

PROHIBITION OF DISABILITY DISCRIMINATION IN MONTENEGRO IN THE LIGHT OF CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE COURT OF JUSTICE OF THE EUROPEAN UNION



Dagmara Rajaska, PhD

“Support to the National Institutions in Preventing Discrimination in Montenegro” (PREDIM)

Funded
by the European Union
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented
by the Council of Europe

**PROHIBITION OF DISABILITY
DISCRIMINATION IN MONTENEGRO IN THE
LIGHT OF CASE LAW OF
THE EUROPEAN COURT OF HUMAN RIGHTS
AND THE COURT OF JUSTICE OF THE
EUROPEAN UNION**

Dagmara Rajska, PhD

Council of Europe: 2016

All rights reserved.

No part of this publication may be translated, reproduced or transmitted, in any form or by any means, electronic (CD-Rom, Internet, etc.) or mechanical, including photocopying, recording or any information storage or retrieval system, without the prior permission in writing from the Directorate of Communications (F-67075 Strasbourg Cedex or publishing@coe.int).

Layout and cover design:
3M Makarije

Published by the Council of Europe
F-67075 Strasbourg Cedex
www.coe.int

© Council of Europe, December 2016
Printed by 3M Makarije

The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

Published within scope of the Project "Support to the National Institutions in Preventing Discrimination in Montenegro" (PREDIM)

The Council of Europe is the continent's leading human rights organization. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of Rights in the member states.

www.coe.int



The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens - in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments) and the European Commission (representing the common EU interest).

<http://europa.eu>



Contents

INTRODUCTION	5
PART I – PROHIBITION OF DISABILITY DISCRIMINATION IN THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION	7
I European Union rules as regards the prohibition of discrimination based on disability.....	7
II The definition of disability in light of the case law of the CJUE.....	9
PART II - PROHIBITION OF DISABILITY DISCRIMINATION IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS	12
I European Court of Human Rights case law on the prohibition of discrimination of people with disabilities	13
II European Court of Human Rights case law involving other rights of people with disabilities	15
1. The right to life.....	16
2. Prohibition of inhuman and degrading treatment.....	17
3. The right to liberty and security.....	18
4. The right to a fair trial.....	19
5. The right to respect for private and family life.....	20
6. The right to marry	23
7. Protection of property	24
8. The right to vote	25
III The European Social Charter	26
PART III - NATIONAL RULES AND EXPERIENCE AS REGARDS PROHIBITION OF DISABILITY DISCRIMINATION IN MONTENEGRO.....	28
I Montenegrin disability discrimination legislation and national Ombudsman competencies in this area.....	28
II Montenegrin disability discrimination case law and practice.....	34
CONCLUSIONS.....	36

INTRODUCTION

People with disabilities, who represent fifteen per cent of society, face restrictions and barriers that restrict them from participating in society on an equal basis with other people.

Disability discrimination mostly results in the denial of the right to move freely because of a lack of specific accommodation for disabled people, their access to education, employment and justice, and their right to enjoy social protection. Support for parents of disabled children is also often considered insufficient. Legislators should consider that it is society which ought to adapt to persons with disabilities, and not the other way around. “The medical model of disability can be contrasted with a social model of disability. The social model is based on a socio-political approach, which argues that disability stems primarily from the failure of the social environment to adjust to the needs and aspirations of people with impairments, rather than from the inability of people with impairments to adapt to the environment.” (L. Waddington, A. Lawson, “Disability and non-discrimination law in the European Union”, 2009). This principle is expressed for example in EU Framework Directive 89/391/EEC, which foresees that an employer should adapt work to meet the needs of a disabled worker.

Therefore, States sign conventions, treaties, and adapt different legal instruments to promote and enhance equal treatment of persons with disabilities. There have been many international instruments of protection of persons with disabilities developed in recent years. The most important among them are the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). The European Social Charter (ESC) also protects persons with disabilities.

The legal framework in the field of protection against discrimination of persons with disabilities is provided by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

On 23 December 2010, the European Union became for the first time in history a part of an international human rights treaty – the United Nations Convention on the Rights of Persons with Disabilities. As a consequence, all EU organs, the Court of Justice of the European Union (CJEU) and all national courts must seek consistency with the UN Convention on the Rights of Persons with Disabilities.

The European Convention on Human Rights has been binding since the ratification of the Convention by Montenegro in 2004. The European Social Charter was ratified by Montenegro on 22 March 2005 and it has had legal force and effect since its entry into force in 2010. Since 29 June 2012, Montenegro has been negotiating its accession to the European Union; it is therefore obligated to implement the legal rules of the organisation in order to become a Member State.

PART I – PROHIBITION OF DISABILITY DISCRIMINATION IN THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

I European Union rules as regards the prohibition of discrimination based on disability

Human rights were first enshrined in EU Law under the Maastricht Treaty, which was signed on 7 February 1992, and entered into force on 1 November 1993.

The following dispositions of the Maastricht Treaty cover human rights:

- “Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law...” (Preamble)
- Article 130u (...) “2. Community Policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.”
- Article J.1 (...) “2. The Objectives of the common foreign and security policy shall be: to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.”
- Article K.2 “1. The matters referred to in Article K.1 (for example judicial cooperation, asylum and immigration policy etc.) shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds.”

The Treaty of Amsterdam amended the founding treaties on the European Union. On 1 May 1999, Article 13 of the European Community Treaty entered into force in order to explicitly mention and protect sexual orientation (now it is Article 19 TFEU): “[...] the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

In December 2000, the European Council adopted a binding general Framework Directive on equal treatment in employment prohibiting direct and indirect discrimination on grounds of religion or belief, age, disability or sexual orientation (2000/78). The EU Member States must swiftly implement the Directive and those States in the process of accession must implement it before joining the EU.

In December 2000, the Member States of the European Union proclaimed the EU Charter of Fundamental Rights. Although the Charter is not a binding document, it covers human rights, explicitly non-discrimination provisions in Article 21 (1): “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or *sexual orientation* shall be prohibited”.

Finally, Article 10 of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2012/C, 326/01) states that: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

The legal framework in the field of protection against discrimination of persons with disabilities is provided by Council Directive 2000/78/EC of 27

November 2000 establishing a general framework for equal treatment in employment and occupation.

On 23 December 2010, the European Union became for the first time in history a part of an international human rights treaty – the United Nations Convention on the Rights of Persons with Disabilities. As a consequence, all EU organs, the Court of Justice of the European Union and all national courts must seek consistency with the UN CRPD.

Among the legal instruments which protect the rights of disabled persons, there is also the non-binding Resolution of the Council of the European Union and the Representatives of the Governments of the Member States. It was adopted during a meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union (2008/C 75/01).

The above-mentioned legal instruments must be interpreted in light of the case law of the Court of Justice of the European Union.

II The definition of disability in light of the case law of the CJUE

On 11 July 2006, in the first case relating to disability provisions of the Employment Equality Directive, *Chacón Navas* (C-13/05), the Court found that a person who has developed a sickness could not be considered as protected by prohibition of discrimination based on disability. Therefore, a person dismissed for reasons of sickness does not have protection on grounds of having a disability. The Court referred to the definition of disability in the United Nations Convention on the Rights of Persons with Disabilities, which was signed and is applied by the European Union. In the light of this Convention, the term of disability has to be interpreted globally in an autonomous and uniform manner. These findings were confirmed in a judgment in two cases of 11 April 2013, *Jette Ring* (C-335/11) and *Werge* (C-

337/11). In these two cases, the Court also found that reduced working hours may be an appropriate accommodation for disabled employees in order that they can continue to work.

Examples:

- In the case of *Jette Ring* (C-335/11), the Court further examined the notion of disability. It looked into the notion of incurable and temporary illness and a reduction in functional capacity, which does not require any auxiliary aid and examined in which circumstances they can amount to disability in the understanding of the UN Convention on the Rights of Persons with Disabilities.

- A judgment of 17 July 2008, *Coleman v. Attridge Law* (C-303/06) concerned a legal secretary employed in a law firm who was made redundant after giving birth to her son who is disabled. The Court found that the words “on grounds of disability” also referred to discrimination and harassment by association. It means that the Directive 2000/78/EC protects a person treated unfavourably on the basis of another person’s protected characteristic, which, in this case, is disability.

- In a judgment of 18 December 2014, *Fag og Arbejde (FOA)* (C-354/13), the Court determined that obesity does not in itself constitute a disability according to Directive 2000/78. However, obesity can result in long-term physical, mental or psychological impairments, which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. Only if this condition is fulfilled according to the national court, discrimination based on obesity can be considered as disability discrimination in the light of the United Nations Convention on the Rights of Persons with Disabilities signed by the European Union.

- In a judgment of 18 March 2014, *Z* (C-363/12), the Court found that a female employee who, due to her biological situation was unable to bear a

foetus and thus commissioned other women to give birth to her children, is not considered as being in a similar situation to that of a pregnant female who is going to give birth. Therefore, she cannot be considered as having been less favourably treated on grounds of sex or disability than other pregnant female employees enjoying their rights with relation to adoption or maternity leave. The health of a woman who is unable to bear a foetus and thus commissions other women to give birth to her children does not exclude or restrict that woman from professional life.

Therefore, the Court stated that gender equality Directive 2006/43/EC does not prohibit discrimination of female employees from enjoying their rights with relation to adoption or maternity leave, and who have arranged surrogate motherhood by commissioning other women. The concept of disability should be interpreted in the light of the UN Convention on the Rights of Persons with Disabilities and the Court case law in this field.

PART II - PROHIBITION OF DISABILITY DISCRIMINATION IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe (CoE) and European Union (EU) law do not provide a definition of disability; there are only attempts at definitions in the case law of the CJEU. The European Court of Human Rights (ECHR) often refers to previously mentioned UN CRPD. Article 1 of this Convention defines the notion of disability: “People with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others”. The main objective of the Council of Europe in this area is to: “enhance equal opportunities, improve quality of life and the independence of people with disabilities, guarantee their freedom of choice, full citizenship and active participation in the life of the community” (<http://www.coe.int/en/web/disability>).

The prohibition of discrimination is established in particular by Article 14 of the European Convention on Human Rights: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Council of Europe also adopted many other legal instruments to make the protection of rights and freedoms of the Council of Europe practical and effective, in particular Recommendation 1592 (2003) towards full social inclusion of people with disabilities, adopted by the Parliamentary Assembly of the Council of Europe on 29 January 2003. A Council resolution of 5 May 2003 protects equal opportunities for pupils and students with disabilities who are in education and training.

In order to understand and apply the human rights of people with disabilities established in the case law of the European Court of Human Rights, it is necessary to overview the most important judgments that have been delivered by the Strasbourg Court in this area.

I European Court of Human Rights case law on the prohibition of discrimination of people with disabilities

Disability does not figure among the protected grounds of the ECHR, but it is considered as one of the “other grounds” protected by Article 14 of the Convention.

Most of the time, cases involving the rights of persons with disabilities are dealt with under other substantive rights, but sometimes the Court chooses a cumulative approach of a substantive right and prohibition of discrimination. The substantive rights at stake are very diverse, for example a person with disability can be a victim of discriminatory treatment as regards his right to respect for private or family life or right to property. The reason for this is the fact that there is no general prohibition of discrimination but the prohibition of discrimination as regards the rights protected by the Convention. The European Court of Human Rights first determines if there is a right protected by the Convention and later if there is a difference in treatment between a person without disability and a person with disability in an analogous situation. The Court examines whether this difference of treatment is justified and pursues a legitimate aim. If it is not the case, there is a breach of the prohibition of discrimination.

Examples:

- In *Glor v. Switzerland* (no. 13444/04) the applicant complained that he was obligated to pay a tax for not executing his military service, because a doctor declared him unfit for this service. In fact, the alleged disability of the

applicant did not attain the level required (40% of mental or physical disability) for exemption from this tax. The applicant considered that this rule did not have any legal basis and was discriminatory as regards his disability. The European Court of Human Rights found that there was no fair balance between the interests of the community and those of the disabled applicant. It held that there was no objective justification for the difference in treatment by the domestic authorities between persons who were unfit for service and not liable to the tax in question and persons who were unfit for service but nonetheless obliged to pay it. Therefore, the Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention.

- In *Çam v. Turkey*, (no. 51500/08) the applicant was blind and wishing to study at the National Music Academy. The authorities of the school refused admission in accordance with their internal rules, which do not let students with such disability integrate into the school. The European Court of Human Rights found a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention. The authorities did not consider the accommodation of the disability of the applicant in order to let her enrol at the school, despite her having passed competitive entrance examination, and therefore they deprived her in this way of benefiting from a musical education without any objective and reasonable justification.

- In *Guberina v. Croatia* (no. 23682/13) the refusal of the national tax authorities to consider exemption from tax on the purchase of a house, adapted by his/her father in order to accommodate his disabled child's needs, was considered by the European Court of Human Rights to be a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. The Court also referred to the provisions of the United Nations Convention on the Rights of Persons with Disabilities.

- In *Kiyutin v. Russia* (no. 2700/10), an Uzbek national arrived in Russia in 2003 and married a Russian national with whom he had a daughter.

According to immigration rules, he was eligible for a temporary residence permit on condition that he produced a medical certificate showing that he was not HIV positive. If he did not comply, he was liable to deportation. The applicant's application for a residence permit was finally refused because he tested HIV positive. The applicant challenged the decision of competent immigration authorities, but the courts upheld the decision to deport him. The European Court of Human Rights determined that the domestic authorities had rejected the applicant's application without taking into account the fact that he belonged to a particularly vulnerable group, HIV-positive people, and they did not take into consideration his weak state of health and strong ties with the family in Russia.

The absence of a reasonable and objective justification for this difference in treatment, and the lack of an individualised evaluation of the applicant's situation, were beyond the margin of appreciation which is left to the national authorities and as a consequence the applicant was a victim of discrimination on account of his health status. Therefore, the Court found a violation of Article 14 in conjunction with Article 8 of the Convention.

II European Court of Human Rights case law involving other rights of people with disabilities

ECHR case law involving persons with disabilities is very particular, as it always concerns the difference of treatment because of the disability, but it not always examined under Article 14 (prohibition of discrimination). On the one hand, applicants do not raise this provision every time when the allegation is well founded. On the other hand, the Court often considers that the violation of a substantive right of the Convention is sufficient and thus it is not necessary to further examine or to pronounce a violation of Article 14 of the Convention.

1. The right to life

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law” (Article 2, § 1 ECHR).

Right to life is the most basic right guaranteed by the European Convention on Human Rights. Therefore, it cannot be derogated from the time of war and any other public emergency. Member States have a positive obligation to protect the right to life. In this study, the right to life is concerned if it is at stake because of discriminatory treatment of people with disabilities.

Examples:

- In *Pretty v. the United Kingdom (no. 2346/02)*, the applicant complained that he was treated in a discriminatory manner by the State authorities because of his disability. In fact, the State applied a uniform prohibition on assisted suicide, which had a disproportionately negative effect on those who have become incapacitated and are therefore unable to end their lives themselves. The European Court of Human Rights found that the refusal to distinguish between those “who are and those who are not physically capable of committing suicide” was justified because introducing exceptions to the law would in practice allow for abuse and undermine the protection of the right to life. The Court did not find a violation of any of the articles raised by the applicant: Article 2, 3, 8, 9 or 14 of the Convention.

- In *Nencheva and Others v. Bulgaria (no. 48609/06)*, between 1996 and 1997, fifteen young people died from the effects of the cold and a shortage of food after being placed in a home for mentally and physically disabled people. The authorities failed in their duty to take measures to protect the lives of those vulnerable children placed in their care and therefore under their exclusive supervision and to conduct an effective investigation. The Court found a violation of Article 2 of the Convention.

2. Prohibition of inhuman and degrading treatment

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” (Article 3 ECHR).

Institutional discrimination related to different grounds for example race or disability can amount to degrading treatment. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment refers directly to prohibition of torture based on discriminatory ground: “the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1 § 1).

Examples:

- In *Price v. United Kingdom* (no. 33394/96) a disabled applicant who relied on a wheelchair for mobility was sentenced to prison for a period of seven days. However, the applicant was placed in a cell not adapted for persons with physical disabilities and consequently was unable to sleep adequately, experienced substantial pain and suffered hypothermia. When she was transferred to the hospital wing, there were similar problems and her electric wheelchair could not be charged when it had lost power. As the applicant did not raise Article 14, the European Court of Human Rights determined that the applicant suffered from degrading treatment and it found a violation of Article 3 of the Convention.

- In *Arutyunyan v. Russia*, (no. 48977/09) a wheelchair-bound applicant, who had been placed in detention, suffered from numerous health problems and, as a result, had to go regularly to the medical and administration units. The

difficulty was that his cell was on the fourth floor and the relevant units were on the ground floor, and the applicants had to walk down and up the stairs without a lift. The Court found that the domestic authorities had failed to treat the applicant in a safe and appropriate manner, consistent with his disability and had denied him effective access to the medical facilities, outdoor exercise and fresh air. Therefore, given the person's disability and overall state of health, the inappropriate treatment amounted to degrading treatment. Therefore, there was a violation of Article 3 of the Convention.

3. The right to liberty and security

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law (...)” (Article 5, § 1 ECHR).

The most important presumption of Article 5 is that deprivation of liberty can occur only in exceptional circumstances and it should be recovered when detention is no longer absolutely necessary. The ground for detention has to be based on the principle of non-discrimination. According to all international human rights treaties, the deprivation of liberty permitted by law is not “manifestly unproportional, unjust or unpredictable, and [that] the specific manner in which an arrest is made must not be discriminatory and must be able to be deemed appropriate and proportional in view of the circumstances of the case” (Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, Arlington: 1993), at 244). At the same time, the European Convention on Human Rights does not prohibit the use of positive discrimination by privileging a certain group in order to eliminate a factually underprivileged position.

Examples:

- In *H.L. v. the UK* (no. 45508/99), an autistic applicant unable to speak and with a limited level of understanding was placed as an informal patient in a hospital's intensive behavioural unit. The European Court of Human Rights

found that there was a breach of Article 5 § 1 as the placement in the hospital had been unlawful and Article 5 § 4 as the applicant did not have a possibility of review the decision on internment in accordance with the requirements of Article 5 of the Convention.

- In *Stanev v. Bulgaria* (no. 36760/06), a partially incapacitated applicant was unlawfully and arbitrarily deprived of liberty and placed in an institution against his will. It was not possible to challenge the decision on that placement before the national courts and seek compensation if the decision had been considered unlawful. In this case, the European Court of Human Rights found a violation of Article 5 § 1 (lawfulness of placement in a social home for persons with mental disorders), as the applicant had been illegally detained; a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), because it was impossible for the applicant to bring proceedings to have the lawfulness of the detention decided by a court; and a violation of Article 5 § 5 (right to compensation), concerning the impossibility for the applicant to apply for compensation for his illegal detention and the lack of review by a court of the lawfulness of his detention.

4. The right to a fair trial

“(...) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)”
(Article 6 § 1 ECHR).

The right to a fair trial involves many procedural rights as regards civil and criminal proceedings, like the right of access to a court, the right to trial without undue delay, presumption of innocence and other minimum rights for those charged in a criminal case: adequate time and facilities to prepare their defence, access to legal representation, the right to examine witnesses against them or have them examined, the right to free assistance from an interpreter. The principle is that all persons shall be equal before the courts and tribunals and Article 6 signifies that all persons must be granted, without

discrimination, the right of equal access to a court. This principle is also expressed in other international human rights treaties, like Article 14(1) of the ICCPR which prohibits establishing separate courts for different groups of people based on their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (including disability). The establishment of certain types of special courts with jurisdiction over all persons belonging to the same category, such as military personnel is not prohibited if the procedural guarantees are respected.

Examples:

- In the case of *Shtukaturvov v. Russia* (no. 44009/05), following a request by the mentally disabled applicant's mother, the applicant was declared legally incapable and placed in a psychiatric hospital. The applicant complained that he was deprived of his legal capacity without his knowledge. The European Court of Human Rights found that the applicant who was a relatively autonomous person despite his illness did not have a possibility to participate in the proceedings on his legal capacity. As the case concerned the autonomy and liberty of the applicant, he should have been heard by a judge. Therefore, if a decision on placement in a psychiatric hospital is given only on documentary basis, there is a violation of the principle of adversarial proceedings established in Article 6 of the Convention.

- In *Fracas v. Romania* (no. 32596/04), the lack of accommodate access for disabled persons to a tribunal is not a breach of the right of access to a court, because there are ways of communicating with a tribunal other than by personally entering the tribunal building. The case was declared inadmissible.

5. The right to respect for private and family life

“Everyone has the right to respect for his private and family life, his home and his correspondence (...)” (Article 8 ECHR).

Article 8 is a very broad concept, which covers many aspects of life, such as names, gender identification, sexual orientation and sexual life, which fall within the personal sphere protected by Article 8. It also involves the right to have or not to have a child. Article 8 has, under certain circumstances, been interpreted as covering the sphere of employment, access to employment and to social benefits if they cover the family unit. This right should be guaranteed to all without any discriminatory difference of treatment. The European Court has never examined a difference of treatment based exclusively on disability. "(...) no statement to this effect can be found in the jurisprudence and there is little Article 14 case law directly addressing the rights of disabled persons. Above all, this may be a reflection of all the weaknesses of that Article as a parasitic right and the Court's approach to interpreting Article 8 in relevant case law" (Harris, O'Boyle & Warbrick, *Law of the European Convention on Human Rights*, p. 600).

Examples:

- In *X. and Y. v. the Netherlands* (no. 8978/80) a mentally disabled girl, who had been placed in a home for children with mental disabilities, was raped by a relative of the person in charge of her in this institution. Her father lodged a complaint before the national courts, because she was not able to do it given her low mental age. The case was rejected, because according to national law, the girl was supposed to lodge a complaint herself. The European Court of Human Rights found that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on the disabled applicant was insufficient. Therefore, there was a violation of Article 8 of the Convention.

- In *Botta v. Italy* (no. 21439/93), the applicant complained about the lack of accommodated access to a beach and the sea for a disabled person, distant from the applicant's normal place of residence, during his holidays. As there was no direct link between the measures which should eventually have been taken to adapt the private bathing establishments and the applicant's private

life, the Court found that Article 8 of the Convention was not applicable in such a situation.

- In *Zehnalova and Zehnal v. the Czech Republic* (no. 38621/97), the disabled applicant and her husband complained about the lack of access to public buildings in their hometown, and the fact that the national authorities had not taken the necessary measures to accommodate these buildings. The disabled applicant did not demonstrate the existence of a special link between the lack of access to the buildings and particular needs for her private life. The case was rejected as inadmissible by the European Court of Human Rights.

- In *Molka v. Poland* (no. 56550/00), the severely handicapped applicant complained about lack of access, and had to rely on his wheelchair in order to reach a polling station where he intended to vote in municipal elections. A ballot paper could not be carried outside the premises of the polling station and there was nobody to carry the applicant inside the polling station. The Court found that the applicant had in particular not shown that he could not have been helped to enter the polling station by other people. As it was an isolated incident, the complaint under Article 8 was declared as manifestly ill founded.

- In *Ivinović v. Croatia* (no. 13006/13), the proceedings brought by a social welfare centre in which a disabled person was declared partially incapacitated, and which did not conform with national procedural rules, resulted in a violation of Article 8 of the Convention.

- In *La Parola and Others v. Italy*, (no. 39712/98), the applicants complained about the lack of effective and financial support by the national authorities for their disabled child. The Court found that the case was manifestly ill founded as the applicants were entitled to permanent benefit on behalf of their son.

- In *R.R. v. Poland*, (no. 27617/04), a pregnant woman suffering from a severe genetic abnormality was deliberately denied access to the genetic tests to which she was entitled by doctors who were opposed to abortion. Therefore, she was obligated to bring up and educate her severely ill child with damage to herself and her two other children. The Court held that the State was obligated to organise its health service to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled. The applicant's lack of access to prenatal genetic tests resulting in her inability to have an abortion on grounds of foetal abnormality resulted in a violation of Article 3 and 8 of the Convention.

- In *A.M.M. v. Romania* (no. 2151/10), the domestic courts did not strike a fair balance between the right of the applicant – a disabled child – to have his interests safeguarded in paternity proceedings, and the right of his putative father not to take part in the proceedings or to refuse to undergo a paternity test. These shortcomings of proceedings to establish paternity of a minor child with disabilities amounted to a violation of Article 8 of the Convention.

- In *Kutzner v. Germany* (no. 46544/99), separation of children from their parents and restrictions on contact, on account of the latter's alleged lack of intellectual capacity to bring up their children was considered as a violation of Article 8 of the Convention. In a similar case, *Saviny v. Ukraine* (no. 39948/06), placement of children in public care on grounds that their blind parents had failed to provide adequate care and housing was also considered as a violation of Article 8 of the Convention.

6. The right to marry

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right” (Article 12 ECHR).

The fact that persons with disabilities are unable to marry, and that it is indissociable from their disability, is considered as discriminatory treatment in the light of the Convention.

Example:

- In *Lashin v. Russia* (no. 33117/02), the fiancée of the applicant suffering from schizophrenia and incapacitated applied to register their marriage. However, the request was refused because, under the national law, mentally disabled persons do not have the right to marry. The European Court of Human Rights found a violation of Article 12 of the Convention.

7. Protection of property

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law” (Article 1 of Protocol No. 1 ECHR).

States should take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property and ensure that persons with disabilities are not arbitrarily deprived of their property. This right is also ensured under the UN Convention on the Rights of Persons with Disabilities (CRPD).

Examples:

- In *Draon v. France* (no. 1513/03) and *Maurice v. France* (no. 11810/03), the applicants were parents of a child born with disabilities, as these disabilities were not discovered during the prenatal examinations because of medical errors. They complained that they did not receive reimbursement of the costs of treatment, which was necessary because of the medical errors committed by the hospital. For this reason, the European Court of Human Rights found violation of Article 1 of Protocol No. 1 to the Convention.

- In *Kjartan Ásmundsson v. Iceland* (no. 60669/00), the applicant was injured on board a trawler and had to give up his work as a seaman. His disability was assessed at 100%. Therefore, the applicant obtained a right to a disability pension. However, his disability was later decreased to 25%, because the assessment factor changed from ability to execute the same work to ability to execute any work. In this way, the applicant lost the right to benefit, because it was awarded only if disability was assessed at least at 35%. The European Court of Human Rights found that the total deprivation of the entitlements was an excessive and disproportionate burden for the applicant and not a reasonable and commensurate reduction. Therefore, there was a violation of Article 1 of Protocol No. 1 to the Convention.

8. The right to vote

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the people in the choice of the legislature” (Article 1 of Protocol No. 1 ECHR).

Voters with mental or physical disabilities should have the same rights as voters having full mental and physical capacities. Polling station staff must ensure that disabled voters are not offered a lower standard than the other voters.

Example:

- In *Alajos Kiss v. Hungary* (no. 38832/06), the Court found that the automatic loss of the right to vote as a result of a partial guardianship order is a violation of Article 3 of Protocol No. 1 to the Convention. The Court did not find a violation of Article 14, even if the restrictions were applied by the national authorities, on fundamental rights of particularly vulnerable groups in society, such as the mentally disabled, who were at risk of legislative stereotyping, without an individualised evaluation of their capacities and needs.

Discrimination on grounds of disability is also prohibited by Article E of the Revised European Social Charter, and in the area of employment by Article 15 which imposes obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep persons with disabilities in employment.

III The European Social Charter

The European Convention on Human Rights guarantees civil and political rights. The European Social Charter is a treaty on fundamental social and economic rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare. The Charter lays specific emphasis on the protection of vulnerable persons such as people with disabilities. It requires that enjoyment of the above-mentioned rights be guaranteed without discrimination (available at <http://www.coe.int/en/web/turin-european-social-charter/home>, visited 14 October 2016). Even if the European Social Charter is not a subject of this comparative study, it has to be mentioned because of its importance in this area (database available at <http://hudoc.esc.coe.int/eng#%20>). In 2010, the European Social Charter entered into force in Montenegro.

Article 15 of the European Social Charter states: “The right of persons with disabilities to independence, social integration and participation in the life of the community. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular: 1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private; 2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment

persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services; 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

The European Committee of Social Rights has considered that the non-discrimination norm is integral to Article 15. Therefore, non-discrimination legislation is required in the field of education, employment and to participation in the life of the community.

People with disabilities should have accommodation to travel (land, rail, sea and air) and housing (public, social and private), cultural activities and leisure (social and sporting activities). For those who have been unlawfully treated, the legislator should establish the effective remedies (see more at: <http://www.osce.org/odihr/34004?download=true>, visited on 14 October 2016).

The European Committee of Social Rights has already treated a lot of cases concerning the rights of persons with disabilities. For example, in the case of *European Action of the Disabled (AEH) v. France (no. 81/2012)*, the Committee decided that France had failed to guarantee the right to education of children and adolescents with autism and the right to vocational training of young adults with autism, in breach of Article 15 (right of persons with disabilities to vocational training, rehabilitation and social integration), read alone and in conjunction with Article E (non-discrimination) of the revised European Social Charter because of the difference in treatment, in the education and vocational training fields, between persons with autism and persons with other disabilities.

PART III - NATIONAL RULES AND EXPERIENCE AS REGARDS PROHIBITION OF DISABILITY DISCRIMINATION IN MONTENEGRO

I Montenegrin disability discrimination legislation and national Ombudsman competencies in this area

The European Convention on Human Rights is binding since the ratification of the ECHR by Montenegro in 2004. The ESC has legal force and effect since its entry into force in Montenegro in 2010. Since the 29th June 2012, Montenegro is negotiating its accession to the European Union; it is therefore obligated to implement the legal rules of the organisation to become a Member State.

Ratified international legal instruments form an integral part of the Montenegrin internal legal system and they have supremacy over national legislation in the case of a difference in regulating relations, according to Article 9 of the Constitution of 19 October 2007.

The Ministry for Human and Minority Rights has the primary role in the executive authority, when it comes to protection of human rights and protection from discrimination of people with disabilities, and promotion of equality and tolerance. Among other obligations, this ministry performs tasks related to the protection of human rights and freedoms, in case this protection is not within the jurisdiction of other ministries; protection against discrimination and promotion of equality; coordination of activities aimed at protecting people with disabilities from discrimination and promotion of equality of these persons with other persons; monitoring the application of international standards for the protection of people with disabilities and taking measures for their implementation in the legal system;

preparation of a strategic document relating to the protection of people with disabilities from discrimination and promotion of equality of these persons with other persons; organization of research and analysis of the situation in the field of protection of people with disabilities from discrimination and promotion of equality of these persons with other persons; cooperation with the local self-government in the protection of people with disabilities from discrimination and promotion of equality of these persons with other persons; establishing cooperation with NGOs in the field of protection of people with disabilities from discrimination and promotion of equality of these persons with other persons; eliminating stereotypes and prejudices about people with disabilities; organization of education and trainings for different target groups in order to raise awareness about people with disabilities and their rights, and other activities related to the protection of members of this population.

The legislative framework of protection against discrimination consists of a general Law on Prohibition of Discrimination, Law on Prohibition of Discrimination of People with Disabilities and the Law on the Protector of Human Rights and Freedoms of Montenegro.

The Constitution of Montenegro, as the highest legal act, guarantees the protection of human rights and freedoms by Article 6, and by Article 7 it promotes prohibition of inciting hatred or intolerance on any grounds, proclaims the prohibition of discrimination and states that regulations and introduction of special measures aimed at creating conditions for achieving national, gender and overall equality and protection of persons which are in an unequal position on any grounds will not be considered as discrimination.

Provisions of Article 9 of the Constitution of Montenegro determine that ratified and published international treaties and generally accepted rules of international law are an integral part of the internal legal order and have primacy over national legislation and are directly applicable when they regulate the relations differently from the internal legislation. The

Constitution guarantees special protection to persons with disabilities. Article 68 of the Constitution guarantees special protection of the people with disabilities. Provisions of Article 81 of the Constitution of Montenegro determine that the Protector of Human Rights and Freedoms is an independent and autonomous authority that takes measures in order to protect human rights and freedoms, and shall serve based on the Constitution, laws and ratified international treaties, adhering to the principles of justice and fairness.

The most important international treaty which was ratified by Montenegro in the field of protection of the rights of people with disabilities is the UN Convention on the Rights of People with Disabilities.

The Law on Prohibition of Discrimination (“Official Gazette of Montenegro”, No. 046/10, 040/11 018/14) regulates the area of protection against discrimination in a systematic way. It develops and concretizes the protection against discrimination, and it defines institutional mechanisms for the protection as well: Protector of human rights and freedoms to which citizens can address with a complaint; the courts or the right to file a lawsuit; misdemeanour bodies; as well as the inspection service in the following areas: provision of services, construction, health, education and sports, labour and employment, safety at work, transport, tourism and other areas. The amendments to the Law of 2014 were introduced in order to promote equality as a significant activity for prevention of discrimination. The Law on Prohibition of Discrimination recognizes “disability” as a ground for discrimination (Article 2), and defines discrimination against people with disabilities, as being unable to approach the facilities and public areas for the persons with reduced mobility and people with disabilities, or as preventing, restricting or impeding the use of those facilities, in a manner which is disproportionate burden for the legal or natural person who is obliged to provide it. Discrimination against people with disabilities exists in the case when specific measures to eliminate the limitations or unequal position in which these persons are not taken.

The new Law on Prohibition of Discrimination of People with Disabilities (“Official Gazette of Montenegro”, No. 035/15, 044/15) is in compliance with the UN Convention on the Rights of People with Disabilities. The most important innovation which this law introduced is the high fines for discriminatory treatment of persons with disabilities.

This Law has established high standards in the field of protection from discrimination against persons with disabilities in view of its effective implementation. The Parliament of Montenegro has adopted the Conclusion, by which the Government of Montenegro is committed to do an analysis of all regulations in the areas defined by the United Nations Convention on the Rights of People with Disabilities, which are covered by the Law on Prohibition of Discrimination of People with Disabilities, especially in the areas of information and electronic communications, transportation, independent living and community life, family and marital relations, the laws which define the legal, procedural and working capacity, as well as in the areas of education and vocational training, health care, social and child protection and adequate living standards and in the field of political and public life; so that to prepare the proposals for amendments to the laws in the field of transport, health care, social and child protection as soon as possible; with the recommendation that in all phases of the above mentioned regulations the representatives of organizations of persons with disabilities and the Committee on Human Rights and Freedoms of the Parliament of Montenegro are included.

Following this Conclusion of the Parliament, the Montenegrin legislation was analysed as regards its compliance with the Law on Prohibition of Discrimination of People with Disabilities and the UN Convention on the Rights of People with Disabilities. As a result, the recommendations for the harmonization of sixty laws and were adopted by the Government of Montenegro in September 2016.

The Ombudsperson institution, the so-called Protector of human rights and liberties of Montenegro, has been established in Article 81 of the Constitution of 19 October 2007. The competencies of the Protector are further detailed in the Law on the Protector of Human Rights and Freedoms passed on 10th July 2003.

The Law on the prohibition of discrimination was adopted on 27 July 2010, and amended in April 2014 (Law on the prohibition of discrimination was adopted on 27 July 2010, available at: <http://www.legislationline.org/topics/country/57/topic/84> visited 14 October 2016). According to this Law, the Protector of Human Rights and Freedoms of Montenegro is competent to act on complaints relating to discriminatory treatment committed by an authority, business entity, entrepreneur, natural or legal person, and can undertake measures and actions to eliminate discrimination and protect the rights of discriminated person, if the court proceeding has not been initiated. The protector is further charged with providing advice to the complainant in this domain; conciliating between parties; alerting the public about the appearances of severe discrimination; collecting data and keeping records of cases of discrimination and, finally, promoting equality and submitting reports to the Parliament of Montenegro on the on the activities conducted regarding protection from discrimination and promotion of equality.

For cases involving discrimination, the Ombudsperson analyses whether or not there is indeed evidence of discrimination. If there is *a priori* appearance of discrimination concerning more than one person, the Ombudsperson gets involved or initiates the court proceedings with the consent of the complainants. The following groups are the most concerned by discrimination: persons with disabilities, women, LGBT persons as well as Roma and other minorities. The Ombudsman intervened successfully in many cases.

Discrimination may also result from actions of public institutions. The Ombudsperson borrows his legal personality from the State. In this situation he can't initiate the judicial proceedings against the national authorities, he can only get involved in them. In the past two years, the Ombudsperson has got involved in four such cases.

The Ombudsman takes a case in charge *ex officio* or following a complaint of anyone who believes that his/her rights and freedoms have been violated (Article 28 of the Law). In the case of violations of the rights of a child, his/her parents, guardians or legal representatives may file the complaint (Article 30 of the Law).

The Ombudsperson refers complainants to the relevant institutions and provides legal advice. The Ombudsperson does not follow the cases of persons referred to other institutions any further, as s/he does not have such jurisdiction. Point 2 of Article 21 of the Law on prohibition of discrimination forms the legal basis for the Ombudsman to provide information to the complainant about his/her rights and duties, as well as about possibilities of court and other protection. It should be noted that the ombudsperson's obligation to provide legal advice is not established by the Law on the Protector of Human Rights and Freedoms and should be limited to the cases involving discrimination.

According to Article 18, the Protector may initiate the adoption of laws, other regulations and general acts for the purpose of harmonization with internationally recognized standards in the area of human rights and freedoms. The relevant authority shall be obliged to make a statement about this initiative. If he deems it necessary for the protection and promotion of human rights and freedoms, the Protector can recommend a legal proposal, other regulation or general act.

The Ombudsperson may initiate a proceeding before the Constitutional Court for the assessment of conformity of laws with the Constitution and confirmed and published international treaties or the conformity of other regulations and general acts with the Constitution and laws (Article 19 of the Law).

II Montenegrin disability discrimination case law and practice

In 2014, the Government in Montenegro adopted an action plan (available at: Montenegro ACTION PLAN - Open Government Partnership, visited 14 October 2016) in the context of strategy for the integration of persons with disabilities. However, this action plan on adaptation of facilities in public use to enhance access and movement of people with disabilities to the public institutions was only partially realised by the authorities. The adaptation measures remained unspent and had to be returned.

As a consequence, the Association of Youth with Disabilities in Montenegro lodged a complaint and initiated a set of three proceedings on discrimination of disabled persons deprived of right to education and employment due the lack of access to public institutions (Health centres, schools). The proceedings were lodged against the Montenegrin Parliament, Hypo Alpe Adria Bank Headquarters and the Montenegrin Directorate of Youth and Sport. On 5 June 2014, the High Court in Podgorica upheld the judgment of the basic court as regards the applicants. It ordered the measures to be taken to prevent repetition of discrimination in the future and it awarded 1500 euros of non-pecuniary damages. The complaint was lodged to the Supreme Court in order to exhaust the legal remedies before lodging an application to the European Court of Human Rights.

On 10 December 2008, Ms Marijana Mugosa, a blind lawyer in the support service of the municipal Parliament, was deprived of access to her workplace

when she came, as usually, with her guide dog. At that time, the national legislation allowed the use of guide dogs; Ms Mugosa lodged a complaint about the lack of access to her workplace against the Mayor of Podgorica who delivered the order to prohibit this access. In February 2012, the High Court of Montenegro upheld the judgment of the basic court and ordered the access to official premises in the workplace for the blind lawyer. In 2102, the basic court in Podgorica also sanctioned the refusal of access to the restaurant for a visibly blind person, Mr Rados Pavicevic with his guide dog.

Montenegrin Government and Ombudsman don't have any experience in regard to disability discrimination cases before the European Court of Human Rights. The legal and judicial culture is quite young and therefore it is impossible to analyse the application of the ECHR case law and to find the eventual examples of exemplary interpretation or misinterpretation of the Convention. However, there are cases, which are worth mentioning because they concern problematic area of access for disabled persons to beach (*Botta v. Italy* (no. 21439/93), public places (*Zehnalova and Zehnal v. the Czech Republic* (no. 38621/97)) and polling stations (*Molka v. Poland* (no. 56550/00)).

CONCLUSIONS

The rights of disabled persons are protected under the European Convention on Human Rights, more specifically Article 14 of the Convention and its Protocol 12. Among the EU legal instruments, Article 19 of the European Community Treaty, Article 21(1) of the EU Charter of Fundamental Rights and Directive 2000/78 EC serve specifically disabled persons' rights' protection. The European Union is also a part of the UN Convention on the Rights of Persons with Disabilities. Taking into account that Montenegro is in the accession process to become a Member of the European Union, its internal legislation has to comply with the EU and UN provisions in this area before it joins this organization. Montenegro also ratified the European Social Charter, which is therefore applicable and protects the rights of disabled persons (Article E and Article 15).

The analysed case law of the European Court of Human Rights has a direct and deep impact on the national legal reality. If the European Court of Human Rights finds a violation of the right protected by the Convention, the judgment is implemented by a legislative amendment (general measures) or by modification of the case law, for example by reopening of the proceedings (individual measures).

The Court of Justice of the European Union delivers the interpretation of the law only within the limits of the provisions of European Union treaties and the general principles of EU law. This has a very strong impact on the application of national legislation, but it does not change its shape or content.

The Court of Justice of the European Union has analysed many cases concerning disabled persons, among them the cases in which it has clarified the notion of disability (*Jette Ring, Fag og Arbejde* (FOA)) or ruled on harassment by association in the case of the mother of a disabled child (*Coleman v. Attridge Law*).

The European Court of Human Rights broadly interprets the Convention as regards the rights of disabled persons because they are a vulnerable group which needs strong legal protection. Firstly, there is a group of cases where the Court refers to the prohibition of discrimination (*Guberina v. Croatia*). Secondly, there are all other substantive rights of disabled persons pointed out by the Court: The right to life (*Nencheva and Others v. Bulgaria*), prohibition of torture, inhuman and degrading treatment (*Price v. the United Kingdom*), the right to liberty and security (*H. L. v. the United Kingdom*), the right to a fair trial (*Fracaş v. Romania*), the right to private and family life (*Saviny v. Ukraine*), the right to marry (*Lashin v. Russia*), and the right to vote (*Alajos Kiss v. Hungary*).

The European Convention on Human Rights (2004) and the European Social Charter (2010) are binding for Montenegro. Montenegro must implement EU rules in order to become a Member of the European Union. According to the Law on the prohibition of discrimination (2010), the Protector of Human Rights and Freedoms of Montenegro is competent to act on complaints relating to discriminatory treatment and to get involved or initiate the court proceedings, initiate adoption of laws, and proceed before the Constitutional Court for the assessment of conformity of laws with the Constitution. In Montenegro, the most concerned by discrimination groups are: persons with disabilities, women, LGBT persons as well as Roma and other minorities.

The gap between the established legislation in accordance with human rights standards and legal practice and case law still exists as regards the prohibition of disability discrimination.

Concerning disabled persons, there are cases when, because a disabled person is being accompanied by a guide dog, they are deprived of the right to education or employment due to lack of access to public institutions, the workplace or a restaurant, (*Association of Youth with Disabilities in Montenegro v. the Montenegrin Parliament, Hypo Alpe Adria Bank*

Headquarters and the Montenegrin Directorate of Youth and Sport; Ms Marijana Mugosa v. Mayor of Podgorica). Judicial and non-judicial practices should be improved with the efficient implementation of the case law of the European Court of Human Rights.

The Ministry for Human and Minority Rights has an important role in the executive authority, when it comes to protection of human rights and protection from discrimination of people with disabilities, and promotion of equality and tolerance. The recommendations for harmonization of sixty laws with the Constitution of Montenegro, the Law on Prohibition of Discrimination, the Law on Prohibition of Discrimination of People with Disabilities and the Law on the Protector of Human Rights and Freedoms were adopted by the Montenegrin Government in September 2016.