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EUROPEAN SOCIAL CHARTER

3rd National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF MONTENEGRO

(Articles 2, 4, 5, 6, 26, 28 and 29

for the period 01/01/2009 – 31/12/2012)

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Government of Montenegro
Ministry of Labour and Social Welfare

EUROPEAN SOCIAL CHARTER (revised)

THIRD NATIONAL REPORT ON IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER

Reference period 01.05.2010 - 31.12.2012
(Report for Working Group III – Labour rights, on Art. 2 para. 1,2 and 6, 4 para. 2, 3 and 5, 5, 6, 26, para. 1, 28 and 29)

November, 2013

Article 2

The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2 to provide for public holidays with pay;

3 to provide for a minimum of four weeks' annual holiday with pay;

4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest;

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Application of Article 2, Paragraph 1

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit; "

Constitution of Montenegro shall guarantee economic, social and cultural rights and freedoms so that Article 64, which protects the rights of employees, provides in paragraph 2 that employees have the right to limited working hours and paid holidays.

Labor Law ("Official Journal of Montenegro", no.49/09, 26/09, 59/2011, 66/2012) under the rights and obligations of employees standardize the working hours as follows: full- time work, part-time work with several employers, part- time work, shorter working hours due to difficult working conditions and overtime work.

Full-time work shall last for 40 hours in a working week, unless otherwise regulated by this law, and by a collective agreement may be determined working time shorter than 40 hours in one working week. Labour Law referred to in Article 45 shall provide for **part-time work with several employers** so that an employee within the 40hours working week may sign a labour contract with several employers and thus achieve full-time work.

The exercise of rights and obligations and the distribution of working hours of the employees who concluded the labour contract with several employers and thus achieve a full-time work, shall be regulated by the agreement of employers.

When it comes to **part-time work** then the labour contract may be concluded on a part-time basis, but not shorter than ¼, which amounts to 10 hours of full-time work. Jobs on which a labour contract with part-time work is concluded, shall be stipulated by the act on systematization, depending on the nature of tasks and organization of work.

An employee performing extremely difficult, tiring jobs and jobs harmful for the health thereof shall have the full-time work shortened proportional to the harmful effects on the health thereof, i.e. working capacity of the employee, but not shorter than 36 hours in one working week.

Jobs extremely difficult, tiring and harmful for the health, shall be stipulated by the act on systematization, in accordance with the collective agreement. An employee engaged in **part-time work due to difficult working conditions** has the same labor rights as well as the employee engaged in full-time work. In addition, the employee engaged in such jobs shall not perform those tasks overtime, and shall not sign a labour contract with another employer to perform such tasks.

When it comes to **engagement longer than full-time work** (overtime work), the law prescribes such a possibility in situations when the adequate labour organization and distribution of working hours cannot secure the fulfillment of the suddenly increased work load. Engagement longer than full-time work may last only for the time necessary to rectify the causes for which it was introduced, but not longer than 10 hours per week. Overtime work shall be introduced based on the written decision of the employer prior to initiation of such work. If it is not possible to instruct the employee to work overtime in written form, due to the nature of business or urgency of performing overtime work, it may be instructed verbally, whereas the employer shall deliver the written decision to that employee subsequently, but within five days upon the execution of overtime work.

The legislator has prescribed situations where overtime work is obligatory, i.e. the employee is obliged to be engaged more than full-time work in the following cases:

1) prevention of direct creation of danger for health and safety of the people or greater material damage that is directly upcoming;
2) natural disasters (earthquakes, floods, etc.)
3) fire, explosion, ionizing radiation and major unexpected break-downs of buildings, equipment and facilities;
4) epidemic or disease that endanger human life or health, endanger livestock or flora, and other material resources;
5) pollution of a greater scope of water, food and other products for human alimentation or cattle feed;
6) traffic or other accidents that have endangered the lives or health of people or material resources to a greater extent;
7) need to promptly provide emergency medical assistance and other emergency medical services;

8) need to execute urgent veterinary intervention;
9) in other cases stipulated by the collective agreement.

Exceptionally from Article 49, paragraph 2 of the Labour Law, i.e. the provisions that overtime work may last only as long as it is necessary to rectify the causes for which it was introduced and no longer than 10 hours per week, overtime work in the aforementioned cases of the mandatory introduction may last until the causes cease due to which it was introduced.

With **the introduction of overtime work, i.e. duty hours in the area of health,** a health care institution may impose overtime work hours if new employment, introduction of work in shifts or redistribution of working hours cannot secure continuous inpatient and outpatient care.

With the introduction of overtime work, the employer shall be obliged to inform the inspection work about the introduction of overtime work within three days from the date of adoption of decision on the introduction of the overtime work. Labour inspector shall prohibit overtime work, if s/he determines that it was introduced contrary to the provisions of the Articles relating to overtime work.

Distribution of working hours

Decision on the distribution of working hours, redistribution of working hours, part-time work and introduction of work longer than full-time work shall be made by the responsible authority of the employer.

Decision of the responsible state authority, that is, local self-government authority shall stipulate the schedule, starting and ending time of working hours in specific sectors and for specific jobs.
The employer is obliged to issue a written decision on the distribution of working hours of the employees and their schedule shifts, if within that employer work is organized in shifts.

Redistribution of working hours

Redistribution of working hours may take place when required so by the nature of the business activity, organization of work, better use of working assets, more rational use of working hours and performance of certain tasks within specific

deadlines.
In such cases, redistribution of working hours is introduced so that the total working hours of the employee on average do not exceed more than full-time work during the year.

Calculation of working hours

An employee whose work has ended prior to the expiry of the period for which redistribution of working hours has been introduced, shall be entitled to have the working hours longer than full-time work calculated into full- time work in the total annual working hours fund and have them accepted as the hours of work subject to the payment of social contribution for the achievement of the right to retirement, and the remaining working hours shall be calculated as the hours of overtime work.

The law prescribes for night work, which presents the work performed in the period from 10 pm to 6 am of the next day, and such work shall represent a special working condition. An employee performing night work for minimum three hours of the daily working hours thereof, that is, an employee performing night work for minimum one third of the full annual working hours thereof, shall have the right to special protection, in accordance with the regulations in the field of health and safety at work. If the opinion of the responsible health authority is that the health state of the employee performing night work could deteriorate due to such work, the employer shall reassign that employee to an adequate day-time job.

Also, an employer who organizes work in shifts shall secure change of shifts so that the employee shall not work at night (night shift) continuously for a period longer than one working week.
Employer working in specific conditions shall regulate work in shifts and duty hours of the employees, in accordance with the company agreement.

The law further stipulates that employees who are engaged in full-time work may conclude an agreement on additional work by the same or another employer, and such contract shall cease to be valid after the expiration date or cancellation of one of the contracting parties.

Application of Article 2, paragraph 2

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

2 to provide for public holidays with pay;"

Absence from work due to state and religious holidays shall be considered as paid leave. Labour Law shall regulate this issue in a way that the employee is entitled to be absent from work during state and religious holidays in accordance with the law. If the employee works during the abovementioned holidays due to the necessary working process needs then s/he has the right to increased wages in accordance with the collective agreement and labour contract.

Law on observance of religious holidays ("Official Journal of Montenegro", no.56/93, 27/ 94) shall prescribe that the observance of religious holidays in Montenegro is free in accordance with religious canons. In this respect, enterprises, institutions, other legal entities, public authorities and entrepreneurs **are obliged** to provide employees who want to observe their religious holidays, paid leave for working days that fall on days of religious holidays. Employees who want to observe the religious holidays are obliged to notify the responsible person, that is, an entrepreneur at least three days before the religious holiday. The right on paid leave for observance of religious holidays are entitled to:

- Orthodox for Christmas Eve, Christmas Day (two days), Good Friday, Easter (the second day) and "patron saints' day" ;

- Roman Catholics for Christmas Eve, Christmas Day (two days), Good Friday, Easter (the second day) and All Saints;

- Muslims for the Eid al-Fitr (three days) and Eid al-Adha (three days);

- Jews for Passover (two days) and Yom Kippur (two days).

State authorities, local self-government bodies, public enterprises and public institutions, founded by the Republic, that is, the municipality, are obliged to provide the exercise of their functions during the religious holidays.

The responsible person in the company, institution, other legal entity, state authority and the entrepreneur, who does not provide the paid leave for an

employee for the observance of a religious holiday, shall be punished by a fine in the amount of one-half to twenty times of the minimum wage in the Republic.

The matter of celebrating the state holidays is the subject of the Law on national and other holidays ("Official Journal of Montenegro", no.27/2007). State holidays in Montenegro are: May, 21st - The Independence Day and July, 13th – The Statehood Day.

Holidays in Montenegro are also: January, 1st - New Year's Day and May, 1st – Labour Day. The abovementioned holidays are celebrated for two days, on the day of the holiday and the following day. **These holidays are festive days and considered to be as non-working days.** If the holiday is on Sunday, two following days are non-working days. If the second festive day is on Sunday then only the following day is the non-working day. State authorities, local self-government bodies, public institutions, public enterprises and other entities engaged in activities of public interest shall be obliged to provide, during holidays, the performance of tasks whose interruption could have harmful consequences for the citizens and state. If the nature of the activity or work technology within companies or other forms of business activities requires continuous operation, it is allowed by law to work during holidays. In those cases, as noted above, the employees are entitled to increased salary in accordance with the collective agreement and labour contract.

General Collective Agreement has determined that an employee, during state and religious holidays, shall be entitled to wage compensation during leave from work in the amount of 100 % of his salary, per hour, as s/he is at work. Employee's salary has been increasing by at least 150% per hour for work during state or religious holidays. General Collective Agreement constitutes the starting point regulating the rights and setting their minimum which must be respected, and Branch collective agreement can raise these rights to a higher level. General Collective Agreement was signed in 2004, underwent the amendments in 2010 which stipulates the time of its application to 31/12/2011.
In January 2012 The Social Council decided to form a tripartite working group, with the task to prepare the text of the new General Collective Agreement. The working group began its work in February 2012 and according to the Labour rules, which were accepted by all members of the working group, it was provided that the working group prepares the draft text of the new General Collective Agreement by

the end of April 2012. However, as social partners did not reach consent on decisions which will be included in the new General Collective Agreement, therefore it was necessary to extend the validity of existing collective agreement. Collective agreement on the extension of the validity of the General Collective Agreement was signed from that reason, which was scheduled to last until September, 30th 2012. Prolonging the deadline in which a new General Collective Agreement should have been signed, is a consequence of difficult reaching a compromise which characterizes the tripartite social dialogue (clash of different interests). Since the signing of the collective agreement, in accordance with the Labour Law and the Law on trade union representativeness, the consent of all the social partners involved in the negotiation process is required, and which we have not yet received, in the period until the signing of a new General Collective Agreement , the rights, duties and responsibilities of employees shall be enforced in accordance with the provisions of the Labour Law, Branch collective agreements and company agreements. As provided in Article 174d of the Labour Law until the conclusion of the General Collective Agreement, the provisions of collective agreements shall be applied which are not contrary to the Labor Law.

In situations when it is necessary to increase salaries to employees for work on religious or state holidays, the practice is to increase the salary in the amount that was previously set by a collective agreement, especially since such provisions in a number of cases include branch, or company agreement.

We emphasize that social dialogue for the conclusion of a new General Collective Agreement is largely conducted, the negotiations are said to be entering its final stage and a consent was reached on all issues except when it comes to allocate the resources for prevention of work disability where two representative trade union centers have not yet agreed. The issue of increasing the employee's salary based on the work during religious and state holidays, was agreed.

So the fact that the General Collective Agreement ceased to be valid, does not mean that the right to increased salary for employees working during state and religious holidays is suspended but rather to exercise that right by applying the branch or company agreements and by labour contract.

Application of Article 2, paragraph 6

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

6 to ensure that workers are informed in written form, as soon as possible, and in every case not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship. "

Labour relationship in Montenegro is based on the conclusion of the labour contract. Labour contract shall be concluded between an employee and an employer and it shall be considered concluded when it is signed by the employee and the employer, or a person authorized by him/her.

The labour contract shall be concluded in written form prior to commencement of employment. If the employer fails to conclude a labour contract with the employee prior to commencement of employment, it shall be considered that the employee has established the labour relationship for an indefinite period on the date of commencement of employment, if the employee accepts employment. In that case, the employer shall be obliged to conclude the labour contract for indefinite period, within three days from the date of commencement of employment. If the employer fails to conclude the abovementioned contract listed within this period shall be imposed a fine of €500 to 20,000.

Content of the labour contract

Labour contract shall contain the following:

1) name and seat of the employer;
2) name and surname of the employee, place of permanent, i.e. temporary residence of the employee;
3) unique personal identification number of the employee, that is, personal identification number in case of foreign citizen;
4) type and degree of qualifications of the employee, that is, level of education and professional training;
5) type and description of tasks that the employee is supposed to perform;
6) place of work;

7) period of time for which the labour relationship is established (for a definite or indefinite period of time);
8) duration of the labour contract signed for a definite period of time;
9) date of commencement of employment;
10) working hours (full-time, shorten working hours or part-time);
11) amount of the basic wage, coefficient level and elements for determining work performance, wage compensations, increased salaries and other employee's benefits;
12) deadlines for payment of salaries and other benefits to which the employee is entitled to;
13) manner of use of rest during work, daily and weekly rest, annual leave, holidays and other absences from work, in accordance with the law and the collective agreement.

Labour Law establishes several types of labour contracts, including: labour contract for a director, labour contract for the performance of tasks with high level of risk, labour contract for part-time work, labour contract for work from home, labour contract with a foreign citizen, labour contract for the performance of work in the household.

Labour contract may regulate other rights and obligations, in accordance with the law and the collective agreement. The rights and obligations which are not stipulated by the labour contract, shall be subjected to the relevant provisions of the aw and the collective agreement.

Article 4

The right to fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1 to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living;

2 to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3 to recognize the right of men and women workers to equal pay for work of equal value;

4 to recognize the right of all workers to a reasonable period of notice for termination of employment;

5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Application of Article 4, paragraph 2

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

2 to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;"

According to Article 78, paragraph 2 with regard to Article 49, paragraph 2, and Article 50 of the *Labor Law (" Official Journal of Montenegro ", no. 49/08, 59/11 and 66/ 12),* the salary of an employee is increased in accordance with the collective agreement and labor contract among other things, for, work longer than full-time working hours (overtime work).

In Article 49, paragraph 2 of this law, work longer than full-time working hours can last only as long as it is necessary to rectify the causes for which it was introduced, but not longer than 10 hours per week.

According to Article 50 of the same law, the employee shall be obliged to work more than full-time work in the following cases:

1) prevention of direct creation of danger for health and safety of the people or greater material damage that is directly upcoming;

2) natural disasters (earthquakes, floods, etc.)

3) fire, explosion, ionizing radiation and major unexpected break-downs of buildings, equipment and facilities;

4) epidemic or disease that endanger human life or health, endanger livestock or flora, and other material resources;

5) pollution of a greater scope of water, food and other products for human alimentation or cattle feed;

6) traffic or other accidents that have endangered the lives or health of people or material resources to a greater extent;

7) need to promptly provide emergency medical assistance and other emergency medical services;

8) need to execute urgent veterinary intervention;

9) in other cases stipulated by the collective agreement.

Exceptionally from Article 49, paragraph 2 of this law, overtime work may last until rectify the causes for which it was introduced.

In situations when it is necessary to increase the salary of employees for overtime work, the practice is to increase salary in the amount previously set by a collective agreement, especially since such provisions in many cases contain the branch, that is, the company agreement. General Collective Agreement has increased employee's salary by at least 40% per hour for overtime work. In cases when the employee has fulfilled conditions for salary increase on many grounds then the percentage of increase is added.

We draw attention to the answer given in the framework of reporting on the application of Article 2, paragraph 2, that the General Collective Agreement constitutes the starting point regulating the rights and setting their minimum which must be respected, and Branch collective agreements can raise those rights to a higher level.

General Collective Agreement was signed in 2004, underwent the amendments in 2010 which stipulates the time of its application to 31/12/2011. In January 2012 The Social Council decided to form a tripartite working group, with the task to prepare the text of the new General Collective Agreement. The working group began its work in February 2012 and according to the Labour rights, which were accepted by all members of the working group, it was provided that the working group prepares the draft text of the new General Collective Agreement by the end of April 2012. However, as social partners did not reach consent on decisions which will be included in the new General Collective Agreement, therefore it was necessary to extend the validity of existing collective agreement. Collective agreement on the extension of the validity of the General Collective Agreement was signed from that reason, which was scheduled to last until September, 30th 2012. Prolonging the deadline in which a new General Collective Agreement should have been signed, is a consequence of difficult reaching a compromise which characterizes the tripartite social dialogue (clash of different interests). Since the signing of the collective agreement, in accordance with the Labour Law and the Law on trade union representativeness, the consent of all the social partners involved in the negotiation process is required, and which we have not yet received, in the period until the signing of a new General Collective Agreement, the rights, duties and responsibilities of employees shall be enforced in accordance with the provisions of the Labour Law, Branch collective agreements and company agreements.

We emphasize that social dialogue for the conclusion of a new General Collective Agreement is largely conducted, the negotiations are said to be entering its final stage and a consent was reached on all issues except when it comes to allocate the resources for prevention of work disability where two representative trade union centers have not yet agreed. The issue of increasing the employee's salary based on the overtime work, was agreed.

So the fact that the General Collective Agreement ceased to be valid, does not mean that the right to increased salary for employees for overtime work is

suspended but rather to exercise that right by applying the branch, that is, company agreements and labour contract.

According to Article 62, paragraph 5 of the Labor Law, if the employee must work on the day of his/her weekly rest, the employer is obliged to provide him/her rest for at least 24 hours continuously during the next week. Hence, the rest according to the abovementioned provision of the law has a dedicated character, and if the employee has to work on that day, he cannot be paid as for overtime work, but depending on the nature of the process and the work organization, s/he must be provided with the use of that rest lasting at least 24 hours continuously during the next week.

Application of Article 4, paragraph 3

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

3 to recognize the right of men and women workers to equal pay for work of equal value;"

In accordance with the decision of the European Committee of Social Rights, states which have accepted Article 20 and Article 4, paragraph 3 do not need to submit a report on the application of Article 4, paragraph 3, because the situation in terms of equal pay is considered exclusively according to Article 20, and Montenegro has accepted both Article 20 and Article 4, paragraph 3.

Application of Article 4, paragraph 5

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or of a collective agreement or arbitration award."

According to Article 79, paragraph 2 of the Labour Law, the contracted wage shall mean a wage determined by the labour contract and it cannot be lower than the minimum wage established by Article 80 of this Law.

The provisions of Article 80, paragraphs 2 and 3 of the same law shall prescribe that the minimum wage may not be lower than 30 % of the average wage in Montenegro in the previous six months, according to official data determined by the administrative authority in charge of the statistics. The amount of minimum wage shall be determined by the Government of Montenegro, at the proposal of the Social Council of Montenegro, every six months.

Article 40, paragraph 1, item 3 of the Labor Law, the employer and the employee may offer to change the agreed working conditions by the annex to the labour contract, and in the case related to the determination of wage, which cannot be lower than the minimum wage established, or guaranteed by Article 80 of this law.

When it comes to suspension of wage and wage compensation, the employer may satisfy monetary claim against the employee by suspending his/her wage only on the basis of a valid court decision, in cases determined by the law or with the employee's consent.

The wage or wage compensation of an employee may be coercively suspended up to one half for the purpose of mandatory maintenance, on the basis of the valid court decision, and for other obligations up to one third of the wage or wage compensation at the most.

The employer shall keep monthly records on wages and wage compensation, in accordance with the law.

With regard to the duties of family members obliged to provide maintenance, the Family Law (" Official Journal of Montenegro ", no. 1/2007), prescribes that this obligation shall be determined in proportion to their capacities, and in the framework of needs of the maintenance creditor.

The total amount of funds required for maintenance shall not be less than the amount of permanent financial assistance, which according to the regulations on

social protection is given to the person with no income in the municipality in which the dependent resides.

In assessing the needs of a dependent person, the court shall take into consideration his/her financial status, level of working capacity, job opportunities, health condition, and other factors which influence on the decision on maintenance. When the maintenance is required for the child, the court takes into account the child's age as well as the need for his/her education.

In assessing the possibilities of the person obliged to provide maintenance, the court shall take into account all of his/her earnings and real opportunities to acquire earnings, as well as his/her own needs and legal obligations of maintenance.

The court shall order payment of the future amounts of maintenance in fixed monthly amounts of money to a person obliged to provide maintenance.
If a person obliged to provide maintenance acquires regular monthly cash income, the court shall determine, at the request of a dependent person, the future amounts of maintenance on a percentage of earnings, pension or other permanent cash income.
If the amount of maintenance is determined by the percentage of regular monthly income of the maintenance debtor (wage, wage compensation, pension, author's royalties, etc.), the amount of maintenance, typically, cannot be less than 15 % nor more than 50% of regular monthly income of the maintenance debtor. If the maintenance creditor is a child, the amount of maintenance should provide at least such standard of living for the child as the parent of the maintenance debtor enjoys.
The right to maintenance from the spouse, i.e. common-law is exercised before the maintenance from relatives.
If there are more people at the same time requiring maintenance, the child's right to maintenance has priority.

Article 5

Right to Organize

With a view to ensuring the promotion of the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake

that national law shall not be such as to impair, nor shall it be applied so as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application of these guarantees to the members of the armed forces and the extent to which they shall be applied to persons in this category shall equally be determined by national laws or regulations.

Application of Article 5

Montenegro is a country that guarantees and protects the rights and freedom which are inviolable and everyone is obliged to respect the rights and freedom of others. Freedom boundaries are set by the Constitution of Montenegro in a manner that everything is free which is not prohibited by the Constitution and law and any person is obliged to comply with them. All are equal before the law, regardless of any particularity or personal feature. Rights and freedom are achieved in accordance with the Constitution and ratified international agreements.

The Constitution of Montenegro, Article 53 guarantees freedom of trade union association and acting without approval, subject to registration with the competent authority. In this regard, nobody can be forced to be a member of an association. The state supports political and other associations when there is a public interest for it.

The Labor Law ("Official Journal of Montenegro", no. 49/2008, 26/2009 and 59/ 2011) also prohibits discrimination, both indirect and direct of persons seeking employment, regarding, among other things, the membership of the trade union organizations. The abovementioned discrimination is prohibited in respect of employment conditions, working conditions and all rights from labour relationship, education, training and development, promotion, termination of employment. Furthermore, the provisions of the labour contract defining discrimination on any grounds, shall be null and void. In cases where a person is discriminated on the basis of membership or activity in the trade union organization then s/he has the right to take proceedings before a competent court in accordance with the law. The right to a legal remedy against any decision of a person's rights is guaranteed by the Constitution of Montenegro (Article 20).

Employees and employers are entitled to organize freely. In fact, Labour Law prescribes that employers and employees by free choice and without previous

authorization establish their organizations and join them under the conditions specified by the statute and rules of those organizations. Therefore, employees are guaranteed the freedom of trade union organization and action without prior authorization. Trade union shall be organized within the employer, in the branch of activity, group or sub-group of activities and at the level of state Montenegro.

Trade union acquires the status of legal entity by entering into register of trade union organization, led by the administrative authority responsible for labor affairs (Ministry of Labour and Social Welfare). The trade union organization independently decides on its representation within the employer. Trade union organization may appoint or elect a union representative to represent it and on the appointment of trade union representative is obliged to inform the employer, and the employer is obliged to allow him/her the timely exercise of this right, and data access to exercise that right.
Trade union representative is obliged to perform trade union activities in a manner that will not affect the efficiency of the employer.

When it comes to informing the trade union by employers, the Labour Law stipulates the obligation of the employer to inform the trade union organization at least once a year on:

1) the results of operations;
2) development plans and their impact on the status of employees, trends and changes in wage policy;
3) measures to improve working conditions, security and safety and other matters relevant to the financial and social status of employees.

Employer also informs the trade union organization on:
1) security measures and safety at work;
2) introduction of new technologies and organizational changes;
3) the distribution of working time, night work and overtime work;
4) making programs on the introduction of technological, economic and structural changes and programs of realization the rights of employees who have been made redundant;
5) the time and manner of payment of wages.

Furthermore, the employer is obligated to promptly notify and submit documents to the trade union organization in order to attend meetings of the employer's bodies where his initiatives and proposals have been considered, and a trade union

representative is entitled to participate in a hearing before the employer's authority bodies.

Freedom to exercise trade union rights is also standardized by the Labour Law in a manner that the employer is obliged to ensure freely exercise of trade union rights for the employee. The employer is obliged to ensure the trade union organization with conditions for the effective performance of trade union activities to protect the interests and rights of employees, in accordance with the collective agreement.
Trade union representative has the right to be absent from work with wage compensation for the performance of activities organized by the trade union in accordance with the collective agreement and on such absence of a member of trade union organization should inform the employer in written form for at least three days prior to his absence.
The employer is not obliged to pay wage compensation to a trade union representative whose absence from work is not in accordance with the collective agreement.
The collective agreement regulates the conditions, manner and procedure of work professionalization of trade union representative, in the interests of trade union rights.

The Law also prescribes the protection of trade union representatives so in Article 160 lays down that the trade union representative and employee's representative, while conducting trade union activities, and six months after the termination of trade union activities cannot be held liable in connection with the performance of trade union activities, declared as employee whose work is no longer needed, neither assigned to another workplace at the same or another employer in connection with the performance of trade union activities, or otherwise brought in a less favorable position, if he acts in accordance with the law and the collective agreement. The employer also cannot put in more or less favorable position the trade union representative or employee's representative due to trade union membership or his/her trade union activities.
The legislator has foreseen a fine of € 500 to 20 000 for an offense committed by the employer as a legal entity if s/he fails to provide employees the free exercise of trade union rights or the conditions for performing trade union rights are not provided to a trade union organization (Labour Law, Article 172).

Trade union to which has been established representativeness in accordance with the Law on trade union representativeness ("Official Journal of Montenegro", no.26/2010 and 36 /2013) shall have the right to collective bargaining and

concluding collective agreements at the appropriate level, participation in the resolution of collective labour disputes, participation in the work of the Social Council and other tripartite and multipartite bodies at the appropriate level, participation in the work of the governing body of the Pension and disability insurance Fund of Montenegro , the Health Insurance Fund of Montenegro and the Institute for Employment Agency of Montenegro, as well as other rights which are prescribed be special law for authorized organization of trade unions (Article 5).
If in the abovementioned bodies is prescribed less number of trade union representatives in relation to the number of representative trade union at an appropriate level, then applies the principle of rotation in accordance with a special agreement of those trade unions.

The Law on **Civil Servants and State Employees** ("Official Journal of Montenegro", no. 50/2008 , 86/2009 and 49/ 2010) stipulates that on a civil servant or state employee shall apply the general rules of procedure in regard to the rights, obligations and responsibilities that are not otherwise determined by this law or other regulations.
The provision of Article 15 of the abovementioned law stipulates that the civil servant or state employee shall have the right to trade union organization, in accordance with the general rules of procedure.
In addition, Article 2 of the law stipulates that a civil servant in terms of exercising certain rights, obligations and responsibilities is considered to be a head of state authority and a person who is employed by appointment or nomination in the state authority. Furthermore, the law stipulates that the state authority, in terms of this law, is the state authority body, other state authority and services of the President of Montenegro, the Montenegrin Parliament, the Government of Montenegro and the Constitutional Court of Montenegro.
Therefore, in accordance with Article 2 of the Law, all such persons are considered as civil servants, so they have the rights of trade union organization in accordance with the law.

When it comes to **police officers** Law on Internal Affairs ("Official Journal of Montenegro", no.44/2012) prescribes in Article 94 that the trade union, professional and other associations and actions are achieved on law determined way. But the abovementioned law also prescribes that a police officer must not be a member of a political party, to politically act, or to be a candidate in the national and local elections.
Note that the trade union of the Police Directorate of Montenegro is entered in the Register of trade unions, and is independent of state authorities, employers and

political parties, funded primarily by membership fees and other own funds, and the representativeness was determined at the level of branch activity, with the legal framework, in April 2013.

Law on the Armed Forces of Montenegro ("Official Journal of Montenegro", no.88/2009) stipulates in Article 53, the prohibition of political organization, so the person serving in the Armed Forces cannot be a member of a political organization, while for the trade union organization such prohibition does not exist and according to that the provisions of Law on Civil Servants and State Employees are applied in terms of rights on trade union organization, which stipulates that a civil servant, or state employee is entitled to trade union organization. In this regard, the trade union of the armed forces of Montenegro is entered in the register of trade union organization, independent of state authorities, employers and political parties, funded primarily by membership fees and other own funds and its representation was determined in October 2011.

Law on Employment and Work of Foreigners ("Official Journal of Montenegro ", no. 22/2008 and 32/ 2011) a foreigner is a person who is not a Montenegrin citizen, whether s/he is a citizen of another state or person without the citizenship. A foreigner may be employed or work in Montenegro, under the conditions stipulated by the law, collective agreement, ratified and published international treaties and generally accepted rules of international law. Legislation makes no difference between these citizens in relation to its own, with regard to the right to organize trade unions. This means that there is no prohibition on foreigners to be members of the trade union organization or members of a trade union body or prohibition that they may establish trade unions or to be freely joined in the organizations of other trade unions, if they reside legally, and concluded the labour contract in accordance with the law. Law on Employment and Work of Foreigners standardizes that a foreigner may be employed, i.e. work in Montenegro, provided that features: a work permit, permanent residence or temporary residence permit, and concluded labour contract or a contract for the performance of tasks, or services.

When it comes to the trade union representativeness, this matter is regulated by the Law on trade union representativeness and it is determined on the basis of general and specific requirements stipulated by this law.
General conditions for determining the trade union representativeness are that the trade union is entered in the Register in accordance with the law, that is

independent of state authorities, employers and political parties and financed mainly from membership fees and other own sources.
Special condition for determining the **trade union representativeness within the employer,** is that the trade union is consisted of at least 20 % of the total number of employees within the employer.
The total number of employees within the employer shall be determined on the basis of a certificate which, at the request of interested trade union, is obliged to issue the employer within seven days from the date of application. Otherwise, interested trade union is one that has submitted a request for determining the trade union representativeness and entered in the Register.

Trade union at the level of branch activity, group or sub-group activities, is representative, if in addition to the general conditions prescribed by law, has at least 15% of the total number of employees in the branch of activity, group or sub-group of activities.

Trade union at the level of Montenegro is representative, if it meets the general requirements for determining the trade union representativeness, if the trade union is affiliated with at least five trade unions at the level of branch activity, group or sub-group of activities and if that trade union is consisted of at least 10 % of the total number of employees in Montenegro.

If there are two or more representative trade unions at an appropriate level, which determined the representativeness in accordance with the law, all trade unions have the right referred to in Article 5 of the Law on trade union representativeness.

The trade union representativeness within the employer shall be determined by the director on the proposal of the commission for determining the trade union representativeness. The commission consists of two representatives of the employer, representative trade union if it exists within that employer and the trade union concerned.

Trade union representativeness at the level of Montenegro, i.e. branch of activity, group or sub-group of activities shall be determined by the Minister, on the proposal of the Committee and the Committee is established by the Minister and consists of two representatives of the Government of Montenegro, the representative trade unions and representative associations of employers.

Government representatives are appointed by the Government on the proposal of

the Minister, trade union representatives shall be determined by the representative trade union and employers' representatives shall be determined by a representative association of employers.

Decision on determining the trade union representativeness and the decision on the complaint of concerned trade union within the employer shall be made by the Minister within 15 days of submission of the proposal of the Committee, or within eight days of the removal of deficiencies in terms of Article 18b and 23 of the Law on trade union representativeness. Decision on determining representativeness is final and against it is provided judicial protection, i.e. administrative dispute may be initiated within 15 days of its submission to the applicant.
Once determined representativeness is not always given and the legislator has foreseen the possibility of its review. The review of determined trade union representativeness within the employer, may be initiated at the request of the trade union within the employer, who is entered in the Register, or on the initiative of the employer, but not before the expiry of one year from predetermined representativeness.

Review of the trade union representativeness determined at the branch level may be initiated at the request, i.e. initiative of trade union established at the level of branch activity which is entered in the Register, but not before the expiry of three years from the previously determined representativeness.

Review of the trade union representativeness at the level of Montenegro may be initiated at the request, i.e. initiative of trade union established at the level of Montenegro that is entered in the Register, but not before the expiry of four years from the previously determined representativeness.

If in the process of review of the trade union representativeness is determined that trade union is no longer representative, the Ministry shall delete that trade union from the Register of the representative trade unions.

02.12.2013 in the Register of trade union organizations in responsibility of the Ministry of Labour and Social Welfare, were registered 1657 trade union organizations and 471 representative trade union organizations (within the employer, at the branch level and the level of Montenegro)
Of 471 representative trade union organizations, which are entered in the Register of representative trade unions at the national level are present Confederation of

Trade Unions of Montenegro and the Union of Free Trade Unions of Montenegro, at the branch level:

1.Trade union of housing - communal economy of Montenegro;
2.Trade union of employees in health care and social protection of Montenegro;
3.Trade union of health care of Montenegro;
4.Trade union of telecommunications of Montenegro;
5.Trade union of tourism and hospitality of Montenegro;
6.Trade union of banks of Montenegro;
7. Trade union of sports of Montenegro;
8. Trade union of energetic of Montenegro;
9. Trade union of textiles, leather, footwear and chemical industry of Montenegro;
10. Trade union of University of Montenegro;
11. Trade union of administration and justice of Montenegro;
12. Trade union of agriculture, food and tobacco industries Montenegro;
13. Trade union of metalworkers of Montenegro;
14. Trade union of education of Montenegro;
15. Trade union of metal workers of Montenegro;
16. Trade union of construction and IGM Montenegro;
17. Trade union of traffic of Montenegro;
18. Trade union of culture of Montenegro;
19. Trade union of employees in social activities of Montenegro
20 Trade union of information , graphics and publishing activity of Montenegro
21.Independent trade union of pupil and student residences of Montenegro
22 Trade union of Armed Forces of Montenegro
23. Trade union of financial institutions of Montenegro.
24. Trade union of Police Directorate.

Representativeness of employers' association is regulated by the Labour Law and developed by the Regulations on the manner and procedure of records of employers' association and detailed criteria for determining of the representativeness of the authorized associations of employers. Representative association is considered the employers' association if its members employ at least 25 % of employees in the Montenegrin economy and participate in social gross product by at least 25%. Detailed conditions for determining the representativeness of employers' associations, in addition to the abovementioned, are that the association has got a signed agreement on cooperation with the authorized trade union organization, and that its main objective and activity the management of social dialogue and collective bargaining, and that is the member of international

organization of employers, which is concerned of the issue of social dialogue at the international or regional level (IOE or UNICE) .

If none of the employers 'associations meet these requirements, then the employer may conclude an agreement on participation in the conclusion of collective agreement. Employers' associations are obliged to register in the Ministry responsible for labour affairs in order to enter into the book of records of employers' associations.

The request for determining the representativeness of the authorized employers' association shall be submitted to the Ministry, which decides on the request by the decision within 15 days from the date of application. On the procedure for determining the representativeness of authorized employers' associations shall be applied the Law on general administrative procedure.

In the book of records of employers' associations in responsibility of the Ministry of Labour and Social Welfare, were registered two employers' associations, Montenegro Business Alliance and the Union of Employers of Montenegro, of which the request for determining the representativeness submitted only one employers' association, that is the Union of Employers of Montenegro to which is determined representativeness.

Article 6

The right to collective bargaining

With a view to ensuring the exercise the right to collective bargaining, the Parties undertake:

1 to promote joint consultations between workers and employers;
2 to promote, where necessary and appropriate, mechanism for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3 to promote the establishment and use of appropriate mechanisms for conciliation and voluntary arbitration for the settlement of labour disputes;
and recognize:

4 the right of workers and employers to collective action in cases of conflicts of interests, including the right to strike, in accordance with the obligations that might arise of collective agreements previously entered into.

The application of Article 6 paragraph 1

"With a view to ensuring the exercise the right to collective bargaining, the Parties undertake:

1 to promote joint consultations between workers and employers; "

Article 53 of the Constitution of Montenegro stipulates that citizens are guaranteed the freedom of trade union action and Article 56 the right to address international organizations for the protection of their freedoms and rights guaranteed by the Constitution.

Labor Law, Article 12 stipulates that employee directly or through their representatives has the right to association, participation in negotiations for the conclusion of collective agreements, peaceful settlement of collective and individual labour disputes, consultation, information and expressing his/hsr views on important issues in the field of labour in accordance with the law. The same Article also provides that an employee or a representative of employees due to these activities cannot be impeached, or put in less favourable position in terms of working conditions, if s/he acts in accordance with the law, collective agreement or labour contract.

The Labour Law stipulates that collective agreement determine the rights, obligations and responsibilities arising from employment and based on Labour Law, the process of amendments to the collective agreement, mutual relations between parties of the collective agreement and other issues relevant to the employee and the employer. Collective agreements are concluded in written form and shall be implemented immediately.

Collective bargaining is performed at three levels, and in accordance with that there are three types of collective agreements, that is, General Collective Agreement, Branch collective agreement and Company agreement.

General Collective Agreement shall be concluded for the territory of Montenegro and applied to all employees and employers, and Branch collective agreements for branch activities, group or sub-group of activities and applied to employees and employers in the branch, group or sub-group. The Company agreement shall be applied to an employee within that employer.
For persons who independently perform artistic or other cultural activity, the rights and obligations arising from employment and based on Labour Law shall be determined by Branch collective agreement.

The content of the General Collective Agreement is consisted of elements for determining the wages, wage compensation, other employees' benefits and the scope of rights and obligations arising of employment in accordance with the law.

Branch collective agreement shall determine the minimum wage in the branch of activity, group or sub-group of activities, the elements for determining basic wage, wage compensation and other employees' benefits and regulates the scope of rights and obligations of employees in accordance with the law.

The Company agreement shall determine the minimum wage within the employer, the elements for determining basic wage, wage compensation and other employees' benefits and regulates more rights, obligations and responsibilities arising of employment and based on Labour Law in accordance with the law and the collective agreement.

Parties in the conclusion of collective agreements are as follows:

(1) **General Collective Agreement** shall be concluded by the responsible authority of the representative organization of the Trade Union of Montenegro, the responsible authority of the representative association of employers of Montenegro and the Government of Montenegro (hereinafter: the Government).

(2) **Branch collective agreement** in the branch of activity, group or sub-group of activities shall be concluded by:
1) **in the field of economy** - the responsible authority of the representative association of employers and the responsible authority of the representative trade union organization;

2) **for public enterprises** and other public services established by the state – the representative trade union organization and the Government, and for other public enterprises - representative trade union organization and the founder;
3) **for public institutions established by the state** – representative trade union organization and the Government, and for other public institutions - representative trade union organization and the founder;
4) **for organizations of mandatory social insurance** – the representative trade union organization, the board of directors, or the board of directors of these organizations and the Government;
5) **for public authorities and organizations, and local self-government bodies** - the representative trade union organization and the Government;
6) **for political, trade union, sports and non-governmental organizations** - the representative trade union organization and the responsible authority of the representative association of employers;
7) **for foreign natural persons and legal entities** (embassies, diplomatic and consular missions, offices of foreign companies, etc.) - representative trade union organization and the responsible authority of the representative association of employers;
8) **for persons who independently perform art or other cultural activity** - the representative trade union of artists and public authority body responsible for cultural affairs.

(3) **Company agreement** shall be concluded by the responsible authority of the employer and the representative trade union organization.

(4**) Company agreement in public enterprise**, institution or other public service, established by the state, shall be concluded by the representative trade union organization, the director and the Government, and for other public enterprises and public services - representative trade union organization, the director and the founder.

The mutual relation of the law, collective agreement and labour contract shall be based on the principle of compliance of acts of lower legal force with higher, or the collective agreement and labour contract shall not contain provisions that provide to employee less rights or establish less favorable working conditions than those rights and conditions determined by the law.
Collective agreement and labour contract may determine larger scope of rights and more favorable working conditions than the rights and conditions determined by this law. If certain provisions of the collective agreement determine lower scope of

rights or less favorable working conditions than the rights or conditions determined by law, the provisions of the law shall be applied.
If individual provisions of the labour contract determine lower scope of rights or less favorable working conditions than the rights, or conditions determined by law and collective agreement, they are null and void.
If Company agreement is not concluded, it shall be directly applicable Branch collective agreement for the adequate activity and if there is no Branch collective agreement, General Collective Agreement shall be applicable.

General Collective Agreement was concluded in 2004, amended in 2010 which stipulated the time for its application to 31.12.2011.
In January 2012 the Social Council decided to form a tripartite working group with the task to prepare the text of the new General Collective Agreement. The working group began its work in February 2012 and according to the Rules of procedure, which were accepted by all members of the working group, it was provided that the working group prepares the draft text of the new General Collective Agreement by the end of April 2012. However, as social partners did not agree on the solutions that would be included in the new General Collective Agreement, it was necessary to extend the validity of existing collective agreement. Thus was signed Collective Agreement on the extension of the validity of the General Collective Agreement, which was provided to last until September, 30th 2012. The extension of the period in which it should be signed new General Collective Agreement, was a consequence of the difficulty of reaching a compromise which characterizes tripartite social dialogue (conflict of different interests). Since the fact that for signing the collective agreement, in accordance with the Labour Law and the Law on trade union representativeness, is required the consent of all social partners involved in the negotiation process, and which we have not yet received, in the period up to the signing of new General Collective Agreement, the rights, duties and responsibilities of employees shall be exercised in accordance with the provisions of the Labour Law, branch collective agreements and company agreements. As provided in Article 174d of the Labour Law until the conclusion of the General Collective Agreement, shall be applied the provisions of collective agreements which are not in conflict with the Labor Law.

Note: the representativeness of trade unions processed in the report on the application of Article 5.

The application of Article 6, paragraph 2

"In order to ensure the exercise the right to collective bargaining, the Parties undertake:

2 to promote, where necessary and appropriate, mechanism for voluntary negotiations between employers or employers' organizations and workers' organizations, in order to regulate the terms and conditions of employment through collective agreements; "

The parties in the negotiation and conclusion of collective agreements are obliged to negotiate. Any party may initiate negotiations by offering the other party, in writing, the proposal of new text or the amended text of the collective agreement. The party to whom is offered a proposal shall make a statement within 15 days in writing on the offered proposal for negotiations. If the parties do not continue to negotiate or fail to reach agreement within three months of the start of negotiations, they will address the Agency for the peaceful settlement of labour disputes.
Collective agreement is concluded when it is signed by authorized representatives of all parties.
General and branch collective agreements are registered in the Ministry and published in the "Official Journal of Montenegro ".
The manner of publication of the Company agreement shall be regulated by the agreement.
Collective agreements are concluded for indefinite or definite period of time.
Collective agreement concluded for indefinite period shall be terminated by the agreement of all parties or by cancellation in the manner specified in this agreement.
Collective agreement concluded for indefinite period shall determine the manner in which one party may terminate the agreement.
Collective agreement concluded for definite period shall cease to be valid after the expiry of time for which it was concluded and may be extended by agreement of the participants who conclude it no later than 30 days prior to expiry of the agreement.

The Labour Law provides the situation where there is extended application of the Company agreement and in case of restructuring of the employer, when on the employees, until the conclusion of new collective agreement, a maximum of one year, it is applied collective agreement that was applied prior to the restructuring.

According to Article 151 para. 6 and 7 of the Labour Law, General and Branch collective agreements are registered in the Ministry of Labour and Social Welfare and published in the "Official Journal of Montenegro".
The manner of publication of the company agreements shall be regulated by that agreement.
Company agreements are not registered in the Ministry of Labour and Social Welfare, so this Ministry does not have data on the number of the concluded collective agreements.

I GENERAL COLLECTIVE AGREEMENT

General Collective Agreement was concluded 19.12.2003 and published in the "Official Journal of Montenegro ", no. 1/04.
General Collective Agreement on Amendments to the General Collective Agreement was concluded 16.09.2005 which was published in the " Official Journal of Montenegro ", no. 59/05 of 13.10.2005.

Decision of the Constitutional Court of Montenegro determined that the provision of Article 68 of the General Collective Agreement ("Official Journal of Montenegro", no. 1/04 and 59/05) and the Agreement on directing of resources for solving the housing issues of employees ("Official
Journal of Montenegro ", no.33/ 04 and 74/05) were not in accordance with the Constitution of the Republic of Montenegro and the law and shall cease to be valid on the date of publication of this decision.
The decision was published in the "Official Journal of Montenegro ", no. 24/ 06 of 18.4.2006.
General Collective Agreement on Amendments to the General Collective Agreement was concluded 03.11.2010. which was published in "Official Journal of Montenegro ", no . 65/10 of 15.11.2010.
General Collective Agreement on Amendments to the General Collective Agreement was concluded on 21.12.2011 with the term of validity until 30.06.2012 ("Official Journal of Montenegro ", no. 9/12 of 10.2.2012).

General Collective Agreement on Amendments to the General Collective Agreement was concluded 06.07.2012. with the term of validity until 30.09.2012 ("Official Journal of Montenegro ", no. 37/12 of 11.7.2012).

II BRANCH COLLECTIVE AGREEMENTS

1. Branch collective agreement for road transport ("Official Journal of Montenegro", no. 33/04 of 20.05.2004);
2. Collective agreement for the tourism and hospitality industry in Montenegro ("Official Journal of Montenegro ", no. 29/11 of 17.06.2011);
3. Branch collective agreement for trading ("Official Journal of Montenegro", no. 33/04 of 20.05.2004) ceased to be valid by the decision of Constitutional Court U-II no. 9/11 of 29.05.2012 which was published in the "Official Journal of Montenegro ", no. 39/12 of 23.07.2012;
4. Branch collective agreement for banks, other financial institutions and insurance ("Official Journal of Montenegro", no. 35/04 of 01.06.2004);
5. Branch collective agreement for maritime transportation and port and transshipment services
("Official Journal of Montenegro", no. 40/ 04 of 11.06.2004);
Decision of the Constitutional Court of the Republic of Montenegro U. no. 117/ 04 of 08.06.2005, which was published in the "Official Journal of Montenegro ", no. 41/2005 of 10.07.2005, determined that the provisions of Art. 9 , 10 and 25 of Branch collective agreement for maritime transportation and port and transshipment services ("Official Journal of Montenegro" , no. 40/04) were not in accordance with the Constitution and the law and ceased to be valid on the date of publication;
6. Branch collective agreement for agriculture, food and tobacco industries and water management
("Official Journal of Montenegro" , no. 40/ 04 of 11.06.2004).
Decision of the Constitutional Court of the Republic of Montenegro U. no. 142/ 04 of 29.11.2005 published in the "Official Journal of Montenegro ", no. 79/05 of 23.12.2005, determined that the provisions of Art. 8 and 9 of Branch collective agreement for agriculture, food and tobacco industries and water management ("Official Journal of Montenegro" no. 40/04) were not in accordance with the Constitution of Republic of Montenegro and the law and ceased to be valid on the date of publication of this decision;
7. Branch collective agreement for the construction and building materials industry ("Official Journal of Montenegro", no. 45/04 of 2 July 2004).
Decision of the Constitutional Court of the Republic of Montenegro U. no. 76/ 05 of 29.11.2005 ("Official Journal of Montenegro" , no. 79/2005) of 23.12.2005

determined that the provisions of Art. 8 and 9 of Branch collective agreement for the construction and building materials industry ("Official Journal of the Republic of Montenegro ", no. 45/04) were not in accordance with the Constitution of the Republic of Montenegro and the law and ceased to be valid on the date of publication of this decision;

8. Branch collective agreement for the energy industry, manufacturing, processing and sale of coal, oil products and gas (Official Journal of Montenegro ", no. 46/ 04 of 09.07.2004), which ceased to be valid on the date of entry into force of the Branch collective agreement for energy industry, manufacturing , processing and sale of coal, oil products and gas ("Official Journal of Montenegro ", no. 45/12 of 17.08.2012);

9. Branch collective agreement for the textile, leather, rubber, chemical and pharmaceutical industry

("Official Journal of Montenegro", no. 46 /04 of 09.07.2004);

10. Branch collective agreement for the metallurgy, metal processing industry and manufacturing of machinery, equipment and means of transport ("Official Journal of Montenegro", no. 54/04 of 09.08.2004).

Decision of the Constitutional Court of the Republic of Montenegro U. no. 85/04 of 17.02.2005, published in the "Official Journal of Montenegro ", no. 12/05 of 07.03.2005, determined that the provisions of Article 9 and Article 22, paragraph 2 of the Branch collective agreement for the metallurgy, metal processing industry and manufacturing of machinery, equipment and means of transport

("Official Journal of Montenegro", no. 54/04) were not in accordance with the Constitution of the Republic Montenegro and the law and ceased to be valid on the date of publication of this decision.

Decision of the Constitutional Court of the Republic of Montenegro U. no. 143/ 04 and 10/05 of 08.06.2005, published in the "Official Journal of Montenegro ", no. 41/05 of 10.07.2005 determined that Article 10 of the Branch Collective agreement for metallurgy, metal processing industry and manufacturing of machinery, equipment and means of transport ("Official Journal of Montenegro" , no. 54/ 04) was not in accordance with the Constitution and the law and ceased to be valid on the date of publication;

11. Branch collective agreement for the forestry, wood processing, paper production and processing

("Official Journal of Montenegro", no. 54/ 04 of 09.08.2004);

12. Branch collective agreement for the information, graphics and publishing activity ("Official Journal of Montenegro", no. 74/ 04 of 08.12.2004);

13. Branch collective agreement for housing - communal activity ("Official Journal of Montenegro" , no. 3/05 of 24.01.2005) which ceased to be valid on the date of

entry into force of the Branch collective agreement for housing-communal activity ("Official Journal of Montenegro ", no. 2/12 of 11.01.2012);
14. Branch collective agreement for the field of education ("Official Journal of Montenegro", no. 82/05 of 30.12.2005);
15. Branch collective agreement for health care and social activity (Official Journal of Montenegro ", no. 16/ 06. of 16.03.2006).
This branch collective agreement ceased to be valid on the date of entry into force of the branch collective agreement for health care activity ("Official Journal of Montenegro", no. 11/12 of 22.02.2012);
16. Branch collective agreement for the field of culture ("Official Journal of Montenegro", no. 53/06 of 25.08.2006);
17. Branch collective agreement for the institutions of pupil and student standards ("Official Journal of Montenegro", no. 23/ 07 of 27.04.2007);
18. Branch collective agreement for health care activity ("Official Journal of Montenegro ", no. 11/12 of 22.02.2012);
19. Branch collective agreement for the construction and building materials industry ("Official Journal of Montenegro ", no. 49/12 of 21.09.2012).

In the Registry of collective agreements were entered following amendments to branch collective agreements:
1. Branch collective agreement on amendments to the branch collective agreement for the field of education (Official Journal of Montenegro ", no. 8 /07 of 09.02.2007);
2. Branch collective agreement on amendments to the branch collective agreement for health care and social activity ("Official Journal of Montenegro", no. 56/ 07 of 26.09.2007);
This collective agreement ceased to be valid on the date of entry into force of the branch collective agreement for health care and social activity ("Official Journal of Montenegro", no. 11/12 of 22.02.2012);
3. Branch collective agreement on the amendments to the branch collective agreement for the field of education ("Official Journal of Montenegro ", no. 4/07 of 06.11.2007)
4. Branch collective agreement on amendments to the branch collective agreement for the field of culture ("Official Journal of Montenegro ", no. 4 /07 of 06.11.2007);
5. Branch collective agreement on amendments to the branch collective agreement for the institutions of pupil and student standards ("Official Journal of Montenegro ", no. 22/08 of 02.04. 2008);

6. Branch collective agreement on amendments to the branch collective agreement for health care and social activity ("Official Journal of Montenegro ", no. 46/08 of 04.08.2008);
This branch collective agreement ceased to be valid on the date of entry into force of the branch collective agreement for health care activity ("Official Journal of Montenegro", no. 11/12 of 22.02.2012);
7. Amendments to the Branch collective agreement for banks, other financial institutions and insurance ("Official Journal of Montenegro", no. 12/06 of 02.03.2006);
8. Amendments to the Branch collective agreement for banks, other financial institutions and insurance ("Official Journal of Montenegro ", no. 53/09 of 07.08.2009);
9. Amendments to the Branch collective agreement for housing-communal activity ("Official Journal of Montenegro ", no. 32/12 of 22.06.2012).
The abovementioned branch collective agreements were concluded for indefinite period.

For the purpose of establishing and developing of social dialogue on issues of importance for the accomplishment of economic and social status of employees and employers and the conditions of their life and labour, the development of a culture of dialogue, encouraging the peaceful settlement of individual and collective labour disputes and other issues arising from international instruments and related to the economic and social status of employees and employers, it was founded Social Council .
Social Council was established for the territory of Montenegro, and may be established for municipalities.

For the area of two or more municipalities it may be established Joint Social Council.
Social Council shall be established on a tripartite basis, and shall be composed of the representatives of the Government of Montenegro, or the responsible authority of the municipality, the capital city and the old royal capital, the representatives of trade union organization and representative association of employers. The work of the Social Council is public.
Social Council shall consider and take positions on issues: the development and improvement of collective bargaining, the impact of economic policy and measures for its implementation on social development and stability of employment policy, salaries and prices; the competition and productivity; the privatization and other issues of structural adjustment; the protection of working and living environment,

education and professional training; health and social protection and security; demographic trends and other issues relevant to the achievement and improvement of economic and social policy.
The funds for the establishment and work of the Social Council shall be provided in the budget of Montenegro, or the budget of municipality.
The Council is legal entity and acquires its nature by the entry in the Register of Social Councils leaded by public authority body responsible for business activity. About registration and removal of Council from the Register, the Ministry shall make a decision.
Council is composed of 11 representatives of Government, 11 representatives of the representative trade union organization of Montenegro and 11 representatives of the representative association of employers. If there is more representative trade union organizations and employers, the number of representatives shall be divided by the number of representative trade union organizations and employers, so that they have equal number of representatives.
If it is not possible to determine the same number of representatives of trade unions, larger number shall pertain to representative trade union organization which is more numerous.
If it is not possible to determine the same number of representatives of employers, larger number shall pertain to representative association of employers that has a higher percentage of employees in the economy of Montenegro and higher gross national product in Montenegro.
The representatives of the Council shall be appointed by the social partners, or discharged in accordance with its legal acts.
The Council has a secretary, who is appointed for a period of four years by the Government, at the proposal of the President of the Council. The function of the secretary of Council shall be undertaken professionally.
Council shall consider and comment on drafts and proposals of laws and other regulations relevant to the economic and social status of employees and employers, and shall review the annual report on the work of labour inspection.
The opinion shall be submitted to responsible Ministry which prepared the law or other regulation, and the Ministry shall, within 30 days of submission of the opinion, inform the Council about its position taken with regard to Council's opinion.
If the relevant Ministry and the Council fail to reach the agreement on the opinion of the specific regulation, the Council may submit its opinion to the Government.

The application of Article 6 paragraph 3

"In order to ensure the exercise the right to collective bargaining, the Parties undertake:

3 to promote the establishment and use of the appropriate mechanisms for conciliation and voluntary arbitration for the settlement of labour disputes;"

Constitution of Montenegro stipulates that everyone has the right to equal protection of the rights and obligations arising from labour (the right to work, free choice of profession and employment, just and humane working conditions, protection during unemployment, the appropriate salary, limited working hours and paid holidays, the occupational safety and health, the rights of women, youth and the disabled persons to special protection, the right to strike, the right to social insurance, health care).

In addition, the Constitution provides that everyone is guaranteed the right to legal remedy against any decision about his right or lawful interest.

Labour Law provides that the employees shall have the rights and obligations arising from labour. Thus, Labour Law provides that employees are entitled to appropriate salary, safety and protection of life and health, vocational training and other rights in accordance with the law and collective agreement.

The employed woman is entitled to special protection during pregnancy and childbirth. During parental leave and for purpose of child care, the employee is entitled to special protection. The Law also provides special protection for employees under 18 years and for persons with disabilities.

About the rights and obligations of employees arising from employment and in accordance with Labour Law shall decide the employer, in accordance with the law, collective agreement and labour contract. The employee who considers that his employer violated his right arising from employment and in accordance with Labour Law may request the employer to provide him the achievement of that right. At such request of the employee, the employer is obliged to decide within 15 days of the day of the submission of the request. That employer's decision is final and shall be submitted to the employee in writing with the explanation and the instruction of legal remedy within a period of eight days from the deadline for the decision.

The employee who is not satisfied with the decision or did not received it on time, is entitled to take proceedings in competent court to protect the rights, within 15 days from submission of decision. The employer is obliged to undertake the final decision of the court within 15 days from the date of submission of the decision, if the decision of the court does not determine the second term.

In addition, the Law provides that the employee and the employer have the possibility to verify the settlement of disputes arising from employment and in accordance with Labour Law to the Agency for the peaceful settlement of labour disputes, in accordance with the special law. The manner and procedure of peaceful settlement of labour disputes are regulated by the Law on peaceful settlement of labour disputes ("Official Journal of Montenegro", no. 16/2007 and 53/2011). Collective dispute is considered a dispute that arose in the process of conclusion, as well as amendments to the collective agreements, in case when employer to all employees does not apply certain provisions of the collective agreement regarding the realization of trade union rights, the right to strike, regarding other disputes between unions and employers in relation to the rights arising from employment and in accordance with Labour Law. The parties in the collective labour dispute are parties in the conclusion of collective agreement then the authorized representative of the trade union and employer, or the representatives of trade union organizations at the appropriate level, and the strike committee representing the interests of employees and on their behalf leads the strike and the employer, or negotiating body determined by the employer.

Individual labour dispute is considered a dispute that arose in the realization of employee rights arising from employment and in accordance with Labour Law. The parties in individual dispute are the employee and the employer.
The parties in the collective and individual dispute voluntarily decide on access to the peaceful settlement of disputes and in that dispute have equal rights. Each application, identification or other document used in the process of peaceful settlement of the dispute, at the request of the parties shall be returned to the parties without retaining of copies.

Parties in the conclusion and amendments to the collective agreement, or parties in the negotiations may agree to resolve any dispute in the Agency by submitting a proposal for participation of the conciliator in the collective negotiating. In these disputes the conciliator shall attend the negotiations, provide professional and other assistance to the parties in the negotiations, indicate to parties in the negotiations the proposals of collective agreements which are not in accordance with law and other regulations.
In the activities for which, in accordance with the law, there is the obligation to ensure minimum of work process, the disputing parties are required to submit joint proposal for the peaceful settlement of the labour dispute to the Agency, within 24 hours of the announcement of strike. If the parties fail to act in this regard, the responsible administrative authority to whom was submitted the decision to go on

strike is obliged to inform the Agency when the Director of Agency, ex officio, initiates the proceedings and appoints the conciliator from the directory.
Upon termination of the conciliation proceedings, the conciliator concludes the discussion and with the parties in the dispute shall bring the recommendation on the manner of resolving the dispute. The recommendation shall be given in writing, with an explanation and for the recommendation is necessary to vote the conciliator and the parties in the dispute. If it is not possible to bring the recommendation within five days from the date of conclusion of dispute, the conciliator may propose to the parties the recommendation. The recommendation of conciliator does not oblige the parties in the dispute.
The party in the dispute which does not accept the recommendation of the conciliator is obliged to, within three days from submission of the recommendation, give the reasons for rejection of the recommendation. At the proposal of conciliator, the Agency may publish the recommendation and the reasons for not accepting the recommendation in the media.
If the disputing parties accept the recommendation, they conclude an agreement on the settlement of the dispute.
If the matter of dispute is collective agreement, the agreement becomes part of the collective agreement and if not, then the agreement has the force of the court settlement.

For the better insight into the functioning and work of the Agency for the peaceful settlement of labour disputes, we provide a comparative review of the submitted Proposals for peaceful settlement of labour disputes per year.

• During 2010, to the Agency were submitted 62 Proposals for the peaceful settlement of labour disputes.
• During 2011, to the Agency were submitted 356 Proposals for the peaceful settlement of labour disputes, or 483 % more than during the previous year.
• During 2012, ending with 24.12.2012 to Agency were submitted 1328 Proposals for the peaceful settlement of labour disputes, or 273 % more than during the previous year.

The total number of submitted Proposals for the period from 20.09.2010 or from the date when the Agency began with concrete settlement of submitted Proposals to 24.12.2012, was 1746 Proposals. All these proposals were fully processed, of which were positively resolved or the agreement was reached between the parties in the dispute, in over the 80% of cases.

The application of Article 6 paragraph 4

The Constitution of Montenegro in Article 66 shall guarantee the right to strike for employees with the fact that this right can be limited to the employees in the army, police, public authorities and public services in order to protect the public interest, in accordance with the law.

The provision of Article 8a of the Law on strike ("Official Journal of Montenegro", no. 43/2003, 71/2005 and Official Journal of Montenegro ", no. 49/2008) determined the limitations on the right to strike in such way that employees in the Army of Montenegro, police and public authorities in order to protect public interest, may not organize the strike if thus the general interests of citizens are jeopardized, national security, the safety of persons and property, as well as the functioning of public authority bodies.

Strike may be organized in the legal entity, or within its part, and in the enterprise or in the branch and activity, or as general strike.
Strike may be organized as a warning strike and may last up to one hour.

The decision to go on strike and warning strike within the employer shall be made by the responsible authority of authorized trade union organization, or more than half of the employees of the employer, or its part.
The decision to go on strike in the branch and activity, or the decision to go on general strike and warning strike shall be made by the responsible authority of authorized trade union organization in Montenegro.
Additionally, Law provides that the decision to go on strike defines the requirements of employees, the time for starting the strike, the venue and the way of leading the strike and the strike committee which represents the interests of employees and on their behalf leads the strike.

In the activity of public interest or activity whose interruption of work due to the nature of work, could endanger human life or health or cause large scale damage, the right to strike of employees may be achieved if the special requirements are accomplished by law.
Activity of public interest is the activity performed by the employer in the areas: electrical industry, water management, transport , postal services, broadcasting (radio and television), utilities (production and water supply, carting industry, production, distribution and supply of energy-generating products, etc.), fire

protection, basic food production, health and veterinary care, education, culture, social child care and social protection.
Activities of particular importance for the defense and security of Montenegro are of public interest and established in accordance with the law, the activities necessary for the fulfillment of obligations arising from international agreements, as well as activities whose interruption by the nature of work, in accordance with the law, could endanger human life and health or to cause large scale damage.
If the strike in public interest activities is organized within a part of employer, the obligation of meeting and special requirements in terms of exercising the right to strike of employees shall be applied only to that part of the organization.

Employees who are engaged in the public interest activity may begin to strike if they provide the minimum of work process that ensures the safety of persons and property or is the indispensable condition for the life and work of citizens or the work of other employer, or the legal entity or entrepreneur who carries out any economic or other activity or service.
Minimum of work process shall be determined depending on the nature of the activity, the level of threat to human life and health and other circumstances relevant to meeting the needs of citizens, employers and other entities (season, tourist season, school year, etc.).
Minimum of work process and the manner of its provision shall be established by the founder or employer. During the determination of minimum of work process the founder or employer shall obtain the opinion of the responsible authority of authorized trade union organization, or more than half of the employees of the employer, in order to reach an agreement.
Employees who are obliged to work during the strike in order to ensure minimum of work process are determined by the director or the executive director and the strike committee, no later than five days before the start of the strike.

Strike committee shall, during the strike, cooperate with the employer in order to provide minimum of work process and the employees who perform these tasks shall carry out the orders of the employer during the strike.
The organizing of strike or participation in the strike under the conditions stipulated by the Law does not represent a violation of duty, cannot be the reason for initiating the procedure for determining the disciplinary and material responsibility of the employee, the suspension of employee from work and may not result in termination of labour contract of employee. The employee who participates in the strike is not entitled to salary.

However, the employee who is obliged to work during the strike, in order to ensure minimum of work process shall be entitled to salary in proportion to the time spent at work.
Employees who participate in the strike in accordance with the Law exercise their rights arising from social insurance in accordance with the regulations and social insurance.

The Law sets out the obligations for the employer that during the strike organized under the conditions stipulated by Law may not hire new persons to replace the strike participants, unless there is a risk for: safety of persons and property, maintenance of minimum of work process that ensures the safety of persons and property, as well as the undertaking international obligations.

Also, the employer cannot prevent the employees from organizing and participating in the strike, nor to use threats and compulsion to end the strike, as well as to provide on the basis of non-participation in the strike higher salary or other favorable working conditions for the employees who do not participate in the strike.
However, the Law stipulates in Article 6 the situations of termination of employment for employee in the Army of Montenegro, police and public authority body when it is determined that the strike was organized by him or that he participated in the strike which is not in accordance with of Article 8a of the Law.
Also, the member of the strike committee and the participant in the strike, who organizes the strike and leads it in the manner that endangers the safety of persons and property or health of people or that prevents the employees who do not participate in the strike from working, or makes impossible to continue the work after the strike or prevents the employer from using the funds and disposing of resources by which the employer performs the activity and that represents a breach of work obligation for which it shall be taken the measure of termination of employment.
The employee in the activities of public interest who refuses to enforce the order of the employer issued in order to ensure the minimum of work process makes serious breach of work obligation for which shall be taken the measure of termination of employment.

The Government of Montenegro prepared the text of the new Law on strike which is currently in the parliamentary procedure. The main reasons for the adoption of the new Law on strike which has been in force since 2003, with certain amendments in 2005 and 2008, were caused by practical problems related to

numerous strikes. By proposing this law were established numerous novelties in relation to existing law, in order to facilitate in the implementation its application in practice, which are generally related to: conditions and manners of organizing the strike; lockout of employees who do not participate in the strike; rights, obligations and responsibilities of employers and employees in relation to the strike.

The most important novelties in relation to valid solutions are:

- the narrowing of activities for which it is necessary to determine the minimum of work process;
- the obligation of the parties to cooperate in order to ensure the minimum of work process, in accordance with the law and general interest;
- the parties in the dispute from the date of announcement of the strike and during the strike in the social dialogue shall try to resolve the incurred dispute or to initiate proceedings for the peaceful settlement of dispute in accordance with the law;
- the minimum of work process shall be determined with respect to the tripartite social dialogue;
- the responsibility for organizing the illegal strike that depends on organizators of the strike, and the protection of employees in case of illegal strike.

Employees who are engaged in activities of general and public interest, as defined in this Law may start a strike if it is previously determined the minimum of work process, which ensures the safety of persons and property or is the indispensable condition for the life and work of citizens, that is, protects the national safety as well as the functioning of public authority bodies.

The news is also the fact that in the activities in which it must be determined the minimum of work process, the act on this minimum shall be agreed by the responsible administrative authority, representative organizations of employers and representative trade union organizations, not later than 90 days from the date of entry into force of this Law, except that the role of the Agency for the peaceful settlement of labour disputes is very important if the subjects in the dispute fail to reach agreement on the adoption of act on minimum of work process. In this case, the responsible administrative authority shall inform without delay, the Agency, which will in certain time form the Panel of arbitrators for determination of the minimum of work process, and therefore the decision on minimum of work process of the Panel is mandatory for the parties in the dispute.

It is also proposed the introduction of the new institute, exclusion from the work process (lock out), as a counter measure by the employer for employees who do not participate in the strike, if the strike is already started and if at least 30 days

passed from the date of its commencement, in order to prevent adverse effects in the production process due to the longer duration of the strike.
The number of employees who in this situation is excluded from the work process, cannot be greater than one third of the employees participating in the strike and the lockout in the abovementioned sense may last until the termination of the strike. In the case of lock-out, the employees are not entitled to the salary, and the employer is obliged to pay contributions to social insurance as they are at work, in accordance with the regulations on social insurance.
However, the lockout, according to proposed solutions is not possible to organize in the activities of general and public interest, through which is ensured the safety of people and property or is indispensable condition for the life and work of citizens, or that protects national safety and the functioning of public authority bodies.
Bearing in mind that the lawful strike is organized collective action, which is expressed as peaceful gathering of employees at the workplace or in business premises of the employer, the strike can be manifested by not coming to work. In this respect, the strike committee and the employees participating in the strike shall not prevent the employer from disposing of funds by which performs the activity, and that the strike committee and employees who participate in the strike cannot prevent the employees, who do not participate in the strike, from working.

Article 26

The right to dignity at work

In order to ensure the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with the organizations of employers and workers:

1 to improve awareness, information and prevention of sexual harassment at the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

2 to improve awareness, information and prevention of such behaviour that is reprehensible or is distinctly negative and offensive and focused on individual workers at the workplace or in relation to work and to take all measures to protect workers from such conduct.

Application of Article 26, paragraph 1

"In order to ensure the effective exercise of the right of all workers to protection of their dignity at work , the Parties undertake, in consultation with the organizations of employers and workers:

1 to improve awareness, information and prevention of sexual harassment at the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;"

Labour Law prohibits direct and indirect discrimination of persons who seek the employment or employees in respect of sex, origin, language, race, religion, color, age, pregnancy, health condition, disability, nationality, marital status , family commitments, sexual orientation, political or other opinion, social origin, property, membership in political and trade union organizations or other personal characteristics. In this regard, direct discrimination shall be any action caused by any of the abovementioned basis by which the person who seeks the employment or the employee is in a less favorable position compared to others in the same or similar situation, and indirect discrimination occurs when a certain provision, criterion or practice puts or would put in the unfavorable position the person who seeks employment as well as the employee, because of certain quality, status, affiliation or beliefs. (Articles 5 and 6 of the Labor Law)

When it comes to sexual harassment Labour Law provides the protection against harassment and sexual harassment at work and in connection with work. The harassment shall be any unwanted behavior caused by any of the grounds indicated in Art. 5 and 6 of the Labor Law, as well as harassment by audio and video surveillance, which has the aim or represents the violating of the dignity of the person who seeks employment, as well as the employee, and which causes the fear or creates a hostile , humiliating or offensive environment.

Sexual harassment, on the other hand, shall be any unwanted verbal, non-verbal or physical conduct that has the aim or represents the violating of the dignity of the person who seeks employment, as well as the employee in the sphere of sexual life, which causes fear or creates a hostile, humiliating, bothering, aggressive or offensive environment .

Also, in accordance with Article 8, paragraph 2 of Law on prohibition of harassment at work ("Official Journal" ,No. 30/12), Ministry of Labour and Social Welfare, adopted the **Regulations on the rules of conduct of the employer and**

the employee on the prevention and protection against harassment at work which, among other things, in Article 5 stipulate that in order to prevent and protect against mobbing the employer and employees shall avoid the conduct that could be considered as sexual harassment, such as:
- the degrading and inappropriate comments and actions of a sexual nature,
- the attempt or completion of improper and unwanted physical contact,
- the guidance on the acceptance of the behaviour of sexual nature with promising the reward, threat or blackmail etc.

Employee cannot suffer adverse consequences in case of reporting or witnessing because of harassment and sexual harassment at work and in relation to work.
In cases of harassment and sexual harassment the person who seeks the employment, as well as employee, may initiate procedure in the competent court in accordance with law.

Anyone who believes that is affected by discriminatory treatment of bodies, other legal and natural person is entitled to protection in court, in accordance with the law.
The procedure shall be initiated by complaint and represents an urgent procedure.
The complaint may request:
1) the finding that defendant treated the claimant in discriminatory manner;
2) the prohibition of the action which may result as the discrimination or the prohibition of repetition of discriminatory action;
3) the indemnification of damage, in accordance with law ;
4) the publication of the judgment which determines the discrimination at the expense of the defendant in the media, if the discrimination is made through the media.

In this procedure, the provisions of the law which regulates the civil procedure shall be applied. In the dispute for protection from discrimination the revision is always allowed.

If the claimant makes probable that the defendant committed the act of discrimination, the burden of proving that in this act there was not a violation of the equality of rights and before the law, passes to the defendant.

In the procedure for protection against discrimination the territorial responsibility, in addition to the court of general territorial competence, has the court in whose territory is the place of residence, or seat of the claimant.

Furthermore, anyone who believes that he was discriminated by the act, action or inaction of authorities and other legal and natural persons, may address complaints to the Ombudsman of human rights and freedoms.
Complaint to the Ombudsman may submit the organizations or individuals involved in the protection of human rights, with the consent of the discriminated person or group of persons.
Dealing with complaints shall be carried out in accordance with the regulations which regulate the manner of work of the Ombudsman.

So far the Institution of Ombudsman for human rights and freedoms received four (4) complaints based on sexual harassment at the workplace.

An anonymous complaint was submitted to Ombudsman electronically by two teachers in the secondary school in Podgorica, which was related to the sexual harassment by two assistant directors of that school. Given that the complaint did not contain all the elements needed for the action of Ombudsman, and it was anonymous, the Ombudsman electronically on the address from which the complaint was received, requested the revision of complaint. Ombudsman also indicated that they may come to have a conversation in the institution of the Ombudsman, where they will be guaranteed the confidentiality of the identity. However, Ombudsman did not receive any response from them.

The second complaint to the Ombudsman was submitted by a nurse from Pljevlja which was related to sexual harassment at the workplace by some colleagues. Ombudsman gave directions to the complaint applicant to other legal remedies because of expediency and efficiency in determining the violation of rights and taking appropriate legal action for any violation of rights.

The third complaint was submitted to Ombudsman by an officer of a bank for sexual harassment by a supervisor. In this regard, the Ombudsman requested amendment of the complaint, but the applicant did not submit it to the Ombudsman within specified period and even after that.

The fourth complaint that, among other things, was related to sexual harassment at the workplace. In this case was determined the violation of rights by the chief of the complaint applicant and indicated, in accordance with the provisions of Article 20 of the Law on the Ombudsman of human rights and freedoms of Montenegro, to the company to which the complaint referred on the importance of the approach to

the problem of discrimination on any ground, such as on the basis of sex and on the basis of national origin. Also, in accordance with the provision of Article 27 of the Law on prohibition of discrimination, the applicant was informed that has the right to file a complaint to the Basic Court.

Inspectional supervision in relation to discrimination in the field of labour and employment shall be performed by Directorate for inspection through labour inspection.

According to the records on submitted initiatives for starting the inspectional supervision, the labour inspection did not register any case of sexual harassment at the workplace.
We note that labour inspection indicates to employers on the consistent application of the Law on prohibition of harassment at workplace (mobbing), which was adopted in June 2012. This law stipulates the obligation of the employer that the employee shall be informed in writing about the rights, obligations and responsibilities in relation to mobbing in order to recognize and prevent the mobbing, whose one aspect represents sexual harassment at the workplace.

According to the data of **Agency for the peaceful settlement of labour disputes,** to that authority were submitted five proposals for peaceful settlement of labour disputes due to the harassment at the workplace, where no proposal contained the elements of sexual harassment at the workplace.

Article 28

"The right of workers' representatives to protection in the enterprise and the benefits they should have been allocated

In order to ensure the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the enterprise:

a they enjoy effective protection against actions that are directed against them, including dismissal, on the basis of their status as workers' representatives within the enteprise;
b obtain such appropriate facilities to enable them to carry out their functions promptly and efficiently, where it should be taken into account the regulation system of relations between employers and workers of the country and the needs, size and capabilities of the enterprise."

Application of Article 28

The Constitution of Montenegro, in Article 53, guarantees the freedom of trade union and other association without the approval with the registration in the competent authority. This right is guaranteed by Article 155 of the Labor Law and Article 1 of the Law on trade union representativeness ("Official Journal of Montenegro ", no.36/10 and 36 /13).

Article 12 of the Labour Law stipulates that employee directly or through the representatives has the right to free association, the participation in negotiations for the conclusion of collective agreements, the peaceful settlement of collective and individual labour disputes, consultation, information and expressing of views on important issues in the field of labour in accordance with the law.
The employee or representative of employees because of activities in the abovementioned article and paragraph of law, cannot be impeached, or put in the less favorable position in terms of working conditions, if acts in accordance with the law, collective agreement and labour contract.

Furthermore, Article 159 of Labor Law regulates the freedom of exercise of trade union rights and is standardized that the employer is obliged to provide to employees freely exercise of trade union rights and to provide to trade union organization the condition for the effective performance of trade union activities in order to protect the interests and rights of employees, in accordance with the collective agreement.
The representative of the trade union organization has the right to be absent from work with wage compensation for the performance of activities organized by the trade union in accordance with the collective agreement.
The employer is not obliged to pay wage compensation to trade union representative whose absence from work is not in accordance with the collective agreement.
The employer must be informed in writing on the absence of the member of trade union organization in case of performing the activities organized by the trade union, at least three days prior to his absence.
The collective agreement regulates the conditions, manner and procedure of professionalization of work of trade union representative, in the interest of protection of trade union rights.

According to Article 160 of the Labour Law the representative of trade union organization and the representative of employee, during the performance of trade union activities and six months after the termination of trade union activities cannot be impeached in relation to the performance of trade union activities, declared as employee who have been made redundant, allocated to another workplace within the same or another employer in relation to the performance of trade union activities, or otherwise put in less favorable position, if he acts in accordance with the law and the collective agreement.
It is also provided that the employer cannot put in more or less favorable position the representative of trade union organization or representative of employees because of trade union membership or the trade union activities.

That means that the trade union representative or the representative of employees is protected by law only in relation to trade union activities. However, if happens that there is no need for the work of the employee who is engaged in trade union activities, he will share the fate of other employees who became redundant (and on this basis may be entitled to severance pay in accordance with Article 94 of the Labour Law) or because of the need of the work process will be assigned to other duties in the level of education or the degree of professional qualifications and occupation within the same or another employer, as well as other employees who are not engaged in trade union activities. In this way are met the requirements set out in ILO Convention No. 135 concerning protection and facilities provided to the representatives of the workers in the enterprise in 1971.

Article 29

"The right to information and consultation in collective redundancy procedures

To ensure the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that the employers inform and consult workers' representatives in timely manner and before it comes to collective redundancies, on manners and means to avoid collective redundancy or to limit its occurrence and mitigate its effects, so as to, for example, undertake appropriate social measures that would aim to facilitate the deployment of workers. "

Application of Article 29

Article 92, paragraphs 1, 2, 3 and 5 of the Labour Law stipulates that, if the employer determines that due to technological, economic and restructural changes within the period of 30 days there will be no need for the work of employees for indefinite period and for at least:
1) 10 employees of the employer who has employed more than 20 and less than 100 employees for indefinite period;
2) 10% of the employees of the employer who has employed at least 100 and at most 300 employees for indefinite period;
3) 30 employees of the employer who has employed over 300 employees for indefinite period, shall inform, in writing, the trade union or representatives of employees and the Employment Office of Montenegro.
That notification shall be submitted by the employer that determines that there will be no need for work of at least 20 employees within 90 days, regardless of the total number of employees.
The mentioned notification shall contain:

1) the reasons for redundancy of employees;
2) the number and category of employees who are employed for indefinite period;
3) the criteria for determining the employees who have been made redundant;
4) the number and categories of employees who have been made redundant;
5) the period in which will be implemented the measures for employment under Article 93, paragraph 2, item 5 of this Law;
6) the criteria for calculating the amount of severance pay.

Trade union or the representatives of the employees and the Employment Office of Montenegro shall submit its opinion to the employer in relation to the notification within 15 days of receiving of such notification. We point out that Article 93, paragraphs 1 to 4 of the Labour Law stipulates that, after the opinion of trade union or representative of employees and the Employment Office of Montenegro, the employer is obliged to adopt the program of measures for dealing with redundancy of employees.
The program of measures for dealing with redundancy of employees shall contain in particular:

1) the reasons for redundancy of employees;
2) the criteria for determining the employees who have been made redundant;
3) the total number of employees who have been made redundant;

4) the number, qualification structure, age and pensionable service of employees who have been made redundant and the business they perform;

5) employment measures: transfer to another workplace within the same employer in the degree of professional qualifications of the employee, the transfer to another employer in the degree of professional qualifications of the employee, with his consent, vocational training, retraining or additional qualifications for another workplace within the same or another employer, and other measures in accordance with the collective agreement or labour contract.

The criteria for determining the employees who have been made redundant cannot be in conflict with the provisions of the Labour Law relating to the prohibition of discrimination against employees.

As a form of facilitating redeployment or retraining of the concerned workers the law stipulates in Article 95 the possibility for the employer to engage the employee, whose work is no longer necessary, in performing the tasks that are appropriate to his qualifications and the level of education and occupation, until he provides him one of the rights determined by the Labour Law.

The program of measures for dealing with redundancy of employees shall be made by the responsible authority of the employer or the employer.

The abovementioned provisions of the law, provide the standards of ILO Convention No. 158 on termination of employment by initiative of the employer of 1982, and the Council Directive 98/59/EC, 1998, related to collective dismissals of employees from work as redundancy.