

LAW ON GENDER EQUALITY IN MONTENEGRO

The Law is published in the Official Journal number 46/07 from 31 July and entered into force on 8 August 2007

I. GENERAL PROVISIONS

Article 1

This Law regulates the method of providing and implementing rights on the basis of gender equality, in accordance with international regulations and general rules of international law, as well as measures to eliminate discrimination based on sex and establishment of equal opportunities for women and men in all fields of social life.

Article 2

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

Article 3

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 the 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.

Article 4

Discrimination based on sex is every legal and de facto, direct or indirect differentiation, privilege, exclusion or restriction based on sex which makes other person being difficult or negated acknowledgement, enjoyment or exercising of rights and freedoms in political, educational, economic, social, cultural, sports, civil and in other fields of public and private life.

Sexual harassment, incitement of other person to discrimination and usage of words in masculine gender as generic neutral form for masculine and feminine gender, within the meaning of the paragraph 1 of this article is considered to be discrimination.

The right of women on protection of maternity and prescribed special protection at the working place for biological characteristic is not considered to be discrimination from the paragraph 1 of this Article.

Article 5

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

Article 6

No one shall suffer any harmful consequences due to giving a statement before the competent body in the capacity of witness or victim of discrimination based on sex or alerting the public about the case of discrimination based on sex.

Article 7

Concepts used in this Law have the following meanings:

1. **gender** is socially established role of women and men in public and private life developed on biological difference of sexes;
2. **sex** means biological characteristics according to which human beings are divided on males and females;
3. **equal opportunities** means the absence of all barriers to economic, political, social, cultural and other fields of social life on the basis of sex and thus ensuring the full implementation of human rights and freedoms of women and men;
4. **unequal treatment** is every act that makes distinction between men and women for their belonging to different sexes or if the advantage is given unjustified to one sex versus another;
5. **direct discrimination** on the basis of sex exists when person is, or would be treated less favourably, on the basis of sex, than person of the opposite sex in a comparable situation, strictly on the basis of sex;
6. **indirect discrimination** on the basis of sex exists when legal provision, another act, criteria or practice, in the same or similar situation, places persons of one sex at a disadvantage compared to persons of the other sex;
7. **gender-based violence** is any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as threat of such act that seriously impede a person's ability to enjoy his or her rights and freedoms in both public or private life, including domestic violence, incest, rape and trafficking in human beings;
8. **sexual harassment** is any form of unwanted physical, verbal or non-verbal conduct of a sexual nature, which aims at or actually constitutes a violation of the dignity of a person and creates a disagreeable, hostile, humiliating or offensive state;

II. GENERAL AND SPECIAL MEASURES

Article 8

Gender equality is provided by general and special measures.

1. General measures

Article 9

General measures are measures of a normative nature, by which discrimination based on sex is prohibited in certain field, and orders specific behaviour in certain conditions for the purposes of achievement of gender equality, and sanctions shall be imposed in a case of violation of prohibitions i.e. requirements.

General measures contain measures asserted by other regulations (declarations, resolutions, by-laws etc.), whose aim is achievement of gender equality.

Article 10

Parliament of Montenegro and Government of Montenegro (hereinafter: Government) shall apply principles of gender equality, within the framework its competencies, in particular the principle of gender balanced representation in elections and nominations, formation of working bodies and confirmation of the official delegations structure.

Article 11

Municipality, capital and royal capital (hereinafter: municipality) incites and achieves gender equality, within the framework of its competencies, or undertakes measures and activities of importance for the establishment of gender equality.

Article 12

Political parties, in their regulations, select the methods and measures for the establishment of equal representation of women and men within the bodies of the party, on the candidate lists for the election of members of republic parliament and members of local parliament, in elected clubs of members of both local and republic parliament and the election of managing positions in all levels.

Article 13

The media promote gender equality through their programme concepts.

Article 14

All statistical data and information collected, registered and processed by the organs, business companies and other legal persons as well as entrepreneurs must be gender disaggregated.

Statistical data and information from the paragraph 1 of this Article are the integral part of the state statistical records in the Republic of Montenegro (hereinafter: Montenegro) and accessible to the public in accordance with the law.

2. Special measures

Article 15

In certain areas of social life where unequal representation of women and men is ascertained i.e. unequal treatment of persons belonging to one sex in relation to the persons belonging to the other sex, special measures for achievement of gender equality could be undertaken.

Non-balanced representation, with regard to the paragraph 1 of this Article, exists in case when representation of one sex in a specific field of social life or in a part of such a field is lower than the percentage of representation of that sex in the total population.

Article 16

Special measures are used to remove existing obstacles that bring about non-balanced representation of women and men or unequal status of persons of one sex in relation to the person of another or give special benefits in a sense of encouragement persons of underrepresented sex.

Special measures are:

1. positive measures which, under equal conditions, give priority to the persons of underrepresented sex or those in specific disadvantage due to their sex, until equal representation or goals defined for their introduction are achieved;
2. encouraging measures that provide special benefits or introduce special incentives for the purpose of eliminating unequal representation of women and men or unequal treatment on the basis of sex;
3. program measures that mean activities relating to the education or incitement and establishment of gender equality.

Article 17

Positive measures may be undertaken in the fields of education, employment, labour, health, social care, public or political activity, and other fields of social life where reasons stated in Article 16 of this Law are given for their introduction.

Organs, within their competencies, introduce positive measures.

The Ministry in charge for protection of human and minority rights (hereinafter: Ministry) may recommend to the organs the introduction of positive measures in those fields of social life where obvious unequal representation of women and men or specific disadvantage of the person belonging to one sex exists.

Article 18

Positive measures are established with action plans for the incitement and achievement of gender equality, on the basis of analysis of the status of women and men within their field of work.

Action plan from the paragraph 1 of this Article contains reasons for introduction of these measures, aims to be achieved, the commencement, method and cessation of implementation of the measures, as well as the monitoring of its implementation.

Before the implementation of positive measures, the entities have to obtain consent from the Ministry.

Article 19

Ministry approves the action plans, on the basis of assessment of the consistence of those plans with principles from the articles 15 and 16 of this Law.

Ministry monitors the implementation of positive measures in the fields where are introduced.

Article 20

Encouraging and program measures may be undertaken by the acts for the implementation of the Action Plan for achieving gender equality (hereinafter: Action Plan), other acts of organs, economic operators, political parties, NGOs and other bodies in accordance with the nature and content of the field in which they are active.

III. COMPETENCIES

Article 21

Government establishes the Action Plan and programs for the implementation of the Plan.

The Action Plan, which is adopted for a period of four years at least, contains:

1. aims and measures for the achievement of gender equality in all fields of social life, in particular in the field of labour, social and health care, education, violence against women and representation of women and men in decision making on all levels and each area of social life;
2. guidelines for the development of the program in certain areas of social life, obligations and holders of the program as well;
3. data which have to be collected, published, linked, preserved, analysed and presented in a gender segregated manner within the framework of activities of national statistics offices, surveys or opinion polls;
4. the method of reporting on the implementation of the measures from the Action Plan;
5. responsibility for the implementation of the measures for the achievement of gender equality;
6. the funds needed for the implementation of measures from the Action Plan.

Programs for implementation of Action Plan establish the activities in certain fields of social life, for the two-year period.

Article 22

Ministry:

1. coordinates all activities aimed at achieving gender equality and participates in preparation and adoption of action plans for the establishment of gender equality in all levels;
2. monitors the implementation of international documents and conventions, as well as adopted standards from gender equality field, undertakes measures for its implementation in the legal system of Montenegro, and creates qualitative monitoring of the respect of those documents;
3. prepares Action Plan, proposes its adoption and monitors its implementation;
4. prepares programs for the implementation of the Action Plan on the basis of reports of organs for areas from their competencies;
5. conducts research and analysis on the status of gender equality and analysis needed for the implementation of Action Plan, and data collection within co-operation on national and international level;
6. prepares reports on fulfillment of international obligations by Montenegro in the field of gender equality;
7. cooperates with local administration bodies and provides assistance for the establishment of mechanisms for the achievement of gender equality on local level;
8. establishes cooperation with non-governmental organisations;
9. undertakes and incites activities on the education on gender equality and organises issuance of publications aimed at promotion of gender equality;
10. investigates complaints of citizens about direct or indirect discrimination based on sex, holds for attitudes and gives opinions and recommendations, and when needed informs Human Rights Ombudsman on existence of discrimination based on sex;
11. submits annual report to the Government on implementation of the Action Plan;
12. performs other tasks related to the implementation of gender equality, in accordance with this Law.

Organs are obliged to submit reports from the paragraph 1, point 4 of this article to the Ministry within two months before completion of the time for which the program is ascertained.

Article 23

Organs are obliged to select the employees, who shall conduct the duties of activity coordinator in gender equality issues within their competencies, and who participates in preparation and implementation of the Action Plan.

Article 24

Organs are obliged to give adequate assistance i.e. give data within the framework of their competence upon the request of the Ministry.

IV. INVESTIGATING COMPLAINTS

Article 25

Complaints indicating direct or indirect discrimination based on sex for shall be submitted to the Ministry.

Employees in the Ministry are obliged to protect personal data obtained while investigating, in accordance with regulations on protection of personal data.

Article 26

The complaint may be submitted by anyone who considers to be discriminated on the basis of sex.

The complaint may be submitted by other legal or physical person on behalf of the person discriminated on the basis of sex, upon his/her consent.

Ministry may act according to anonymous complaint, if it incites direct discrimination based on sex and if includes sufficient information for revelation and assertion of existence of discrimination based on sex.

Article 27

Ministry shall not act according to the complaint for which it is evident that there is no discrimination based on sex.

About the reasons of not acting according to the complaint the Ministry informs the person who submitted the petition.

Article 28

Ministry informs organ, employer, political party and other legal or physical person on which the complaint is directed (hereinafter: opposing party) on investigating the complaint, and may request the opposing party to provide him with explanation, within a fixed time limit, which would enable him/her to investigate the complaint.

If the opposing party doesn't give written statement from the paragraph 1 of this Article, the Ministry gives an opinion on the basis of the available data.

Article 29

Ministry ceases investigating the complaint at the request of the complainant or if due to insufficient data it cannot be carried on.

Article 30

Ministry prepares an opinion with determinations and an assessment on the circumstances of the case, from the aspect of existence of discrimination based on sex and informs the complainant and the opposing party about it.

In the opinion from the paragraph 1 of this Article the Ministry warn on ascertained discrimination based on sex, and recommends the method of elimination of the cause of discrimination and decides about the term for the complainant and opposing party in which the Ministry will be informed about the undertaken measures.

Article 31

Organs, business companies, political parties, non governmental organisation and other legal and individual persons may turn to the Ministry with a request for an opinion on whether it will cause or it has caused by any of its actions unequal treatment of women and men in terms of this Law.

V. MONITORING

Article 32

Ministry performs monitoring on the implementation of this Law.

VI. PENALTY PROVISIONS**Article 33**

A fine in the amount of fifty to one hundred and fifty minimum labour rates in Montenegro shall be imposed on a organ, business company, other legal person or entrepreneur for a violation if fails to provide gender disaggregated statistical data and information collected, recorded and processed (Article 14, paragraph 1).

A fine in the amount of five to fifteen minimum labour rates in Montenegro shall be imposed on a responsible person in the organ or legal person for a violation from the paragraph 1 of this Article.

VII. TRANSITIONAL AND FINAL PROVISIONS**Article 34**

Organs shall select the official who will perform the duties of coordinators in gender equality issues from the article 23 of this Law within three months after this Law takes effect.

Article 35

The Government shall adopt the Action Plan from the Article 21 of this law within nine months after this Law takes effect.

Article 36

This Law shall take effect on the eighth day after its promulgation in the Official Gazette of the Republic of Montenegro.