

## **THE LAW**

### **ON GENDER EQUALITY**

**(Official Gazette of the Republic of Montenegro, no. 46/07 of 31 July 2007 and Official Gazette of Montenegro, no. 73/10 of 10 December 2010, 40/11 of 8 August 2011 40/11, 35/15 of 7 July 2015)**

#### **I GENERAL PROVISIONS**

##### **Article 1**

This law shall regulate the manner of providing and implementing rights based on gender equality, in accordance with the international regulations and generally accepted rules of international law, as well as measures to eliminate discrimination based on sex and create equal opportunities for participation of women and men, as well as persons of different gender identities in all spheres of social life.

##### **Article 2**

Gender equality shall mean equal participation of women and men, as well as persons of different gender identities in all spheres of public and private sector, equal position and equal opportunities to exercise all rights and freedoms and use personal knowledge and skills for development of society, as well as realize equal benefits from work achievements.

##### **Article 3**

In order to achieve gender equality in all phases of planning, making and implementing decisions, as well as taking actions in their competency, the state organs, organs of state administration and local self-government, public institutions, public enterprises and legal persons exercising public authority (hereinafter: organs), as well as business companies, other legal persons and entrepreneurs shall be obliged to assess and evaluate the impact of those decisions and activities on the position of women and men.

##### **Article 4**

Discrimination based on sex is any legal or factual, direct or indirect distinction or unequal treatment, or failure of treating one person, or group of persons of one sex compared to persons of the other sex, as well as exclusion, restriction or giving preference to one person, or group of persons of one sex compared to persons of the other sex, because of what a person is hindered or denied a recognition, enjoyment or exercise of human rights and freedoms in civil and political, economic, social, cultural and other spheres of public and private life.

Discrimination based on sex is also considered to be encouraging, helping, giving instructions, as well as announced intention to discriminate a specific person or group of persons based on sex.

Discrimination is considered to be any treatment bringing in disadvantaged position a women because of pregnancy or maternity, as well as other person because of changing sex, compared to other persons, in occasion of employment, self-employment, exercising rights arising from social security and other rights.

Discrimination, within the meaning of paragraph 1 of this Article, shall be considered to be also harassment based on sex, sexual harassment, incitement of other person to discriminate, as well as using words in the masculine gender as generic neutral form for both male and female gender.

Discrimination referred to in paragraph 1 of this Article, shall not be considered to be the right of women on protection of maternity as well as special protection at work prescribed due to biological characteristics.

#### **Article 5**

Discrimination, within the meaning of this Law, shall not be considered to be general and specific measures, adopted or taken to eliminate and prevent unequal treatment of women and men, to eliminate the consequences of the unequal treatment of men and women and to promote gender equality.

#### **Article 6**

No one can suffer adverse effects for submitting a complaint for discrimination or for witnessing, alerting the public about discrimination based on sex or giving any other type of support to proceeding conducted because of discrimination on that ground.

#### **Article 6a**

Protection of persons who are discriminated based on sex shall be exercised in accordance with the law governing prohibition of discrimination and the law governing the competency of the Protector of human rights and freedoms of Montenegro.

#### **Article 7**

Terms used in this Law shall have the following meaning:

1. **gender** is socially established role of women and men in public and private life that has evolved on the biological difference of sexes;
2. **sex** means biological characteristics by which human beings are divided into male and female;
3. **equal opportunities** imply lack of restrictions based on sex for participation of men and women in political, economic, social, cultural and other spheres of life, thereby ensuring the exercise of their rights and freedoms;
4. **unequal treatment** is any treatment making difference between men and women because they belong to different sexes or in case the advantage is unduly given to a person of one sex compared to a person of the other sex;
5. **direct discrimination based on sex** exists if an act, action or failing to act brings or has brought or could bring in an unequal position a person or group of persons of one sex, compared to other person or group of persons of other sex being in the same or similar situation;
6. **indirect discrimination based on sex** exists when an apparently neutral wording of regulation or general act, criterion or practice brings or could bring in an unequal position a person or group of persons of one sex, compared to other person or group of persons of the other sex, unless that provision, criterion or practice is objectively and reasonably justified by a legitimate aim, with the use of resources that are appropriate and necessary to achieve the objective, that is, in acceptably proportional relation with the objective to be achieved;
7. **violence based on sex** is an act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as threatening with such an act which

seriously impedes a person to enjoy its rights and freedoms in public or private life, including domestic violence, incest, rape and human trafficking, in accordance with the special law;

- 7a) **harassment based on sex** exists when unwanted conduct toward a person or group of persons of one sex has the purpose or effect of violation of personal dignity, causing fear, feelings of humiliation or offensiveness or creating hostile or humiliating environment, in accordance with special law;
8. **sexual harassment** is any unwanted physical, verbal or non-verbal conduct of a sexual nature which for the purpose has or represents a violation of personal dignity, or when creates state of fear, hostile, humiliating or offensive state, in accordance with the special law.

## **II GENERAL AND SPECIAL MEASURES**

### **Article 8**

Gender equality shall be secured with general and special measures.

#### **1. General measures**

### **Article 9**

General measures are the measures prescribed by the law by which in certain spheres is prohibited discrimination based on sex or is ordered an appropriate behaviour in certain circumstances in order to achieve gender equality, and are prescribed sanctions in case of violation of prescribed prohibitions or orders.

General measures also include measures set forth by other acts (declarations, resolutions and similar), whose goal is to achieve gender equality.

### **Article 10**

The Parliament of Montenegro and the Government of Montenegro (hereinafter: the Government) shall, within its competency, promote and apply the principles of gender equality, in particular the principle of gender balanced representation in occasion of election and appointment to certain functions, establishment of working bodies and establishment of composition of official delegations.

### **Article 11**

A municipality, the Capital City and the Old Royal Capital (hereinafter: municipality) shall, within their competency, promote and realize gender equality, or undertake measures and activities relevant to the achievement of gender equality.

### **Article 12**

Political parties shall, by their acts, define manner and measures to achieve gender balanced representation of women and men in their organs, on candidate lists for the election of members of parliament and councillors, in elected clubs of members of parliament and councillors and for election to public functions at all levels.

### **Article 13**

The media shall promote gender equality through the programmatic conception.

### **Article 13a**

Organs, media, business companies, other legal persons and entrepreneurs shall be obliged to use gender-sensitive language in their work and express all job titles, occupations, professions and functions, in acts on employment or work contract, acts on election, appointment or designation, as well as acts on the election in academic titles, acts on the assignment and other acts deciding on the rights and obligations of employees and other public documents and records in the natural gender (masculine or feminine) of the person to whom those acts relate.

### **Article 13b**

Organs shall be obliged to within the program of professional training and specialization of employees or in any other manner prescribed by law or other legal act, provide for education of employees on achieving gender equality, or the exercise of rights based on gender equality.

### **Article 14**

Statistical data and information which are collected, recorded and processed by the organs, business companies and other legal persons, as well as by entrepreneurs must be disaggregated by sex affiliation.

Statistical data and information referred to in paragraph 1 of this Article shall form the integral part of the official statistic in Montenegro (hereinafter: Montenegro) and shall be accessible to the public in accordance with the law.

## **2. Special measures**

### **Article 15**

In political, economic, social, cultural and other spheres of life, in which was found unequal representation of women and men, or unequal treatment of a person of one sex compared to a person of the other sex, can be undertaken special measures for ensuring and promoting gender equality.

Unequal representation, within the meaning of the paragraph 1 of this Article, exists in case when representation of persons of one sex in the spheres referred to in paragraph 1 of this Article, or in part of that sphere is lower than the percentage of representation of persons of that sex in the total population.

### **Article 16**

Special measures shall be used to remove existing obstacles that objectively lead or may result in unequal representation of women and men, or unequal position of persons of one sex compared to person of the other sex, or to provide special benefits in terms of encouragement of persons of underrepresented sex.

Special measures are, particularly:

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

### **Article 17**

Positive measures can be undertaken in the sphere of education, employment, labour, health, social security, public, or political activism, as well as in other spheres of social life where there are reasons for their introduction within the meaning of Article 16 of this Law.

The organs, in accordance with their competencies, shall undertake positive measures.

The Ministry in charge for protection of human and minority rights (hereinafter: the Ministry) can recommend to the organs the introduction of positive measures in those spheres of social life where there is obvious unequal representation of women and men, or distinct inequality of persons of one sex.

### **Article 18**

Positive measures shall be determined by action plans for promotion and achievement of gender equality, based on analysis of the position of women and men in the sphere for which the measures are determined.

The action plan referred to in paragraph 1 of this Article shall contain the reasons for the introduction of positive measures, the objectives to be achieved, beginning, manner and termination of implementation of measures, as well as monitoring over the implementation of measures.

### **Article 19**

The Ministry shall give consent for action plans, based on assessment of compliance of those plans with the principles set out in Articles 15 and 16 of this Law.

The Ministry shall monitor the implementation of positive measures in the spheres where they have been introduced.

### **Article 20**

Stimulatory and programmatic measures can be undertaken by the acts for implementation of the Action Plan for Achieving Gender Equality (hereinafter: the Action Plan), other acts of organs, businesses companies, political parties, non-governmental organizations and other subjects, in accordance with the nature and content of the sphere in which they operate.

## **III COMPETENCIES**

### **Article 21**

The Government shall establish the Action Plan and programs for the implementation of this Plan.

The Action Plan, which shall be adopted for a period of at least four years, shall contain:

1. objectives and measures for achieving gender equality in spheres referred to in Article 15 paragraph 1 of this Law, and particularly in the sphere of labour, social security and health care, education, protection from violence against women, as well as representation of women and men in decision-making processes at all levels and in all areas of social life;
2. guidelines for development of programs in certain spheres of social life, as well as obligations and holders of programs;

3. data which in the official statistics, surveys or opinion polls have to be collected, published, linked, preserved, analysed and disaggregated by sex;
- 3a) indicators of achieved results in the application of the Action Plan;
4. manner of reporting on implementation of measures from the Action Plan;
5. responsibility for implementation of measures determined by the Action Plan;
6. funds needed for implementation of measures from the Action Plan.

Programs for implementation of the Action Plan shall determine activities in certain spheres of social life, for a period of two years.

## **Article 22**

The Ministry:

1. coordinates activities aimed at achieving gender equality and participates in preparation and adoption of action plans for the establishment of gender equality at all levels;
2. monitors the application of international documents and conventions, as well as adopted international standards from the area of gender equality, undertakes measures for their implementation in the legal system of Montenegro and creates quality monitoring of respect of those documents;
3. prepares the Action Plan, proposes its adoption and monitors its implementation;
4. prepares programs for implementation of the Action Plan based on reports of the organs for areas from their competency;
5. organizes researches and analyses on the situation of gender equality and analyses needed for implementation of the Action Plan, as well as collection of data within cooperation on national and international level;
6. prepares reports on fulfilment of international obligations by Montenegro in the area of gender equality;
7. cooperates with local self-government and provides support for establishment of mechanisms for achievement of gender equality on local level;
8. establishes cooperation with non-governmental organisations;
9. undertakes and encourages activities of education on gender equality and organizes issuance of apposite publications aimed at promoting gender equality;
10. submits the annual report on implementation of the Action Plan to the Government;
11. performs other activities related to the achievement of gender equality in accordance with this Law.

The reports referred to in paragraph 1, item 4 of this Article, the organs shall submit to the Ministry not later than two months before the expiry of the period for which the program is determined.

## **Article 23**

The organs shall designate employees, who shall perform the duties of coordinator for activities related to gender equality issues within their competency, who shall participate in the preparation and implementation of the Action Plan.

## **Article 24**

The organs shall be obliged to at the request of the Ministry provide adequate assistance, or deliver necessary data within their competency.

## **Article 25 - Article 31**

Shall be deleted. (Official Gazette of Montenegro, no. 35/15)

## **V MONITORING**

### **Article 32**

Monitoring over the implementation of this Law shall be performed by the Ministry.

## **VI PENAL PROVISIONS**

### **Article 33**

A fine of EUR 1,000 to EUR 10,000 shall be imposed for misdemeanour on a legal person if brings a women because of pregnancy or maternity, as well as other person because of changing sex in disadvantaged position compared to other persons, in occasion of employment, self-employment, the exercise of rights arising from social security and other rights (Article 4 paragraph 3).

A fine of EUR 150 to EUR 2,000 shall be imposed on a responsible person in the legal person, state organ, organ of state administration and local self-government for misdemeanour referred to in paragraph 1 of this Article.

A fine of EUR 150 to EUR 3,000 shall be imposed on an entrepreneur for misdemeanour referred to in paragraph 1 of this Article.

### **Article 33a**

A fine of EUR 500 to EUR 5,000 shall be imposed on a legal person for misdemeanour if:

1) it does not use gender-sensitive language in its work and express all job titles, occupations, professions and functions in acts on employment or work contract, acts on election, appointment or designation, as well as acts on the election in academic titles, acts on the assignment and other acts deciding on the rights and obligations of employees and other public documents and records, in the natural gender (masculine or feminine) of the person to whom those acts relate (Article 13a);

2) it does not provide training for employees on achieving gender equality (Article 13b);

3) it does not disaggregate by sex the collected, recorded and processed statistical data and information (Article 14 paragraph 1);

4) it does not submit to the Ministry, within the prescribed period, the report on achieving gender equality within its competency (Article 22 paragraph 1 item 4);

5) it does not select employees who shall perform the duties of coordinator for activities related to gender equality issues, or who shall participate in the preparation and implementation of the Action Plan (Article 23).

A fine of EUR 150 to EUR 1,000 shall be imposed on a responsible person in the legal person, state organ, organ of state administration and local self-government for the misdemeanour referred to in paragraph 1 of this Article.

A fine of EUR 150 to EUR 1,500 shall be imposed on an entrepreneur for the misdemeanour referred to in paragraph 1 of this Article.

## **VII TRANSITIONAL AND FINAL PROVISIONS**

### **Article 34**

Organs shall designate employees who shall perform the duties of the coordinators in gender equality issues referred to in Article 23 of this Law within three months as of the entering into force of this Law.

### **Article 35**

The Government shall adopt the Action Plan referred to in Article 21 of this Law within nine months as of the entering into force of this Law.

### **Article 35a**

By the day of entry into force of this Law, Article 109 of the Law on Amendments to the Law prescribing fines for misdemeanours (Official Gazette of Montenegro, No. 40/11) shall cease to be valid.

### **Article 36**

This Law shall enter into force eight days after its publication in the Official Gazette of Montenegro.