

This type of discrimination is hard to prove. The Institution of the Protector of Human Rights tries to expand the monitoring of statements, and if it is not possible to prove discrimination, the Institution shall try to check if other rights have been violated. Siniša Bjeković, the Deputy Protector of Human Rights and Freedoms said: “Currently, we are working on a case where a party has complained of discrimination by public bodies and local government. We have initiated the procedures in all cases. As I already said, it is interesting that discrimination is hard to prove, but we are still working to try to define whether some other rights were violated, other than discrimination. If we cannot prove discrimination, then we want to protect the victim from the other violations. And this is something that will happen in any of these cases, meaning, we will not find a specific reason for discrimination, but the right to work will have been violated.”



“A girl of Roma nationality, who finished a Hairdressing Course, spoke on the phone with a possible employer, who was interested in arranging the interview with her, when he heard that she worked as an intern in a Hairdressing Salon. However, when she appeared at work and when her employer saw that a girl was of Roma nationality, he directly told her he could not give her the job because he was afraid that customers would reject her services, which might negatively influence his business.”

Representatives of the Association of Youth with Disabilities of Montenegro pointed out several cases, where the Association has represented victims and provided free legal aid and support. They reminded us of the already well-known cases of Ms Marijana Mugoša – discrimination in terms of her job position, based on disability. In this case, the Association helped in developing applications, complaints and similar documents which they sent to institutions – specifically, the Protector of Human Rights and Freedoms and courts. They also had a case of the mother of a child with disabilities, who was discriminated against by her employer because of her child.

Representatives of the Association said: “So, we have types of discrimination such is this one – the parents of a child with disabilities are discriminated against at work.” They have also worked on cases of discrimination related to the slow processing of the adaptation of a job position to a person with disabilities. People with disabilities face discrimination committed by the Commissions for Professional Rehabilitation, and are often treated as having a level of disability which is not adequate to the real situation. They were also informed by people with disabilities that employers refuse to sign permanent contracts with them.

Ms. Borović said that the Sectoral Report on the Harmonization of the Legal and Institutional Framework in Montenegro with the UN Convention on the Rights of Persons with Disabilities for the area of Work and Employment had been developed during the implementation of the project “Establishing the Balkans Independent Disability Framework”, funded by the EU. The Report included qualitative research with the aim to define the views of people with disabilities about the implementation of regulations in the area of labour and the employment of people with disabilities. Here, information on discrimination during the employment process describes specific examples, but not the place and the time when they happened and whether the procedures for protection from discrimination were initiated.

One of the questions in this research was: “Have you ever faced any type of discrimination during the employment process or during work?” Respondents answered yes and mentioned the following examples: “They forced me to work hard”; “The working time in this company is ten hours and on Saturday”; “When I finished school, I wanted to apply for the public call for the job position of saleswoman at a kiosk, but I was told not to apply because that position was already held in reserve”; “I was indirectly told that the problem was communication with customers”; “I did not attend any additional education because accommodation for a personal assistant was not paid for”; “I worked temporarily in a workshop for people with disabilities. The place was not adapted to the needs of people with physical disabilities. Another premise was better adapted, but I did not receive the job because of an arm injury which did not last too long and because of the self-will of the employer”; “While I worked, my appearance ‘forced’ employees to laugh at me. But, I worked as a machine mechanic so they did not look at me too much, because I spent most of the time doing my job with the machines.”



“I am not satisfied with the efficiency, their work is insufficiently transparent. Discrimination occurs in practice on an everyday basis, and those who commit discrimination are not punished. This is such a sensitive issue. Reporting employers in such a settled country, the employee or applicant for employment risk their jobs or other rights.”

These views were divided in terms of the existence of efficient mechanisms for protection from discrimination during the employment process. Representatives of public institutions mostly believe that efforts should be made to raise awareness. They also believe that mechanisms exist but are insufficiently used, such as court protection and inspection surveillance. The representatives of the Association of Paraplegics said: “The Law emphasizes the mechanisms for protection from discrimination⁷¹.”

It is important to work on improving the practice of the Constitutional Court of Montenegro in terms of protection from discrimination, as it has not reached a satisfactory level due to a lack of reactions over a long period. People with disabilities should also be encouraged to initiate litigation. As the reasons for failing to initiate court cases, they mentioned a lack of confidence in the efficiency of the courts and a fear of retaliation.”

“The laws are not the problem, because the laws are quite clear. The Constitution says that any discrimination shall be prohibited, just like the Law on Labour that prescribes the prohibition of discrimination on any grounds.
The problem is in the implementation of these laws.”

When it comes to the legislative framework, the general opinion is that it provides good protection; we have heard the view that amending the main Law on the Prohibition of Discrimination should be initiated, and that other laws may provide opportunities for discrimination. Respondents mentioned that the law was inconsistent, and that the terminology was incorrect, and that the forms, areas and types of discrimination mentioned in this law were mixed. Representatives of the Employers Federation said that Montenegrin legislation was good, starting with the Constitution, laws and bylaws. They also explained that certain failures occur in practice, related to both employers and employees.

They further indicated that the Law on Professional Rehabilitation and Employment should be amended in order to prevent the problem of long procedures in practice. NGOs dealing with the rights of people with disabilities said that the functioning of the Fund for Professional Rehabilitation and the Employment of People with Disabilities has become a problem, because the funds from contributions paid by employers, who do not employ people with disabilities, are poured into the budget of the country and are allocated in the manner prescribed by the Ministry of Finance or the Government. Nataša Borović said that the law provides to employers right to adapt a job position to the person he/she hired, but the period of adaptation allows for too long a wait, which is one of the problems of employers when employing people with disabilities.

⁷¹ The Ombudsperson, the courts.



Representatives of the Women’s Rights Centre said: “When it comes to maternity leave, the Law on Social and Children’s Protection says that the employer has to pay all contributions. Still, employers do not receive compensation for complete maternity leave, and thus, they tend not to employ women who are planning a family, because then he does not have an employee but still pays her. So, while adopting laws, matters that might stimulate people to discriminate against someone are not taken into account. The Law on Discrimination itself is good, but when adopting other laws, it is not taken into account whether the laws might be discriminatory. It is important to reconsider whether any law opens up an opportunity for discrimination.”

“When it comes to the Roma community, people don’t know whom to address. For that reason, the competent institution should work more on the promotion of their work, to inform other people on cases when anyone can address them, and similar areas. It is not enough to sit in your office and expect people to call and report cases of discrimination.”

Most respondents were not satisfied with the work of the competent institutions on the prohibition of discrimination during the employment process. A large number of complaints were related to the work of the courts. On the other hand, they believe that the courts should not reveal and pursue committers of discrimination, and that the problem is the inadequate work of those bodies dealing with internal affairs and inspection bodies, which should devote more attention to this kind of situation in practice.

At the moment, NGOs are recognized as the most vocal protectors of citizens, in terms of discrimination, even during the employment process. However, individual opinions say that it is not good if the civil sector finds hate speech and discrimination. They also believe that it is not good if the Protector of Human Rights and Freedoms assesses and finds discrimination, and afterwards the Prosecution Office initiates the procedure.

However, the competent public institutions are engaged in a lot of activities, either independently or with the support of international institutions and funds. Respondents were satisfied with their relations with the Ministry of Human and Minority Rights, in terms both of communication and connections with NGOs. The HRMA has signed an Agreement of Co-operation with the MoHMR aiming to develop minority rights and freedoms. Among other matters, they jointly organize research with the aim of collecting data about the representation of minorities in public bodies and institutions. The HRMA organizes workshops aimed at promoting differences and fighting discrimination against people with disabilities in the procedure of employment in public administration.

The Employers Federation of Montenegro conducts a wide range of activities in co-operation with public institutions and NGOs. Zvezdana Oluić, Head of the PR and Marketing Section said that the Federation had signed a Memorandum of Co-operation with the MoHMR in 2014, which covers this topic. The goal of the Memorandum was to establish the principles of programme measures and activities related to human rights and freedoms, with a special accent on the minority population and other minority communities, the protection of representatives of socially vulnerable groups, and the development of equal opportunities policies for both men and women.



In co-operation with the International Labour Organization, the Federation published a trilogy as part of the project called “The promotion of equality and prevention of discrimination at work in Montenegro”. The project involved publishing three brochures. They also organized training seminars for employee trainers at the Employers Federation, so they could organize further training of employers and representatives of the public sector. They also organized lectures at Mediteran University, which is a sustainable activity. Furthermore, they conducted extensive research about corporate social responsibility and also published the trilogy “The employment of people with disabilities” in co-operation with the International Labour Organization in 2011.

The Employers Federation also published a number of flyers and distributed them via newspapers on topics related to people with disabilities and employment, and they co-operated with the Foundation for Scholarships for Roma. The Federation also informs members on all the benefits of the employment of people with disabilities and Roma. They co-operate with NGOs and promote their activities and projects. NGOs are also engaged in a lot of activities.

The Association of Paraplegics has implemented a number of activities and projects focused on protection from discrimination during employment through the creation of equal opportunities. The activities and programmes were related to the monitoring and harmonization of the legislative framework with the UN Convention on the Rights of Persons with Disabilities, in which one of the areas is employment area; amending the law; and participation in the development of the Strategy. One programme was about the labour market for people with disabilities. They were also focused on meeting people with disabilities to discuss their rights and the preparation of documentation related to the exercising and protection of those rights.

The Association of Paraplegics intensively implements activities on the promotion of the rights of people with disabilities in employment within project implementation, and within the regular activities of the organization. The Association is currently implementing the project “With the practice for people with disabilities until their inclusion in employment“ which puts the accent on the employment of persons with disabilities, their inclusion in work integration, and points out legislative regulations in this area and the views of employers during the implementation of the law. In addition to this, people with disabilities are always included in the implementation of all the projects of this Association, according to their labour contracts.

The NGO the Association of Youth with Disabilities has a law and anti-discrimination programme. Within this programme, they have a free legal clinic that works on cases of discrimination against people with disabilities during the employment process and at work. They act through direct communication with employers and the provision of free legal aid during the initiation of proceedings by a victim of discrimination. Since September 2012, the NGO Parents has provided free legal aid to parents, mostly mothers, and advises them on how to exercise their rights guaranteed by laws on labour and children’s and social protection and other regulations.

The NGO Parents has established co-operation with the Administration for Inspection Affairs. This NGO reports all cases received from citizens directly to the Administration for Inspection Affairs. Representatives of this NGO believe that the situation in this area will be



improved in future. However, they believe that a support model should be found and that employees should be encouraged to inform the competent institutions about irregularities and have confidence in them, because this is one of the key means of protection and the exercising of their rights.

Additionally, the NGO CEDEM is involved in a number of activities. This organization has a programme devoted to social inclusion. Projects focused on the fight against discrimination are implemented within this programme founded a project on the employment of Roma at a local level. CEDEM implements research on ethnic distance. This NGO has worked on measuring ethnic distance since 2010. These measures showed that the Roma population was extensively exposed to discrimination, but also people with disabilities, the LGBT population, women and the elderly.

Representatives of the Women's Rights Centre said they had organized "Women's Day March". The topic of the march was women's labour rights, but also discrimination during the employment process. The NGO 4life implemented projects at ZIKS about the re-socialization and inclusion of prisoners in society after being released from prison. The NGO "Koračajte s nama" (Walk with us) has organized educational workshops aimed at encouraging young Roma to register with the Employment Agency, to search for jobs, and use informal training that might be useful during their employment.

This is not a complete list of all activities in this area, only of examples and good practices. Unfortunately, discrimination during the employment process is still present and we need a stronger response to ensure the prevention of such situations, primarily on the part of the competent public institutions.



VI Conclusions and recommendations

This research shows that discrimination in terms of employment is present and that it occurs on the grounds of political beliefs, nationality, gender, disability, and age. Discrimination occurs in both public bodies and the private sector. The results of the research show that recruitment procedures are not clear and transparent; assessment terms are not defined, and nor are the scoring process of filled applications.

The research shows that unemployed citizens are not encouraged to file applications and they do not have confidence in the work of the competent public institutions, when it comes to the protection of their rights.

For that reason, it is important to amend the legislation and practice for more transparent employment, and produce adequate mechanisms for the protection of the rights of applicants from discrimination during the employment process.

The constitutional definition of discrimination should be more comprehensive, and should mention the principle reasons for the derogation of the principles of equality, which constitute non-discrimination.

The legislative framework for the prohibition of discrimination should be harmonized with international standards. This does not mean that only legal norms should be harmonized. The option of implementing standards of so-called soft law⁷² should be considered, if they are applicable to Montenegro on social grounds.

The current Law on the Prohibition of Discrimination does not contain derogations from the principles of prohibition of discrimination, which may bring into question the sustainability of the system, such as, for example, life insurance, the labour area in certain sectors and similar issues. This is especially important in terms of the restrictive definition of the constitutional principle on non-discrimination from Article 8 of the Constitution.

The current provisions of the Law on the Prohibition of Discrimination and the Law on the Prohibition of Discrimination against People with Disabilities have the same principles that should be harmonized.

The current Law does not have appropriately structured provisions on types, forms, areas, and bases of discrimination. For that reason some sectors and forms have an (un) justifiable advantage⁷³ in addition to the fact that all rights are equal, indivisible, inter-dependent, while beneficiaries are equal in the exercising of their rights.

Regulations on proceedings before the Protector should be defined fully. All key procedures should be further harmonized with the principles contained in the Law.

Sanctioning provisions should be harmonized in all the laws, especially in terms of discrimination, depending on the area of implementation of specific laws⁷⁴

⁷² Recommendations, opinions, and so on.

⁷³ See Chapter “Specific forms of discrimination”

⁷⁴ Labour, education, health policy and so on



There should be checking of the applicability of legal solutions in practice, and the implementation of the principles of proceeding in terms of discrimination.

The role of public bodies and local government should be clarified, in terms of acting on charges of discrimination.

The role and capacities of competent inspection services should be improved, but also those of the Employment Agency and the HRMA, so they can adequately monitor irregularities during the employment process.

The authorities should encourage people to report cases of discrimination and irregularities noticed in the process of employment.