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- ▶ **Comprehensive Comparative Analysis of Montenegro's Current Legislation on Violence and Harassment and the Provisions of ILO Convention No. 190**

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of Montenegro's Current Legislation
on Violence and Harassment
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of ILO Convention No. 190

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Legal Framework concerning Violence and Harassment at Work in Montenegro

In the legal system of Montenegro, the basis for regulation of harassment at work is the constitutional guarantee concerning the prohibition of discrimination and the equality of men and women. In this sense, Article 8 paragraph 1 of the Constitution¹ prohibits "direct or indirect discrimination on any grounds". Furthermore, Article 18, on "gender equality", prescribes that the state "shall guarantee the equality of women and men and shall develop the policy of equal opportunities". Finally, Article 28 paragraph 3 prescribes that "no one shall be subjected to torture or inhuman or degrading treatment". Labor issues are regulated by Articles 62–67 of the Constitution and refer to: (1) the right to work, (2) prohibition of forced labour, (3) rights of the employed, (7) social councils, (8) strike action and (9) social security.

The Law on the Prohibition of Discrimination,² as the main anti-discriminatory regulation, prohibits (in Article 2 paragraph 1) any form of discrimination, on any grounds. Discrimination is defined as

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

The Law recognizes the following as special forms of discrimination: (1) harassment and sexual harassment, (2) segregation, (3) hate speech, (4) discrimination in use of facilities/buildings and areas in public use, (5) discrimination in goods and service delivery, (6) discrimination based on health conditions, (7) discrimination based on age, (8) political discrimination, (9) discrimination in the field of education and vocational training, (10) discrimination in field of labour, (11) racial discrimination and discrimination based on religion and belief, (12) discrimination of persons with a disability, (13) discrimination on the basis of gender identity and sexual orientation.

The Law on Gender Equality³ defines (in Article 4) discrimination based on sex as "every legal and de facto, direct or indirect differentiation, privilege, exclusion or restriction based on sex which makes difficult or denies people the acknowledgment, enjoyment or exercising of rights and freedoms in political, educational, economic, social, cultural, sports, civil and other fields of public and private life". Additionally, Article 7 defines gender as the "socially established roles

1 The Constitution of Montenegro, Official Gazette of Montenegro, no. 1/2007, 38/2013 – Amendments I–XVI. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={70C61F26-B411-4FA2-BEF3-45A4E23C998A}> <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={79D31963-8A48-436B-B363-B7E5C41B985C}>

2 Law on Prohibition of Discrimination, Official Gazette of Montenegro, nos. 46/2010, 40/2011 – as amended, 18/2014 and 42/2017. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={7A94151E-8E30-48C3-A82A-826308643D8A}>

3 Law on Gender Equality, Official Gazette of Republic of Montenegro, no. 46/07 as of 31 July 2007 and, Official Gazette of Montenegro, no. 73/10 as of 10 December 2010, 40/10 as of 08 August 2011, 35/15 as of 07 July 2015. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={E7389CBA-854C-4122-8510-720BA6C989A3}>

of women and men in public and private life developed on the basis of the biological difference of the sexes.”

The Labour Code,⁴ prohibits (in Article 8) direct and indirect discrimination against persons seeking employment, as well as employed people, based on gender, birth, language, race, religion, colour of skin, age, pregnancy, or health status, that is, disability, nationality, marital status, family obligations, sexual orientation, political or other beliefs, social background, wealth, membership of political and union organizations or other personal characteristics. Furthermore, Article 10 prohibits harassment and sexual harassment at work and in relation to work. The Labour Code, in Article 10 paragraph 2, defines harassment as “any unwanted conduct based on any of the discriminatory grounds, as well as harassment through audio and video surveillance, mobile devices, social networks and internet, with the purpose or effect of undermining the dignity of a person seeking employment, as well as an employed person, which causes or intends to cause fear, humiliation or dishonour, or creates or intends to create a hostile, degrading or offensive environment”.

Sexual harassment, pursuant to this Law, “shall represent any unwanted verbal, non-verbal or physical conduct of a sexual nature intended to or actually undermining the dignity of a person seeking employment, as well as employed persons, particularly when such behaviour causes fear or creates a hostile, humiliating, intimidating, degrading or offensive environment”. It is important to note that, in line with Article 10 paragraph 4 of the Labour Code, employees must *not* suffer damaging consequences if they report or testify to harassment or sexual harassment at work.

Abuse at workplace (bullying) is regulated by Article 14 of the Labour Code, which prohibits

any form of abuse at the workplace (bullying), or any conduct towards an employee or a group of employees of an employer which is repeated, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity, or position of an employee, which causes fear or creates a hostile, humiliating or offensive environment, aggravates working conditions, or leads an employee to become isolated or induces an employee to terminate the labour contract on their own initiative.

Prohibition of abuse at the workplace (bullying), measures for prevention of abuse, the procedure for protection of persons exposed to bullying, as well as other issues relevant for prevention of and protection against bullying at work and in connection with work shall be regulated in more detail by a **special law**.

In this connection, the Law on the Prohibition of Harassment at Work⁵ has been adopted, defining bullying in Article 2 as any active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates an intimidating, humiliating or offensive environment, worsens working conditions or leads to the isolation of the employee or leads the employee to terminate their

4 Labor Law, Official Gazette of Montenegro, no. 074/19 as of 30 December 2019. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={53CAEE70-A8DA-4C14-B915-1A29CA6447EE}>

5 Law on the Prohibition of Harassment at Work, Official Gazette of Montenegro, no. 30/12, 54/16. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={D3EE49E8-F67F-42F0-BDF5-79CB8F9577B2}>

contract of employment or another type of contract upon their own initiative. Additionally, bullying shall be understood to mean incitement of or prompting others to violent behaviour, while perpetrators of bullying shall be considered to include employers in the capacity of natural persons, persons responsible to the employer in the capacity of legal entity, employees or groups of employees of the employer or third persons in contact with the employee or employer performing work at the relevant workplace. The focus of the Law on the Prohibition of Harassment at Work is, primarily, on preventive measures regarding protection from bullying, including certain obligations of the employer and the employees. For example, the employer shall be obligated to ensure that conditions at the employee's place of work respect their dignity, integrity and health, and to take special measures to protect the employee from bullying at work and related to work. Therefore, prior to the commencement of work, the employer shall be obligated to familiarize employees, in writing, with the rights, obligations and responsibilities related to the prohibition of bullying, and, for the purpose of prevention of bullying, to implement measures notifying and training employees and their representatives in relation to the causes, forms and consequences of bullying at work and related to work. It should be stipulated that the Law does not include a list of types of behaviour that come under the heading of bullying. This issue is regulated by the Rulebook.

Based on the Law on the Prohibition of Harassment at Work, the Rulebook on Codes of Conduct for Employers and Employees Regarding Prevention and Protection from Bullying⁶ has been adopted, listing forms of behaviour to be avoided, including: (1) inability to mutually communicate, (2) violation of interpersonal relations, (3) violation of personal reputation of the employee, (4) violation of personal integrity of the employee, (5) violation of the health of the employee, (6) other behaviour that may be considered harassment and (7) sexual harassment. This list is not final; it cannot be considered *numerus clausus*; it merely identifies certain forms of behaviour that lead to bullying in practice.

6 Rulebook on Codes of Conduct for Employers and Employees Regarding Prevention and Protection from Bullying, Official Gazette of Montenegro, no. 56/2012. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={99C4B1E5-9129-442E-8CE0-665CC736F59C}>

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9. Labour Code, Official Gazette of Montenegro, no. 074/19 as of 30 December 2019.
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Comparative analysis of national legislation in relation to the provisions of ILO Convention No. 190

Article 1

1. For the purpose of this Convention:

- (a) the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;
- (b) the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.

2. Without prejudice to subparagraphs (a) and (b) of paragraph 1 of this Article, definitions in national laws and regulations may provide for a single concept or separate concepts.

Analysis:

Subparagraph 1(1)(a) – Violence and harassment

The labour legislation of Montenegro includes terms of harassment and violence at work in a number of laws.

- **“bullying” in the Law on the Prohibition of Harassment at Work, Article 2:**

The Law on the Prohibition of Harassment at Work, in Article 2, defines bullying as “any active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates an intimidating, humiliating or offensive environment, worsens working conditions or leads to the isolation of the employee or leads the employee to terminate their contract of employment or another type of contract upon their own initiative”.

Two important elements of behaviour that result in violence arise from this legal definition, namely: (1) repetition of actions, that is, frequency of certain types of behaviour, meaning that the action may not be a single occurrence, (2) the negative impact of certain behaviour on the dignity, reputation, personal and professional integrity, or position of an employee, and their working environment. Thus, the repetition of violent actions is one of the important elements of the existence of bullying, therefore, a single, isolated action cannot be qualified as bullying, regardless of the seriousness of the consequences. Nevertheless, the legislator did not respond to the question of how often, that is, for what period of time, violence is supposed to persist in order for victims to be entitled to seek protection. Court practice, in each specific case, evaluates whether this time condition has been met, regarding the repetition of behaviour.

- **“Harassment” and “bullying” in the Labour Code, Articles 10.2:**

The Labour Code, in Article 10 paragraph 2, defines harassment “as any unwanted conduct based on any of the discriminatory grounds, as well as harassment through audio and video surveillance, mobile devices, social networks and the internet, with the purpose or effect of undermining the dignity of a person seeking employment, as well as an employed person, which causes or intends to cause fear, humiliation or dishonour, or creates or intends to create a hostile, degrading or offensive environment”.

Legislation in Montenegro significantly limits the notion of harassment to discriminatory harassment. According to Article 7: “direct or indirect discrimination against persons seeking employment and employed persons, on the grounds of race, skin colour, nationality, social or ethnic origin, relationship to a minority nation or minority community, language, religion or conviction, political or other belief, gender, change of sex, gender identity, sexual orientation, health condition, disability, age, financial status, marital or family status, pregnancy, membership of a group or assumption of membership of a group, political party, trade union or other organizations, or any other personal feature, shall be prohibited”. Also, Article 8 paragraph 1 prescribes that “direct discrimination shall include any action caused by an act, action or failure to act, which places, has placed or may place in a less favourable position a person seeking employment, as well as an employed person, in relation to other persons seeking employment or employed persons on one of the grounds mentioned in Article 7”.

It is not clear why the law identifies harassment through audio and video surveillance as a separate form of harassment, given that there are many other forms of behaviour that constitute harassment.⁷

Article 14 of the Labour Code also defines “abuse at work (bullying)”, prohibiting “any form of bullying, that is, any form of abuse at the workplace (bullying), or any conduct towards an employee or a group of employees of an employer which is repeated, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity, or position of an employee, which causes fear or creates a hostile, humiliating or offensive environment, aggravates their working conditions, or leads an employee to become isolated or induces an employee to terminate their labour contract upon their own initiative”.

- **Rulebook on Codes of Conduct for Employers and Employees Regarding Prevention and Protection from Bullying**

The Rulebook, in Article 5 paragraph 1 item 5, clearly states that “for the purpose of prevention and protection from bullying, employees and the employer shall avoid behaviour that may lead to violation of health of employees, such as unjustified constant threats (for example, employment termination) and pressure, keeping employees in constant fear”.

⁷ The author is not aware of any relevant court ruling that has penalized illegal audio or visual harassment in the past. The proposed Law amends this provision and prescribes that harassment may be perpetrated by means of mobile devices, social networks and the internet.

- **Law on the Professional Rehabilitation and Employment of Persons with Disabilities**

In addition to these two laws, *de lege lata*, there are other laws indirectly related to harassment. For example, the Law on the Professional Rehabilitation and Employment of Persons with Disabilities,⁸ in Article 5, prohibits direct and indirect discrimination during the professional rehabilitation or the employment of persons with disabilities. However, the Law does not prescribe penalties for violations of this Article. Furthermore, in Article 6 of the same Law it is precisely prescribed that no one shall suffer negative consequences, whether as a witness or a victim of discrimination, who provides a statement in front of a competent court and alerts the public of gender-based discrimination. However, the penal provisions of this Law do not prescribe penalties for violations of its Article 6.

- **Prohibited conduct under the Law on Civil Servants and State Employees**

The Law on Civil Servants and State Employees⁹, Article 95 paragraph 1 item 9, prescribes the following as severe violations of official duties: “violent, indecent or offensive behaviour towards state authority managers, state officials, state employees and parties or the exhibition of any form of hostility”.

- **Criminal Code**

The Criminal Code of Montenegro,¹⁰ in Section XX, under the title Criminal Offenses against Labour Rights, does not mention bullying as a separate criminal offense. A number of other sections of this Law, however, include the following penalties for criminal offenses: (1) in Article 159 on violation of equality – imprisonment of up to 3 years; in Article 166a on harassment – imprisonment up to one year; (3) in Article 167 on torture – imprisonment from 6 months up to 5 years; (5) in Article 443 on racial and other discrimination – imprisonment from 6 months up to 5 years.

- **Law on Gender Equality**

Article 7 paragraph 1 item 7 of the Law on Gender Equality, defines gender-based violence as “any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person’s ability to enjoy their rights and freedoms in both public or private life, including domestic violence, incest, rape and trafficking in human beings”.

⁸ Law on the Professional Rehabilitation and Employment of Persons with Disabilities, Official Gazette of Montenegro, no. 49/2008, 73/2010, 39/2011. <http://www.sluzbenilist.me/pregled-dokumenta-2?id={19EA0BD0-5B89-4EF5-87AB-9831190403E6}>

⁹ Law on Civil Servants and State Employees, Official Gazette of Montenegro, no. 2/2018, 34/2019. <http://www.sluzbenilist.me/pregled-dokumenta-2?id={13CF4517-6D06-4C40-804A-2DCD69C2FA87}>

¹⁰ Criminal Code of Montenegro, Official Gazette of the Republic of Montenegro, no. 70/2003, 13/2004 – correction and 47/2006 and, Official Gazette of Montenegro, no. 40/2008, 25/2010, 32/2011, 64/2011 – as amended, 40/2013, 56/2013 – correction, 14/2015, 42/2015, 58/2015 – as amended, 44/2017, 49/2018 and 3. <http://www.sluzbenilist.me/pregled-dokumenta-2?id={F28756AA-74EA-43EE-B7ED-74BD091348FD}>

RECOMMENDATIONS

It should be pointed out that, in line with Article 1 of the ILO Convention on eliminating violence and harassment in the world of work (ILO Convention No. 190), the term “violence and harassment” in the world of work is related to a series of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, mental, sexual or economic harm, including gender-based violence and harassment. In this sense it is necessary to amend the aforementioned laws on the determination of the notion of violence, because in line with Convention No. 190, the action may be singular, and repetition is not a precondition. It is precisely the fact that individual, isolated actions may be considered to constitute violence and harassment at work that presents a particular challenge for the Union of Employers of Montenegro in implementing the provisions of this Convention.

Occupational discrimination should be regulated by the Law on the Prohibition of Discrimination. The Labour Code should contain only one referral provision as regards the Law on the Prohibition of Discrimination as the main law in this area, in order to avoid overlapping legal terms and unnecessary repetition.

Subparagraph 1(1)(b) – gender-based violence and harassment

Furthermore, Convention No. 190, under the term “gender-based violence and harassment”, includes “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment”.

- **“discrimination based on gender” and “sexual harassment” – Law on Gender Equality**

Law on Gender Equality, in Article 4, provides the definition of discrimination based on gender, including sexual harassment.

Article 4 paragraph 1 defines discrimination based on sex as “every legal and de facto, direct or indirect differentiation, privilege, exclusion or restriction based on sex which makes it difficult or impossible for other people to obtain the acknowledgment, enjoyment or exercise of rights and freedoms in the political, educational, economic, social, cultural, sports, civil and in other fields of public and private life.”

Article 4 paragraph 2 defines sexual harassment, as “incitement of other persons to discrimination and the use of words in the masculine gender as generic neutral form for both the masculine and feminine genders, within the meaning of the paragraph 1 of this article”.

In this sense, the Law on Gender Equality in Article 7 paragraph 1 items 1 and 2 distinguishes between sex and gender by defining gender as the socially established role of women and men in public and private life, developed on the basis of the biological difference between sexes, while sex represents a biological feature used to differentiate humans as male and female.

It should be stipulated that the Law on Gender Equality complements the Law on the Prohibition of Discrimination by defining discrimination and harassment based on sex, as well as sexual harassment in Article 4.

- **“Sexual harassment” – Labour Code**

Sexual harassment, pursuant to Art. 10 paragraph 3 of the Labour Code, “shall represent any unwanted verbal, non-verbal or physical conduct of a sexual nature intended to or actually undermining the dignity of a person seeking employment, as well as employed persons, particularly when such behaviour causes fear or creates a hostile, humiliating, intimidating, degrading or offensive environment”.

- **Gender equality policy**

Gender-based violence is recognized in the Implementation Programme 2019–2020, the Action Plan for Achieving Gender Equality 2017–2011, as well as the Action Plan for Achieving Gender Equality 2017–2021 with the Implementation Programme 2017–2018.¹¹

The plan, as a strategic goal, includes combatting all forms of gender-based violence towards women and violence in the family, and the improvement of the position and protection of the rights of victims of all forms of gender-based violence.

RECOMMENDATIONS

Montenegro's labour legislation covers violence and harassment at work, regulated through several laws. For the purpose of harmonization with the Convention, the recommendation is to:

1. include individual instances of violence or harassment that aim at, result in or may be likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;
2. gender-based violence and harassment shall be clearly defined in law because a small number of laws recognize gender and gender identity as a basis for discrimination;
3. harmonize the Labour Code and the Law on the Prohibition of Harassment at Work terminologically.

include single occurrence that aim at, result in, or is likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.

¹¹ Implementation Programme 2019–2020, Action Plan for Achieving Gender Equality 2017–2011, Podgorica, March 2019 and Action Plan for Achieving gender Equality 2017–2021 with the Implementation Programme 2017–2018. https://www.paragraf.me/nacrti_i_predlozi/PLAN_AKTIVNOSTI_ZA_POSTIZANJE_RODNE_RAVNOPRAVNOSTI.pdf

Article 2

1. This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.
2. This Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

Analysis:

Montenegro's labour legislation complies with Article 2 of the Convention because protection in relation to harassment and violence in the world of work is implemented mainly through two separate laws.

Scope of the Law on the Prohibition of Harassment at Work

The Law on the Prohibition of Harassment at Work, in Article 2 paragraph 1, lays down that bullying is any active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates an intimidating, humiliating or offensive environment, worsens working conditions or leads to the isolation of the employee or leads the employee to terminate their contract of employment or another type of contract on their own initiative.

According to Article 2 paragraph 3 of the Law on the Prohibition of Harassment at Work, "perpetrators of bullying shall be considered to include employers in the capacity of natural persons, responsible persons engaged by the employer in the capacity of legal entity, employees or groups of employees engaged by the employer or third persons with whom the employee or the employer have contact during the performance of tasks at the workplace".

The regulation of bullying in the Law on the Prohibition of Harassment at Work is almost identical to its treatment in the Labour Code. However, in Article 3 of the Law on the Prohibition of Harassment at Work, the provisions of this Law are applied to employers and employees in line with regulations related to labour, but also to persons outside of employment, such as:

- (1) persons in professional training,
- (2) students in practical training,
- (3) volunteers,
- (4) persons performing jobs while serving a prison sentence or correctional measures,
- (5) persons in voluntary and public works,
- (6) work in the public interest,
- (7) voluntary work and competitions,
- (8) any other person participating in work with the employer on any basis.

The solution is to equalize all categories of workers in the law, regardless of the legal basis of their work, which corresponds to the concept of decent work. We may note that the term used in this regulation is "persons engaged outside of employment", which is a little unusual because the Labour Code, as the general law, never mentions this term. Also, Article 3 paragraph 2 of the Law on the Prohibition of Harassment at Work states that this Law applies to cases of harassment and sexual harassment, in line with the provisions of the Labour Code.

Convention No. 190 protects workers and other persons in the world of work, including employees as defined by national laws and practice, but also all other persons regardless of their contractual status, including persons with the authority, obligations and responsibilities of the employer.

Scope of the Labour Code:

First, the Labour Code, in Article 14, prohibits any form of abuse at the workplace (bullying), or any conduct towards an employee or a group of employees of an employer which is repeated, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity, or position of an employee, or which causes fear or creates a hostile, humiliating or offensive environment, worsens working conditions, or leads an employee to be isolated or induces an employee to terminate their labour contract on their own initiative. The employee, in line with Article 5 paragraph 1 item 1 is a physical person with an established labour relationship with the employer. In this way, all other persons working on any other basis, for example, on special types of contracts do not have the status of employee, but that of contractor; thus, they only possess rights based on health and pension insurance, in line with Article 203 of the Labour Code.

Scope of Gender Equality Law:

The Gender Equality Law in Art. 3 prescribes that

"state administration bodies, local administration bodies, public institutions, public enterprises and legal persons with public authority (hereinafter: organs), in all phases of planning, adopting and implementing decisions, and carrying out activities, are obliged to assess and evaluate the impact of those decisions and activities upon the position of women and men, with the aim of achieving gender equality".

Regarding Article 2(2) of the Convention

RECOMMENDATIONS:

It is recommended to include protection of persons whose employment has been terminated.

Article 3

This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work:

- (a) in the workplace, including public and private spaces where they are a place of work;
- (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- (c) during work-related trips, travel, training, events or social activities;
- (d) through work-related communications, including those enabled by information and communication technologies;
- (e) in employer-provided accommodation; and
- (f) when commuting to and from work.

Analysis:

Montenegro's labour legislation is in line with the provisions of the Convention.

Namely, the Law on the Prohibition of Harassment at Work regulates the prohibition of any behaviour at work or related to work. Also, it is prohibited to abuse the right to protection from bullying. Therefore, the broadest possible formulation that includes all the elements foreseen by the Convention is to be preferred. The Labour Code, in Article 10 paragraph 2, defines that harassment can be conducted through audio and video surveillance, mobile devices, social networks and the internet. However, Article 5 paragraph 1 item 1 of the Rulebook on Codes of Conduct for Employers and Employees Regarding Prevention and Protection from Bullying, prescribes "harassment of employees through telephone calls and other communication means, if not related to work processes and the employee's job". The wording of the Convention focuses on violence and harassment happening in the course of, linked with or arising out of work.

Article 4

1. Each Member that ratifies this Convention shall respect, promote and realize the right of everyone to a world of work free from violence and harassment.
2. Each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach to the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable, and includes:

- (a) prohibiting in law violence and harassment;
- (b) ensuring that relevant policies address violence and harassment;
- (c) adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment;
- (d) establishing or strengthening enforcement and monitoring mechanisms;
- (e) ensuring access to remedies and support for victims;
- (f) providing for sanctions;
- (g) developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and
- (h) ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.

3. In adopting and implementing the approach referred to in paragraph 2 of this Article, each Member shall recognize the different and complementary roles and functions of governments, and employers and workers and their respective organizations, taking into account the varying nature and extent of their respective responsibilities.

Analysis:

This Article of the Convention prescribes that each member state has the obligation to adopt, in line with national laws and circumstances, an integrated gender-responsive approach to the prevention and elimination of violence and harassment in the world of work, and that such an approach should consider violence and harassment involving third parties.

Montenegrin legislation does not have an inclusive, integrated and gender-responsive approach because it lacks formal training for monitoring institutions tasked with identifying cases of gender discrimination and harassment and finding appropriate ways to address them. There must be continuity in knowledge related to gender equality and new training courses must be organized at all levels of society on a continuous basis.

The Convention takes into account that violence and harassment may involve persons who are not members of a certain working environment, but who are present in it on some other basis. In the case of Montenegrin legislation, Article 2 paragraph 3 of the Law on the Prohibition of Violence at Work regulates that perpetrators of bullying shall be considered to include employers in the capacity of natural persons, responsible persons engaged by the employer in the capacity of legal entity, employees or groups of employees engaged by the employer or third persons with whom the employee or the employer have contact during the performance of tasks at the workplace. It is worth noting that even though current legislation recognizes the involvement of third parties, in practice there has not yet been a case of this kind.

As far as the author of this article knows, Montenegro has no comprehensive national strategy referring to the prevention of violence and harassment at work.

RECOMMENDATIONS:

It is recommended to:

1. adopt a comprehensive National Strategy on the Prevention of Violence and Harassment at Work;
2. continue to engage in training and continuous education related to gender issues at all levels;
3. keep up-to-date records in cases of abuse by third parties.

Article 5

With a view to preventing and eliminating violence and harassment in the world of work, each member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as to promote decent work.

Analysis:

Montenegrin labour legislation is in compliance with this Article of the Convention.

Regarding freedom of association and the effective recognition of the right to collective bargaining, the Constitution of Montenegro, in Article 53, guarantees freedom of political, trade union and other associations and actions without prior approval, with registration with the competent authorities. Also, Article 154 of the Labour Code lays down that employees are entitled, of their own free choice, without prior approval, to establish their own organizations and become members of them, under the terms set out by statute and the rules of such organizations. Furthermore, Article 155 guarantees freedom of trade union organization and action, without prior approval. The right to collective bargaining is regulated by Article 151 of the Labour Code.

In relation to the elimination of all forms of forced or compulsory labour, the Constitution, in Article 63, prohibits forced labour. Article 8 of the Constitution prohibits any direct or indirect discrimination, on any basis. As regards the effective abolition of child labour, Article 74 paragraph 2 of the Constitution prescribes that “a child shall be guaranteed special protection from psychological, physical, economic and any other exploitation or abuse”.

Article 6

Each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

Analysis:

Legislative interventions since 2017 have amended a number of regulations that are important for anti-discrimination in Montenegro. Thus, the Law on the Prohibition of Discrimination has been improved and harmonized with EU legislation, especially the part laying down the definition, grounds and areas of discrimination, meanings of terms, special forms of discrimination, and cases that will not be considered discrimination. In particular, the amendment to Article 22 is important according to which anyone who considers themselves to be discriminated against by an act, action or failure to act on the part of an authority or other legal and natural persons, may address the Human Rights and Freedoms ombudsman with a complaint. Finally, the clause on shifting the burden of proof was confirmed. This now refers, in addition to courts, in line with Article 29 paragraph 2 of the Labour Code, to procedures before the ombudsman, although this standard is applied through institutes of direct application and based on the priority of international law.

Also, the Law on Minority Rights and Liberties¹² has been amended in relation to institutional support for the assertion of minority rights and liberties, and the transparency and efficiency of procedures for distributing assets for the realization of projects aimed at activities significant for the preservation and development of the national, that is, ethnic uniqueness of minority nations and other minority national communities. In this sense, in line with Article 36, the Fund for Protection and Assertion of Minority Rights and Liberties has been established, with the capacity of a legal person and bodies prescribed by law.

Furthermore, the Law on Civil Servants and State Employees of 2019¹³ has improved the normative framework for civil servants, and conditions have been created for better human resource management. In Article 13, the law lays down that it is “prohibited to place in privileged, that is, unequal position, a civil servant, that is, a state employee, when exercising their rights, or to deny, or limit their rights, especially due to their political, national, racial, gender or religious affiliation or based on any other personal characteristic”.

Finally, a set of documents has been adopted for the purpose of improving the position of certain groups at risk of discrimination, namely:

- 1) Implementation Programme 2019–2020, Action Plan for Achieving Gender Equality 2017–2021, Podgorica, March 2019. Plan of activities for achieving gender equality 2017–2021 with implementation programme 2017–2018 and the Implementation Plan for 2019–2021 with implementation programme 2017–2021.¹⁴
- 2) Action Plan for the Implementation of the Strategy for the Protection of Persons with Disabilities and Promotion of Equality 2017–2021 for 2019 and 2020¹⁵;
- 3) Action Plan for the Implementation of the Strategy for Social Inclusion of Roma and Balkan Egyptians in Montenegro 2016–2020 for 2019.¹⁶

12 Law on Minority Rights and Liberties, Official Gazette of Montenegro, no. 31/17. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={596D56C2-54AF-4639-A664-F57A76F4B9B3}>

13 Law on Civil Servants and State Employees, Official Gazette of the Republic of Montenegro, nos. 2/2018 and 34/2019. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={13CF4517-6D06-4C40-804A-2DCD69C2FA87}>

14 https://www.paragraf.me/nacrti_i_predlozi/PLAN_AKTIVNOSTI_ZA_POSTIZANJE_RODNE_RAVNOPRAVNOSTI.pdf

15 Action plan for the implementation of the strategy for the protection of persons with disabilities and promotion of equality 2017–2021 for 2019 and 2020, Podgorica, March 2019.

16 Action plan for the implementation of the strategy for social inclusion of Roma and Balkan Egyptians in Montenegro 2016–2020 for 2019.

Article 7

Without prejudice to and consistent with Article 1, each Member shall adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.

Analysis:

A normative framework regarding gender-based violence and harassment has been established, based, among other things, on the Law on Gender Equality, as well as the Action Plan for Achieving Gender Equality 2017–2021. Article 7 paragraph 1 item 7 of the Law on Gender Equality defines gender-based violence as “any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as the threat of such acts that seriously impede a person’s ability to enjoy their rights and freedoms in both public or private life, including domestic violence, incest, rape and trafficking in human beings”. Further, in Article 8 gender is dealt with by general and special measures. According to Article 9 paragraph 1, “general measures are measures of a normative nature, by which discrimination based on sex is prohibited in certain fields, and requires specific behaviour in certain conditions for the purposes of achieving gender equality, and sanctions shall be imposed in case of violations of prohibitions, that is, requirements”. Special measures are defined in Article 15: “in certain areas of social life where unequal representation of women and men is ascertained, that is, unequal treatment of persons belonging to one sex in relation to persons belonging to the other sex, special measures for achieving gender equality could be undertaken”. Concerning penalty provisions, Article 33a only prescribes a “fine in the amount of 500 to 5000 euros which shall be imposed on an legal person for a violation if they fail to provide gender disaggregated statistical data and information that has been collected, recorded and processed”.

Regarding the Action Plan for Achieving Gender Equality 2017–2021, one of the basic strategic goals shall be the combatting all forms of gender-based violence, violence against women and violence in the family. Additionally, there is a need to improve the position and protection of the rights of victims of all forms of gender-based violence. Special focus has been placed on the education of health care specialists, as well as experts from the area of mental health protection, employees in centres for social work and employees in educational institutions on the topic of providing protection and help to victims of violence.

Article 8

Each Member shall take appropriate measures to prevent violence and harassment in the world of work, including:

- (a) recognizing the important role of public authorities in the case of informal economy workers;
- (b) identifying, in consultation with the employers’ and workers’ organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment; and
- (c) taking measures to effectively protect such persons.

Analysis:

(a) Recognizing the important role of public authorities in the case of informal economy workers + (c) taking measures to effectively protect such persons

In line with the Report on the Operations of the Inspection Authority for 2018,¹⁷ the Labour Inspectorate’s priority was to suppress informal employment (including unpaid work by the formally employed) and secure safe workplaces, from the standpoint of occupational safety and health. In accordance with the Report, supervision in the area of labour and employment has been carried out separately from implementing measures to ensure the exercise of rights of employees related to work (regular salary, compensation and other income, vacation and leave, working hours, special protection of women, young people and persons with disabilities, and protection in case of employment termination), as well as supervision of the legality of employment.

As regards occupational safety and health, attention was paid to monitoring: (1) occupational safety and health measures, that is, conditions at work that do not lead to injuries at work, professional diseases and diseases related to work; (2) harmonization of norms with the provisions of the Law on Occupational safety and health at Work; (3) inspection and testing of tools and work environment conditions in regulated periods; (4) training employees in safe working; and (5) providing specialist health checks for employees working under special working conditions, including increased risk.

In the reporting period, the Labour Inspectorate performed a total of 11,013 inspections (8,468 in the area of employment and labour, and 2,545 in the area of occupational safety and health), in the course of which, a total of 5,768 irregularities were detected.

Measures to combat informal employment were implemented continuously, making sure to gather gender-sensitive statistics. The Ministry for Human and Minority Rights drafts reports on this basis semi-annually. The report does not say how many cases of violence and harassment there were and how much of it is present among workers in the informal economy.

(b) Identifying, in consultation with the employers’ and workers’ organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment; + (c) taking measures to effectively protect such persons

Regarding the identification of sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment, Montenegro has not proceeded to the identification of such sectors, nor there are any guidelines or model policies that aim to prevent violence and harassment in the private and public sectors.

¹⁷ Report on the Operations of the Inspection Authority for 2018, March 2019.

RECOMMENDATIONS:

It is recommended to:

1. improve statistics showing the number of abused workers in the informal economy, segregated by gender, ground of abuse, and so on;
2. increase the number of general and individual acts of employers in the private sector that come under the aegis of the prohibition of bullying;
3. identify specific sectors, occupations and work arrangements that are more exposed to violence and harassment;
4. formulate gender-specific guidelines and policies aimed at preventing violence and harassment in both the private and the public sector;
5. conduct additional training for labour inspectors in order to enable them to recognize violence and harassment at work.

Article 9

Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to:

- (a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
- (b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;
- (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and
- (d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.

Analysis:

Obligation to take steps commensurate with their degree of control to prevent violence and harassment in the world of work

Regarding the obligation to take steps to prevent violence and harassment, Article 6 of the Law on the Prohibition of Harassment at Work provides for the employer's liability to ensure that employees' workplace and working environment ensure them respect for their dignity, integrity and health, as well as to take the necessary measures to protect employees from bullying in accordance with this Law.

(a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment

Regarding the obligation to adopt and implement a workplace policy in accordance with Article 7 paragraph 1 of the Law on the Prohibition of Violence at Work, "an employer shall be liable to inform an employee in writing, before starting work, about the rights, duties and responsibilities in relation to bullying". Also, according to Article 7 paragraph 2, "an employer shall be liable, in order to identify, prevent and prohibit bullying, to implement measures to inform and train employees and their representatives about the causes, forms and consequences of bullying."

(b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health

Based on the Law on Occupational safety and health at Work, the Ministry of Labor and Social Care adopted the Rulebook on Protection Measures at the Place of Work¹⁸ regulating minimum protective measures for the employer and the employee. In line with Article 3 of the Rulebook, employer should secure a workplace to the employee that does not endanger occupational safety and health and that prevents or limits risks for protection at work.

However, the Law or the Rulebook do not record actions referring to violence and harassment, related to the assessment of all factors in the work process. Article 9 of the Convention prescribes the obligation of employers, so far as is reasonably practicable, to consider violence and harassment and associated psycho-social risks when managing occupational safety and health. In this sense, it is necessary to assess the risk from violence and harassment, with the participation of workers and their representatives.

(c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and

In line with Article 17 of the Law on Occupational safety and health at Work¹⁹, 'employer shall adopt and own Risk Assessment Act, assess risk for all jobs, determine the manner and measures to remove risks and secure its implementation'. Risk assessment act is an act including the description of the work process with assessment (evaluation) of the risk from injury at work, professional illness and illness related to work determining measures for occupational safety and health for the purpose of improving occupational safety and health. In line with the law, the risk assessment act determines: (1) identification, that is, detection of hazard, (2) which jobs are exposed to identified hazards, (3) probability of occurrence of injury at work, professional illness or illness related to work, (4) whether the risk is acceptable, (5) introduction of risk mitigation measures. It is important to note that the provisions of this Law apply to all workers, regardless of the legal basis of their engagement. Also, the Risk Assessment Act is mandatory for all workplaces, without exception, and contains psychosocial risks.

Additionally, the employer shall amend the risk assessment act in cases prescribed by law, and to present the risk assessment act to employees and make it available to employees.

18 Rulebook on Protection Measures at the Place of Work, Official Gazette of Montenegro, no. 040/15 as of 24 July 2015. <http://www.sluzbenilist.me/pregled-dokumenta-2/?id={D54C0BEA-EF11-4DA6-83BB-E6D13A809556}>

19 Law on Occupational Health and Safety at Work, Official Gazette of Montenegro, no. 034/14 as of 08 August 2014, 044/18 as of 06 July 2018.

Article 56 of the Law prescribed pecuniary fines from EUR 500 to EUR 15,000 for a legal entity in case: (1) it fails to adopt and does not have the risk assessment act, fails to assess risk for all jobs, fails to determine manner and measures for risk removal and fails to secure its implementation, that is, (2) fails to amend the risk assessment act in case of adaptation, reconstruction, accident, general overhaul, severe, collective and fatal injury at work and when the results of health monitoring of employees show that this is mandatory.

Psychosocial risks are included in the Rulebook on the manner and procedure of Workplace Risk Assessment²⁰. According to Art. 7 para 1 item 9 „dangers at the workplace can be related, among else, to psychological conditions“. Those conditions are related to: 1) work characteristics (intensity, monotony), 2) claustrophobia, loneliness, 3) non – physiological position of the body (prolonged standing, sitting, squatting, kneeling, etc), 4) effort or physical exertion, 5) conflicting relationships, 6) high demands, poor supervision during operation, etc.

(d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.

Regarding the obligation to provide information and training under Article 1 paragraph 2 of the Law on the Prohibition of Violence at Work an employer shall be liable, in order to identify, prevent and prohibit the bullying, to implement measures to inform and train employees and their representatives about the causes, forms and consequences of bullying.

RECOMMENDATIONS:

1. to adopt and implement a workplace policy and to include violence and harassment in the management of occupational safety and health in the workplace. It is also recommended to provide training to employers and employees to prevent violence and harassment in the workplace;
2. to adopt a new Strategy for Improving and Protecting Health in Montenegro – planned for the fourth quarter of 2021;
3. the Strategy should recognize the psychosocial risks related to violence and harassment at work;
4. it is important that companies have their own policies to prevent violence and harassment at work.

Article 10

Each Member shall take appropriate measures to:

- (a) monitor and enforce national laws and regulations regarding violence and harassment in the world of work;
- (b) ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, such as:
 - (i) complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level;
 - (ii) dispute resolution mechanisms external to the workplace;
 - (iii) courts or tribunals;
 - (iv) protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers; and
- (v) legal, social, medical and administrative support measures for complainants and victims;
- (c) protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused;
- (d) provide for sanctions, where appropriate, in cases of violence and harassment in the world of work;
- (e) provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies;
- (f) recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work;
- (g) ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management; and
- (h) ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders requiring measures with immediate executory force, and orders to stop work in cases of an imminent danger to life, health or safety, subject to any right of appeal to a judicial or administrative authority which may be provided by law.

²⁰ Rulebook on the manner and procedure of Workplace Risk Assessment, Official Gazette of Montenegro, no. 043/07 as of 17.07.2007 and no. 014/14 as of 22.03.2014.

Analysis:

(a) monitor and enforce national laws and regulations regarding violence and harassment in the world of work

According to Article 29 of the Law on the Prohibition of Harassment at Work, "supervision of the implementation of this Law shall be conducted by the administrative authority in charge of inspection".

(b) ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work

Regarding access to appropriate and effective remedies, Article 16 of the Law on the Prohibition of Harassment at Work "prescribes urgency, and secrecy of the mediation procedure". This means that employees who are not satisfied with the outcome of proceedings for protection against bullying at the employer may initiate proceedings for protection against bullying at the Agency for Peaceful Settlement of Labor Disputes or before the competent court within a period of 15 days from the day of receipt of the notice or decisions. According to the Union of Free Trade Unions of Montenegro, the Labour Inspectorate has been providing incorrect advice in cases related to workplace abuse, which is unfortunate because neither the Agency nor the courts have the expertise to handle such disputes.

Labour inspectorate is advertising incompetent in cases related to workplace abuse, which is unfortunate, because neither Agency nor Courts are skilled enough to handle such cases

(i) complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level

Internal process according to the Law on the Prohibition of Harassment at Work:

According to Article 15 of the Law on the Prohibition of Harassment at Work, employees who believe that they are exposed to bullying shall submit a written request to the mediator for the initiation of proceedings for protection against bullying, and/or to the employer if a mediator is not designated.

According to Article 9 paragraph 1, "an employer who has 30 or more employees shall be liable to designate one or more persons to mediate between the parties in the case of bullying (hereinafter: Mediator), after obtaining the opinion of a representative trade union or representative of employees."

According to Article 9 paragraph 2, "at an employer with fewer than 30 employees, a mediator shall be designated by the employee who is exposed to bullying, the employee charged with bullying and an employee designated by the employer, and if an employer is charged with bullying the mediator shall be designated by the employee who is exposed to bullying and the employee designated by the employer." The mediator shall propose that the parties in dispute engage in mediation for the purpose of dispute resolution within three business days of the receipt of such a written request. According to Article 16 paragraph 1, "the mediation procedure shall be urgent, and the mediator shall act independently and impartially, by helping the par-

ties in dispute reach agreement". A trade union representative and/or employee representative may participate in the mediation proceedings, at the request of the parties to the dispute.

According to Article 16 paragraph 4 "the mediation proceedings shall be closed to the public", and in paragraph 5 it is stipulated that the "information collected during mediation shall be disclosed only to participants in the proceedings and the authorities responsible for protection against bullying". Disclosing information collected in the course of mediation shall be considered a serious breach of labour obligations.

The mediator, also, may have mutual and separate conversations with the parties in dispute, and, with the consent of one party, may transfer and present proposals and positions on certain matters to the other, in order to achieve agreement on the issue in dispute.

One solution that contributes significantly to the protection of victims during procedures in front of the mediator is the possibility of taking preventive measures. The possibility is foreseen that the mediator, during the mediation process, may assess that there is a danger of irreparable damage to the employee exposed to bullying.

Bullying protection procedures with employers shall be conducted urgently and shall be brought to an end within eight business days from the date of assigning the mediator. However, if there are good reasons, the deadline for completion of the mediation procedure may be extended to a maximum of 30 days from the date of initiating the procedure.

The procedure may be concluded in three ways, namely: (i) by concluding a written agreement between the parties in dispute; (ii) a decision of the mediator that mediation has failed; and (iii) a statement of the parties in dispute that they waive further proceedings.

When the dispute has been finalized by agreement between the parties in dispute, this agreement must include measures directed at cessation of the behaviour that constitutes bullying – that is, excluding the possibility of continuation of such behaviour – and also recommendations to the employer related to removal of the possibility of the continuation of bullying, such as moving the employee to another work environment. However, if the parties in the procedure do not reach agreement on the disputed issues, the mediator shall, within three business days from the expiry of the eight-day deadline when the procedure should have been finalized, deliver notice to the parties in dispute and the employer – if the employer is not a party – that the mediation failed. In this instance, along with the notice, the mediator may propose measures to protect the employee from bullying, bearing in mind the determined facts and work process requirements.

(ii) dispute resolution mechanisms external to the workplace

External process according to the Law on the Prohibition of Harassment at Work

According to Article 25 of the Law on the Prohibition of Harassment at Work, "an employee who is not satisfied with the outcome of the proceedings for protection against bullying at the employer may initiate proceedings for protection against bullying at the Agency for the Peaceful Settlement of Labor Disputes or before the competent court within a period of 15 days from the day of receipt of the notice or decisions, as well as in the case when there is no agreement, referred to in Article 9, Paragraph 2 of the Law on consensual appointment of a mediator".

This means that, in line with the law, external protection is conditional on launching the procedure with the employer. It is worth nothing that the legislator does not differentiate between harassment charges against the responsible person in the legal entity, that is, the employer in the capacity of natural person, or against an employee. Our opinion is that in the first case the employee should be able to directly initiate the procedure in front of the competent body, that is, the mediation agency for labour disputes, without having to go through the internal mediation procedure put in place in the workplace concerned. In line with current laws, a victim of harassment must initiate and finalize the prior procedure with the employer, even when it is quite obvious that this may be a waste of time, in order to be entitled to external protection. This procedure is a form of mediation, and it is often neglected that mediation is a voluntary, not a mandatory method of dispute resolution. Additionally, it is difficult to imagine that the most complex and severe forms of bullying will be tackled conclusively by reaching an agreement under which the harasser would voluntarily accept measures referring to the termination of such behaviour. Finally, in case this internal procedure fails, the victim of bullying has a very short 15-day period to submit to the external procedure.

It is necessary to point out that, according to Article 25 paragraph 2, "disputes initiated under the Law on the Prohibition of Harassment at Work, shall have the character of labour disputes".

On the other hand, according to Article 16 of the Labour Code, in cases of harassment and bullying, an employee shall be obliged to file a motion for an amicable settlement of the dispute before the Agency for Peaceful Settlement of Labour Disputes or before the Centre for Alternative Dispute Resolution prior to initiating court proceedings. The same right is guaranteed to an employee whose employment relation has been terminated. According to Article 140 paragraph 4, during the proceedings before the Agency or Centre, the deadlines for initiating proceedings before the competent court shall not apply. The Law on Peaceful Settlement of Labour Disputes²¹ shall apply to the procedure for the peaceful settlement of labour disputes before the Agency for Peaceful Settlement of Labour Disputes. In line with Article 4 of the Law on Peaceful Settlement of Labour Disputes the "individual labour dispute shall be the dispute occurring on the basis of the employee's exercise of labour and labour-law rights, as well as collective agreements, acts of the employer and the employment contract". The dispute shall be resolved by an arbitrator. Arbitrators must undergo special training and have a mandate of four years. The arbitrator must adopt a decision on the subject of the dispute within 30 days of the date of opening discussions, and it shall be valid and in effect on the date of delivery to the parties in dispute. If the decision states that the action that is the subject of execution may be delayed, the decision shall come into effect upon the expiry of this deadline.

The regulations governing alternative dispute resolution shall apply to the procedure of alternative dispute resolution before the Centre for Alternative Dispute Resolution. The Law on Alternative Dispute Resolution²² mainly regulates mediation as a process in which parties seek to resolve a dispute by mutual agreement with the help of one or more mediators. To date, cases of sexual harassment have not been brought to mediation, but there have been around 50 cases of bullying and other forms of harassment at the workplace, 23 of which were initiated by women.

21 Law on Peaceful Settlement of Labour Disputes, Official Gazette of Montenegro, no. 016/07 as of 27 December 2007, 053/11 as of 11 November 2011, 011/15 as of 12 March 2015, 042/15 as of 29 July 2015, 055/16 as of 17 August 2016.

22 Law on Alternative Dispute Resolution, Official Gazette of Montenegro, no. 77/2020 as of 29.9.2020.

(iii) courts or tribunals

According to Article 25 of the Law on the Prohibition of Harassment at Work, "an employee who is not satisfied with the outcome of the proceedings for protection against bullying at the employer may initiate proceedings for protection against bullying at the Agency for Peaceful Settlement of Labor Disputes or before the competent court within a period of 15 days from the day of receipt of the notice or decisions, as well as if no agreement has been reached, as referred to in Article 9, Paragraph 2 of the Law on consensual designation of a mediator".

(iv) protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers

Article 24 paragraph 1 of the Law on the Prohibition of Harassment at Work prescribes that the initiation of proceedings for protection against bullying, as well as participation in the proceedings shall not be the basis for:

- putting the employee in a less favourable position in terms of exercising their rights and duties arising from employment; initiation of proceedings for establishing disciplinary, financial and other responsibility of the employee;
- termination of the labour contract and/or termination of employment or other contractual relation based on labour and making the employee redundant, in accordance with provisions regulating the field of labour.

Article 24 paragraph 2 prescribes that the right to protection referred to in Paragraph 1 of the Article hereof shall also be given to an employee who draws the attention of the competent state authority to a violation of the public interest as established by law, perpetrated by an employer, when said employee has justified fears that they shall be exposed to bullying.

Furthermore, in Article 6 of the Law on Gender Equality it is precisely prescribed that no one shall suffer negative consequences when they provide, whether as a witness or a victim of discrimination, a statement in front of a competent court and issue a public alert concerning gender-based discrimination.

(v) legal, social, medical and administrative support measures for complainants and victims

There is an SOS hotline for victims of violence at work under the aegis of the Women's Rights Centre NGO,²³ which has specialized phone numbers for reporting. It also provides free legal aid to represent victims of violence in the workplace.

(c) protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused

Article 16 of the Law on the Prohibition of Harassment at Work prescribes urgency and secrecy in the internal procedure.

Process before the Agency for Peaceful Settlement of Labour Disputes – Law on Peaceful Settlement of Labour Disputes

23 <https://www.annalindhoundation.org/members/womens-rights-center>

In line with Article 41 of the law the discussions in front of an arbitrator shall be public, unless the parties to the dispute agree otherwise. The recommendation should be to keep discussions behind closed doors in case of disputes related to discrimination and violence and harassment.

(d) provide for sanctions, where appropriate, in cases of violence and harassment in the world of work

The penalty provisions for employers, entrepreneurs and officials of a legal entity are regulated by Article 30 of the Law on the Prohibition of Harassment at Work. According to this article a legal entity shall be fined in the amount of between 500 euros and 10,000 euros if they:

- 1) fail to provide preventive measures to protect employees against bullying at work or related to work (Article 6);
- 2) fail to inform employees in writing before entering employment and existing employees about the prohibition on perpetrating bullying, duties and responsibilities related to bullying, and how to recognize, and provide for protection against, bullying (Article 7);
- 3) fail to designate a mediator who shall hear complaints and mediate between the parties to the dispute relating to bullying, in the case of employers with 30 or more employees (Article 9, Paragraph 1);
- 4) act contrary to the provisions of the Law on the protection of participants in proceedings for protection against bullying (Article 24).

Concerning misdemeanours, referred to in Paragraph 1 of the Article, the responsible person in the capacity of legal entity, responsible person of a state body, a state administrative body or a local self-government body shall be fined in the amount of between 100 euros and 1,500 euros.

For misdemeanours, referred to in Paragraph 1 of this Article, entrepreneurs shall be fined in the amount of between 500 euros and 3,000 euros.

Also, Article 13 of the Law on the Prohibition of Harassment at Work regulates that abuse of the right to protection against bullying shall be deemed to have occurred by an employee who was aware or should have been aware that there were no justified reasons for initiating proceedings for protection against bullying, but who starts or initiates such proceedings in order to obtain for themselves or another person tangible or intangible property or to harm another person.

(e) provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support services and remedies

Bullying protection procedures involving an employer shall be conducted urgently and shall be concluded within eight business days of the date of assigning the mediator. However, if there are good reasons for this, the deadline for completion of the mediation procedure may be extended to a maximum of 30 days from the date of initiating the procedure .

According to Article 27 of the Law on the Prohibition of Harassment at Work, "if the prosecutor in the proceedings, and/or submitter of the proposal for peaceful settlement of the labour dispute makes the case in the course of proceedings that bullying referred to in Article 2 of the Law hereof occurred, the burden of proof that such conduct which represents bullying did not occur shall fall upon the defendant, or upon the other party to the dispute".

According to Article 25 of the Law on Gender Equality complaints indicating direct or indirect discrimination based on sex shall be submitted to the Ministry. Employees of the Ministry are obliged to protect personal data obtained while investigating the case. A complaint may be submitted by anyone who considers themselves to have been discriminated against on the basis of sex. The Ministry shall prepare an opinion with determinations and an assessment of the circumstances of the case, as well as monitor the implementation of this law.

(f) recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work

Domestic violence is regulated by both Montenegrin family law, as well as the Law on Protection against Domestic Violence.

(g) ensure that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to life, health or safety due to violence and harassment, without suffering retaliation or other undue consequences, and the duty to inform management

Article 19 of the Law on the Prohibition of Harassment at Work prescribes that an employee exposed to bullying shall be entitled to cease working until the completion of the mediation proceedings, if they are, in the opinion of a medical specialist of a competent health institution, in immediate danger to health or life.

(h) ensure that labour inspectorates and other relevant authorities, as appropriate, are empowered to deal with violence and harassment in the world of work, including by issuing orders requiring measures with immediate executive force, and orders to stop work in cases of an imminent danger to life, health or safety, subject to any right of appeal to a judicial or administrative authority which may be provided by law

Article 29 of the Law on the Prohibition of Harassment at Work stipulates that supervision of the implementation of this law shall be conducted by the administrative authority in charge of inspection.

Article 11

Each Member, in consultation with representative employers' and workers' organizations, shall seek to ensure that:

- (a) violence and harassment in the world of work are addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration;

(b) employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools in accessible formats, as appropriate, related to violence and harassment in the world of work, including on gender-based violence and harassment; and that

(c) initiatives, including awareness-raising campaigns, are undertaken.

Analysis:

From the aforementioned reports it is clear that the legislator in Montenegro has launched certain measures and initiatives for the purpose of raising awareness in the area of prevention of violence and harassment at work.

(a) violence and harassment in the world of work are addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration

There is a Strategy for Occupational Safety and Health in Montenegro for the period 2016–2020 with an Action Plan for its implementation. However, this Strategy does not include issues related to violence and harassment in the world of work.

(b) employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment

Educational workshops for employers and employees related to violence and harassment in the world of work, as well as occupational safety and health at work, have been organized in the past by the Ministry of Labour and Social Welfare.

(c) initiatives, including awareness-raising campaigns, are undertaken

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In a certain number of special and collective agreements with employers, there are already provisions on the prohibition of violence and harassment at work, mostly through standard formulations, in which the employer is obligated to organize work so that violence at work or related to work shall be prevented and to enable conditions of work where other employees will not be able to harass anyone. Also, employers are obliged to train employees and their representatives to recognize the causes, forms and consequences of violence at work. Still, it is important to state that collective contracts in Montenegro are concluded mostly in the public sector, while they tend to be absent from the private sector. However, branch collective agreements in the area of administration and justice do not contain any provisions related to prevention of violence and harassment.²⁴ The only provision in the general collective agreement related to violence and harassment at work can be found in Article 37 paragraph 1 item 6 of the agreement, where it is deemed a serious breach of work obligations and can lead to termination of the employment contract.²⁵

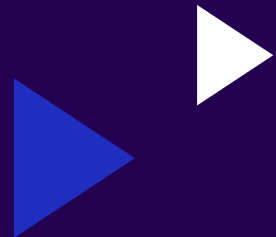
It is important to further promote collective bargaining at all levels and to include various measures to cover violence and harassment at work.

24 <http://www.amrrs.gov.me/sites/default/files/documents/library/Granski%20KU%20za%20oblast%20uprave%20i%20pravosudja.pdf>

25 <http://www.katalogpropisa.me/wp-content/uploads/2020/02/Opsti-kolektivni-ugovor.pdf>



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