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## **EUROPEAN SOCIAL CHARTER**

7<sup>th</sup> 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 01/01/2013 - 31/12/2016
- Complementary information on Article 1§1, 1§4, 9, 10§2, 10§3, 15§1, 15§2, 15§3 and 24 (Conclusions 2016)

Report registered by the Secretariat on

26 December 2017

**CYCLE 2018**





*Government of Montenegro*

*Ministry of Labour and Social Welfare*

**7<sup>th</sup> NATIONAL REPORT ON THE APPLICATION OF THE  
EUROPEAN SOCIAL CHARTER (Revised) FOR 2017**

**Conclusions 2014/ Conclusions 2016**

**MONTENEGRO**

**December 2017**

## **Article 2 – Right to just conditions of work**

### *Paragraph 1 - Reasonable working time*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee asks whether there is a limit to the maximum daily working time.**

*Answer:*

*According to Article 64 of the Constitution of Montenegro ("Official Gazette of Montenegro", No. 1/2007 and 38/2013), it was determined that employees have a right to a limited working time. Limited working hours is the constitutional and legal right of an employee. Full-time employment is scheduled on weekdays, with respect to daily and weekly breaks of at least 24 hours in a week. With a minimum duration of weekly rest vacation, the working week is six working days and the seventh is used as a day of rest.*

*The Labour Law stipulates that full-time working hours are 40 hours a week. The collective agreement may only specify working hours with less than 40 hours a week.*

*The decision on the work schedule, rescheduling, shorter working hours and introduction of overtime work shall be enacted by a relevant body of an employer. The schedule, the start and finish of working hours for specific activities and for specific positions shall be defined by the decision of a relevant state body or local government body.*

*An employer shall pass a written decision on the schedule of working hours for the employees and their distribution in shifts, if the employer's work is organized in shifts.*

*In this regard, the Decree on Organization and Manner of Work of State Administration ("Official Gazette of Montenegro" No. 05/2012, ... 3/2017) prescribes that working days in public administration bodies are Monday, Tuesday, Wednesday, Thursday and Friday and that the working hours start at 7.00 a.m. and finish at 3:00 p.m. and/or the daily working hours are limited to eight hours. These eight hours shall include a 30-minute rest period.*

*The work schedule of the public administration body for employees working on positions continuously or in shifts shall be determined by the minister and/or the head of the administrative body. Customer service hours of operation shall be determined in the manner that the activities related to rights and obligations of the clients shall be exercised timely and efficiently.*

*The public administration body shall inform the public on working hours of the public administration body and/or customer service hours of operation in the media, a notice board or in other appropriate manner.*

The Committee notes that Articles 54 and 55 regulate flexible working time arrangements.

The Committee understands that under flexible working time arrangements the average working week may not exceed 40 hours within the reference period of one year. **The Committee asks if this understanding is correct. It also asks whether under the flexible working time arrangements limits are established to the maximum daily and weekly working hours.**

*Answer:*

*Work longer than full-time and/or overtime work may only last for such a period required to eliminate the cause of its introduction, but not longer than 10 hours a week.*

*Furthermore, the law prescribes the obligation of introduction of overtime work (Article 50) in emergency situations such as natural hazards (earthquakes, floods, and other), fire, explosions, ionizing radiation and significant sudden breakdown of facilities, equipment and installations, epidemics or diseases threatening human life or health, endangering livestock or herbal stock or other tangible assets, larger pollution of water, food and other objects for human or livestock nutrition, traffic or other accidents that endangered human life or health or tangible assets to a larger extent, the need to immediately provide urgent medical help or other immediate medical service, the need to perform urgent veterinary intervention. The duration of such introduced overtime in emergency situations can be extended exceptionally until the elimination of the cause of its introduction, i.e. the maximum working time limit for such situations is not prescribed.*

**The Committee asks the next report to provide information regarding any violations of working time regulations identified by the Labour Inspectorate.**

*Answer:*

*In carrying out inspection supervision, the Labour Inspection controls the working hours of employees, which according to the Labour Law is 40 hours a week (full-time). However, working hours may last longer than full-time work (overtime) for reasons and in cases outlined in the law. Overtime work may only last for such a period required to eliminate the cause of its introduction, but not longer than 10 hours a week and it shall be introduced upon a written decision of the employer prior to the beginning of such work. In carrying out inspection supervision, the Labour Inspection has identified cases where the employer violated a regulation that relates to the obligation to make a written decision before the introduction of overtime work. During inspections, no cases of unreasonable 16 working hours were detected, although if there are such cases, it is difficult to establish them because there are no valid records.*

**The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.**

*Answer:*

*The Labour Law stipulates that a health institution may introduce overtime work (work on duty), if new employment, introduction of work in shifts or rescheduling of work cannot provide continuous hospital and out-patient health care.*

*The Branch Collective Agreement for Health Care Activity ("Official Gazette of Montenegro", No. 30/16) regulates the issue of increased salary during the work on duty as well as on-call duty. Health care institution, depending on the form of health care it provides, organizes and introduces work in shifts, rescheduling of working hours, work on duty and on-call duty in accordance with the Law and other regulations.*

*Article 18 of the said collective agreement stipulates that the basic salary of an employee shall be increased during hours on duty, as follows:*

*- for 24 hours (from 7 AM to 7 AM the following day) 15% of the accounting value of the coefficient expressed as gross amount, increased by the employee's coefficient determined by Article 11 of this contract and for the years of service,*

*- for 16 hours (from 3 PM to 7 AM the following day) 10% of the accounting value of the coefficient expressed as gross amount, increased by the employee's coefficient determined by Article 11 of this contract and for the years of service,*

*In addition to the rights referred to in paragraph 1 of this Article, an employee has the right to use a day-off on the basis of work on duty. The absence from work referred to in paragraph 2 of this Article can only be used by an employee on the first following working day after the completion of work on duty.*

*When it comes to on-call duty, it is stipulated (Article 19 of the Branch Collective Agreement for Health Care Activity) that the employer is obliged to pay the employee 10% of the employee's hourly rate for every hour spent on call at home. Therefore, work on duty and being on-call is not counted as a break, and the employees receive adequate and above mentioned increased salary for such periods on duty.*

*The Branch Collective Agreement for the Activities of Agriculture, Food and Tobacco Industry and Water Management prescribes that the employer is obliged to increase the basic pay of the employer by 15% per hour for every hours on call at home, if he reported for duty at the employer's call.*

## **Article 2 – Right to just conditions of work**

### *Paragraph 2 – Public holidays with pay*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee asks the next report to provide updated information on the new General Collective Agreement reached.**

#### *Answer:*

*The Government of Montenegro, the Management Board of the Union of Employers of Montenegro, the Assembly of the Confederation of Trade Unions of Montenegro and the Main Board of the Union of Free Trade Unions of Montenegro have concluded a General Collective Agreement published in the Official Gazette of Montenegro no. 14/14 of 22 March 2014. The implementation of this collective agreement is monitored by the contracting parties. This collective agreement was concluded for two years. In this regard, after two years, the contracting parties signed an Agreement for the extension of the application of the General Collective Agreement ("Official Gazette of Montenegro", No. 39/16 of 29.06.2016) with the deadline for application until June 2018.*

*The Contracting Parties shall establish a Board for the monitoring, application and interpretation of this collective agreement. The Board has six members, of which one member is appointed by trade unions, signatories to this contract, and two members are appointed by the Union of Employers of Montenegro and the Government of Montenegro. The Rules of Procedure closely regulate the way of work and other issues of relevance to the work of this Board. The Board gives expert interpretations and opinions regarding the Collective Agreement, and at least once a year, it informs the signatories of the application of this Collective Agreement.*

**Committee asks for clarifications concerning the increased compensation granted in case of work performed on public non-working holidays, that is whether the minimum compensation granted in such cases corresponds to 100%, 150% or more of the usual wage and whether such compensation includes the normal salary paid in respect of the public holiday with pay or whether it is paid in addition to the normal wage. The Committee also asks the next report to clarify whether an exhaustive list of criteria exist to identify the circumstances under which work is allowed during public holidays.**

#### *Answer:*

*National and other holidays and the manner of their celebration are regulated by the Law on State and Other Holidays. This Law envisages that certain economic entities, if the nature of the activity or technology requires continuous work, can also work on holiday days, and the license for the work of these entities is issued by the administrative authority in charge of economic affairs (Ministry) in accordance with the criteria and rules that it prescribes. Criteria and rules have not been passed. Compensations for work on state and religious*

*holidays are considered to be supplements and they are paid together with earnings, that is, when the salary is paid.*

*The General Collective Agreement stipulates that the salaries of employees shall be increased per hour by 150% for work during national or religious holiday. The competence of the labour inspection relates to the control of the realization of the employee's right to increase the salary for working on national holidays, and the increase is recorded in the employee's payroll. The salary of employees shall consist of: starting salary, salary for work performed and time spent working in the prescribed working conditions (basic salary), salary increase, salary based on the results of work achieved and fringe benefits.*

*The basis for the calculation of salary increase shall be obtained by multiplying the accounting value of the coefficient and the coefficient of the complexity of learning outcomes achieved (complexity coefficient). The accounting value of the coefficient for the average of 174 hours in the gross amount shall be determined by a separate agreement between the signatories of the present collective agreement.*

*The General Collective Agreement defines the basic groups of jobs with coefficients for determining salaries based on the complexity of the learning outcomes achieved, as follows:*

<i>Level coefficient</i>	<i>Complexity</i>
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*The first level*

<i>a) Sub-level 1</i>	<i>1.03</i>
<i>- Qualification gained through completion of a part of the basic education programme (at least the first cycle of basic education or functional literacy programme completed);</i>	
<i>- Professional qualification;</i>	

<i>b) Sub-level 2 (I2):</i>	<i>1.29</i>
<i>- Qualification of primary education completed;</i>	
<i>- Professional qualification;</i>	

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<i>The second level</i>	<i>1.65</i>
<i>- Qualification of lower vocational education (120 MCTS credits);</i>	
<i>- Professional qualification;</i>	

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<i>The third level</i>	<i>2.00</i>
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- *Qualification of secondary vocational education (180 MCTS credits);*
  - *Professional qualification;*
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*The fourth level*

*a) Sub-level 1* 2.27

- *Qualification of secondary general and vocational education (240 MCTS credits);*
- *Professional qualification;*

*b) Sub-level 2 (IV2):*

2.52

- *Qualification of a craftsman (60 MCTS credits);*
  - *Diploma obtained for the fifth level of education, craftsman exam and specialisation within the framework of vocational education with the IV2 sub-level of qualifications;*
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*The fifth level*

2.88

- *Qualification of a two-year post-secondary vocational education (120 MCTS credits);*
  - *Professional qualification;*
- 

*The sixth level*

3.09

- *Qualification of a two-year post-secondary education (180 MCTS credits);*
  - *Professional qualification;*
  - *Diploma obtained for completed two-year education at university (equivalent to the reference level of the Qualification Framework);*
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*The seventh level*

*a) Sub-level 1* 3.40

- *Qualification of a higher education (240, 180+60, 300, or 360 MCTS credits);*
- *Professional qualification;*
- *Qualification of a higher education – Bachelor (240 MCTS);*
- *Qualification of the seventh level of education (qualification acquired under the regulations that were in force before the entry into force of the Law on Higher Education of 2003);*
- *Qualification of a higher education - Specialist (240 MCTS);*

*b) Sub-level 2*

3.71

- *Qualification of a higher education – Master’s degree (180+120 or 240+60 MCTS credits);*
- *Professional qualification;*

*- Qualification of a higher education Master of Science (qualification acquired under the regulations that were in force before the entry into force of the Law on Higher Education of 2003);*

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*The eighth level*

4.12

- Qualification of a higher education – Doctor of Science (300+180 MCTS credits);*
- Qualification of a higher education Doctor of Science (qualification acquired under the regulations that were in force before the entry into force of the Law on Higher Education of 2003);*
- Professional qualification.*

## **Article 2 – Right to just conditions of work**

### *Paragraph 6 – Information on the employment contract*

**The Committee takes note of the information contained in the report submitted by Montenegro and asks whether the length of period(s) of notice in case of termination of the contract or employment relationship are also specified in writing (in the contract or another document).**

#### *Answer:*

*An employee shall have the right and duty to remain working for at least 30 days as of the day of receipt of termination of the contract of employment, i.e. decision on termination of employment (termination notice), in cases determined by collective agreement and contract of employment. The Labour Law prescribes the contents of contract of employment but other elements of the contract can be agreed, as well as other rights and obligations in accordance with the law and the collective agreement, as well as the length of termination notice in case of termination of the contract of employment.*

## **Article 4 – Right to a fair remuneration**

### *Paragraph 2 – Increased rate of remuneration*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee notes however that the application of the General Collective Agreement ended at the end of 2011. The Committee asks the next report to provide information on the increased remuneration rate for overtime hours, as established by the new General Collective Agreement.**

#### *Answer:*

*The Government of Montenegro, the Management Board of the Union of Employers of Montenegro, the Assembly of the Confederation of Trade Unions of Montenegro and the Main Board of the Union of Free Trade Unions of Montenegro have concluded a General Collective Agreement published in the Official Gazette of Montenegro no. 14/14 of 22 March 2014. This collective agreement was concluded for two years. In this regard, after two years, the contracting parties signed an Agreement for the extension of the application of the General Collective Agreement ("Official Gazette of Montenegro", No. 39/16 of 29.06.2016) with the deadline for application until June 2018.*

*When it comes to overtime compensation, the valid General Collective Agreement regulates this issue in an identical way, so the salary of an employee is increased per hour by at least 40% for work longer than the full-time working hours (overtime work).*

The Committee recalls that the right of workers to an increased rate of remuneration for overtime work allows for exceptions in certain specific cases. These "special cases" have been defined by the Committee as senior state employees and management executives of the private sector (Conclusions IX-2 (1986), Ireland). **The Committee asks whether the legislation provides for such exceptions.**

#### *Answer:*

*The law does not provide for such exceptions.*

**The Committee asks whether the employees are entitled to days off in lieu of the remuneration for overtime work and if so, whether it is of an increased duration.**

#### *Answer:*

*The Labour Law and the General Collective Agreement do not provide for the possibility of replacing the increase in salary for overtime with days off. Also, such a possibility is not foreseen by the Law on Civil Servants and State Employees ("Official Gazette of Montenegro", No. 39/11) or the Branch Collective Agreement for the Administration and Justice Sector ("Official Gazette of Montenegro", No. 18/15).*

## **Article 4 – Right to a fair remuneration**

### *Paragraph 3 – Non- discrimination between women and men with respect to remuneration*

The Committee notes that the report of Montenegro contains no information regarding this provision.

In the General Introduction to Conclusions 2002, the Committee indicated that national situations in respect of Article 4§3 (right to equal pay) would be examined under Article 20 of the Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4§3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under thematic group 1: "Employment, training and equal opportunities", as well as under thematic group 3: "Labour rights"). Henceforth, the Committee invites Montenegro to include all information on equal pay every time it reports on Thematic Group 1 or Thematic Group 3.

**Therefore, the Committee requests that the next report on Article 4§3 provide information regarding the situation with respect the equal pay for work of equal value. In particular, the Committee wishes to be informed on the legal basis of equal pay for the work of equal value, the guarantees of enforcement, the judicial safeguards as well as methods of comparison and other measures taken to ensure equal pay between women and men.**

### *Answer:*

*The Labour Law establishes a principle of equality in the sphere of work on all bases and in relation thereto it prescribes prohibits discrimination, both direct and indirect of employed persons, on the grounds of gender, birth, language, race, religion, colour of skin, age, pregnancy, health condition, or disability, nationality, marital status, family responsibilities, sexual orientation, political or other beliefs, social background, financial status, membership in political and trade union organisations or any other personal feature.*

*Direct discrimination, pursuant to this Law, shall include any treatment based on any of the listed grounds whereby an employed person is placed in a less favourable position in comparison to other persons in the same or similar situation.*

*Indirect discrimination, pursuant to this Law, exists when a certain provision, criterion or practice places or would place a person seeking employment and an employed person in a less favourable position in comparison to other persons on the basis of his or her particular characteristic, status, orientation or belief.*

*Discrimination is prohibited, inter alia, in relation to terms of employment and all rights arising from employment relationship and provisions of a contract of employment introducing discrimination on any of the grounds shall be null and void.*

### *Legal basis of equal pay*

The Committee asks the next report to provide information on the legislative framework guaranteeing the right to equal pay.

*Answer:*

*The Labour Law equals men and women concerning the right to equal pay. The Labour Law establishes a principle of equality in the sphere of work on all bases and in relation thereto it prescribes prohibits discrimination, both direct and indirect of employed persons, on the grounds of gender, birth, language, race, religion, colour of skin, age, pregnancy, health condition, or disability, nationality, marital status, family responsibilities, sexual orientation, political or other beliefs, social background, financial status, membership in political and trade union organisations or any other personal feature.*

*Direct discrimination, pursuant to this Law, shall include any treatment based on any of the listed grounds whereby an employed person is placed in a less favourable position in comparison to other persons in the same or similar situation.*

*Indirect discrimination, pursuant to this Law, exists when a certain provision, criterion or practice places or would place a person seeking employment and an employed person in a less favourable position in comparison to other persons on the basis of his or her particular characteristic, status, orientation or belief.*

*Discrimination is prohibited, inter alia, in relation to terms of employment and all rights arising from employment relationship and provisions of a contract of employment introducing discrimination on any of the grounds shall be null and void.*

*Article 77 of the Labour Law stipulates that an employee man or woman shall be guaranteed the same salary for the same work or work of the same value performed with an employer. An employer's decision or an agreement with an employee which is not in accordance with this provision shall be null and void. Work of the same value shall include work for which the same level of professional education, or the level of their education, or professional qualification, responsibility, skills, working conditions and work results are required. In case of violation of these rights, an employee shall be entitled to an indemnification in the amount of the unpaid portion of the salary.*

## *Guarantees of enforcement and judicial safeguards*

The Committee asks what rules apply as regards the guarantees of enforcement of the equal pay principle, burden of proof, sanctions as well as domestic case law on equal pay litigations.

*Answer:*

*The employer is obliged to pay to an employee the agreed salary for performed work in accordance with the law, the collective agreement and the contract on employment. In case of discrimination, in terms of the provisions of the Labour Laws dealing with the issue of non-discrimination, an employee may initiate proceedings before a relevant court in accordance with the law. The employer shall decide on the rights and obligations of the employees arising from and based on employment, in accordance with the law, collective agreement and contract of employment. An employee who believes that the employer has violated any of his/her rights arising from and based on employment may file a claim with the employer to request exercise of the right and an employer shall decide on the request of an employee, within 15 days as of the day of filing the request. That decision shall be final, unless otherwise prescribed by the law and the same shall be delivered to the employee in writing, with explanation and note on the legal remedy within eight days as of the day of expiry of the period for making the decision. An employee who is not satisfied with the decision or who has not received the decision within the prescribed period shall be entitled to initiate proceedings before the relevant court for the purpose of protecting his/her rights within 15 days as of the day of receiving the decision. An employer shall enforce the final court decision within 15 days as of the day of receiving the decision, unless other deadline is prescribed by the court decision.*

*Also, an employee and an employer may entrust the Agency for Amicable Settlement of Labour Disputes with resolving disputes arising from and based on employment, in accordance with a special law. The Constitution of Montenegro prescribes the prohibition of any direct or indirect discrimination on any ground (the Constitution of Montenegro, "Official Gazette of Montenegro", No.1/ 2007 and 38/2013-Amendments I-XVI, Article 8 paragraph 1). Gender equality is also one of the constitutional principles, and the state guarantees equality between women and men and develops a policy of equal opportunities.*

*The principle of the prohibition of discrimination is regulated in detail by the Labour Law ("Official Gazette of Montenegro", No. 49/2008, .. 53/2017 – Art. 5-11), whereby is provided for the prohibition of discrimination of a person seeking employment and an employed person, on the grounds of gender. An employee man or woman shall be guaranteed the same salary for the same work or work of the same value performed with an employer. In case of discrimination, and in the sense of the provisions of the Labour Law, a person seeking employment, and an employee, may initiate proceedings before a relevant court in accordance with the law.*

*The guarantee of the protection of rights based on the equality of men and women is also provided in a special law - the Law on Gender Equality ("Official Gazette of Montenegro", No. 46/2007, 40/2011 and 35/2015 - Article 2) whereby equal benefit from achieved results is prescribed.*

*Prohibition of discrimination, protection against discrimination, as well as the promotion of equality, is being implemented in accordance with the law on prohibition of Discrimination ("Official Gazette of Montenegro", no. 46/2010, 40/2011, 18/2014 and 42/2017). Pursuant to legal provisions, which regulate this area in detail, discrimination is any legal or actual distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, which is, inter alia, based on gender. The right to protection against discrimination belongs to all natural persons, if they are discriminated on any of the grounds and the law applies to the public and private sectors. An explicit prohibition of discrimination in the field of labour is envisaged in Article 16 of the law on prohibition of Discrimination. Discrimination on the basis of gender identity is set out in Article 19 of the said Law in the manner that it is determined that any differentiation, unequal treatment or bringing a person or the group of persons in an unequal position based on gender identity, shall be deemed to be discrimination.*

*The same law prescribes the manner of securing court protection in cases of discrimination. Namely, anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection. In addition to a discriminated person or group of persons, a lawsuit may also be filed by organizations or individuals who are dealing with the protection of human rights, only with the written consent of a discriminated person or a group of persons. The court decides in civil proceeding for the violation of the principle of non-discrimination, to which the provisions of the Law on Civil Procedure apply. In the dispute for protection from discrimination, the proceedings are urgent, and the revision, and/or extraordinary legal remedy decided by the Supreme Court of Montenegro, is always allowed. By lawsuit can be claimed the establishment of the fact that the respondent has acted discriminatory against the plaintiff, the prohibition of exercising the activity that bears potential treat of discrimination, i.e. prohibition of repetition of discrimination activity; removing the consequences of discriminatory treatment; compensation of damage, in accordance with the law; publication of the judgement establishing discrimination in the media, on the expenses of respondent.*

*When it comes to the burden of proof, if the plaintiff proved the likelihood of respondent committing an act of discrimination, the burden of proving that due to that act the violation of equality in rights and equality before the law did not occurred, passes on the respondent. This rule on the burden of proof also applies in the proceedings for protection against discrimination before the Protector of human rights and freedoms. The lawsuit may be filed within one year from the day of cognition for the committed discrimination, or within three years from the date of the discrimination. Prior to initiation or during the lawsuit proceedings, upon the proposal of the party, the court may pass temporary measures, of which is obliged to deliver a decision without delay.*

*In terms of the Law on Prohibition of Discrimination, appropriate misdemeanour sanctions are foreseen, depending on the grounds and specific forms of discrimination. A fine of EUR 1,000 to 20,000 EUR shall be imposed for misdemeanour on a legal entity if it differentiate, treat unequally or bring a person or a group of persons in an unequal position based on gender identity, sexual orientation and/or intersexual characteristics. Also, for the same offense, the responsible person in a legal person, state body, state administration body, local self-government body and a local government body shall be fined in the amount of EUR 500 to EUR 2,000. An entrepreneur shall be also fined in the amount of EUR 300 up to EUR 6,000, as well as a natural person with a fine from EUR 150 to EUR 2,000.*

*By checking the data of the competent misdemeanour courts, it was established that there were no initiated misdemeanour proceedings on the stated basis.*

*Regarding the application of the rules of international law in the field of anti-discrimination, we emphasize that, in accordance with the constitutional principle, the confirmed and published international treaties and generally accepted rules of international law are an integral part of the internal legal order, have primacy over domestic legislation and are directly applied when relations are regulated differently from internal legislation. Therefore, when considering all cases of discrimination, the courts have also in mind the standards envisaged by the European Convention on Human Rights and Fundamental Freedoms (Article 14 of the Convention and Article 1 of Protocol No. 12), respecting the general prohibition of discrimination. Another important instrument in this area is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Montenegro acceded thereto through succession proceedings. It is important to note that judges are continuously trained on the application of anti-discrimination rules of CEDAW and informed about the relevant practice of the European Court of Human Rights.*

*In order to provide a comprehensive answer to the question raised in relation to domestic jurisprudence in disputes related to equal pay, data were obtained from all competent courts (for the purposes of the preparation of the report, data on court decisions of the Basic Courts in Bar, Berane, Bijelo Polje, Danilovgrad, Zabljak, Kolasin, Kotor, Niksic, Plav, Pljevlja, Podgorica, Rozaje, Ulcinj, Herceg Novi and Cetinje, as well as the Misdemeanour Courts in Budva, Bijelo Polje and Podgorica). Data check established that for the period from 01 January 2016 until the reporting date, there were no disputes cases relating to equal pay for women and men in judicial practice.*

#### *Methods of comparison and other measures*

The Committee asks whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

The Committee asks for statistical data concerning the pay gap of men and women in all sectors of activity (unadjusted gap) as well as for work of equal value.

*Answer:*

*The salary of employees shall consist of: starting salary, salary for work performed and time spent working in the prescribed working conditions, salary increase, salary based on the results of work achieved and fringe benefits. The collective agreement with the employer or general act of the employer shall determine the criteria and standards for evaluating work results and incentives for achieving better work results. If no standards and criteria for the evaluation of work results achieved were determined, it shall be deemed that an employee achieved the standard work result for the time spent working during the working hours. These provisions apply equally to employed men and women.*

*In addition to the Labour Law, the issue of salaries is regulated in more detail by branch collective agreements such as determining a group of jobs and jobs with coefficients for determining the labour cost based on the necessary expertise and complexity, and the collective agreement with the employer develops and determines the coefficients of complexity for all jobs from the act of systematization. In Montenegro, there is a wide network of branch collective agreements concluded for 20 branches of activity, as follows:*

- *Branch collective agreement for the Metallurgy, Metalworking Industry and Machinery Industry, Devices and Vehicles*
- *Branch Collective Agreement for the Activities of Agriculture, Food and Tobacco Industry and Water Management*
- *Branch Collective Agreement for the Activities of Forestry, Wood Processing, Production and Processing of Paper*
- *Branch Collective Agreement for Road Transport*
- *Branch Collective Agreement for Energy*
- *Branch Collective Agreement for the Civil Works*
- *Branch Collective Agreement for Chemical, Pharmaceutical and Textile Industry*
- *Branch Collective Agreement for Informational, Graphic and Publishing Activities*
- *Branch Collective Agreement for the Field of Culture*
- *Branch Collective Agreement for the Field of Education*
- *Branch Collective Agreement for Maritime Traffic and Port Services*
- *Branch Collective Agreement for Social Activity*
- *Branch Collective Agreement for Housing-Utility Activity*
- *Branch Collective Agreement for the housing and communal activities of Montenegro*
- *Branch Collective Agreement for Telecommunications*
- *Branch Collective Agreement for Institutions of Pupils & Students Standards*
- *The Branch Collective Agreement for Health Care Activity*
- *Collective Agreement for the Activity of Tourism and Catering of Montenegro*
- *Branch Collective Agreement for the Administration and Justice Sector*
- *Collective Agreement for the Public Institution “Centre for Vocational Education“*
- *Collective Agreement for the Public Institution “Examination Centre“.*

*The Statistical Office of Montenegro presents data on average earnings paid out in a month (year) in the "Statistical Yearbook" and are obtained from the regular monthly statistical survey Monthly report on employed persons and their earnings. Coverage of data on average earnings of employed persons in enterprises, institutions, cooperatives and organizations of private, mixed or state ownership include average earnings of persons employed on a permanent or temporary basis, no matter whether they work full-time, part time or short time. The organizational-territorial observation principle is used for a survey on earnings, whereas municipality represent a basic territorial unit. From 2011, the Law on Classification of Activities have been implemented; therefore, the data on earnings in this Yearbook are presented according to the new Classification of Activities. The monthly survey on employed persons and earnings covers around 70% of total number of employed persons. Calculation of the average gross earnings is done so that the total sum of all monthly earnings is divided by the number of employees to whom the paid earnings refer. Net salaries and wages are tax and contributions deducted (gross) salaries and wages. Index real average wage without taxes and contributions is the relationship between indices of nominal average wage without taxes and contributions (net), and the index of consumer prices. Statistical Yearbook publishes average earnings only by NACE.*

*(Source: publication "Statistical Yearbook 2016" MONSTAT)*

## **Article 4 – Right to a fair remuneration**

### *Paragraph 5 – Limit to wage deduction*

The Committee takes note of the information contained in the report submitted by Montenegro.

It is the first time it examines the protection of wages that applies in Montenegro.

**The Committee asks the next report to include information on the following points:**

**claims (such as tax debts, civil-law claims, trade union dues or fines) liable to result in deductions from wages in circumstances not covered by the Labour Law;**

**exceptions to the limitation of deductions to one third of the wage provided for by section 85, paragraph 2 of the Labour Law and the level of protected wages;**

**circumstances in which workers may waive the limitation on deductions from wages provided for by the law.**

**The Committee notes that damage caused intentionally or by serious negligence to employers or third parties by the employee may give rise to deductions from wages pursuant to section 133, paragraphs 1 to 4, and section 135 of the Labour Law. It asks for information in the next report on whether establishing liability and quantifying damage in this context require a court decision, or whether this falls within the employer's powers.**

*Answer:*

*The Labour Law provides for situations to withhold employee's salary and wage compensation in such a way that a withheld portion of an employee's salary for the purpose of mandatory alimentation, based on a final court decision, may not exceed a half of his/her salary, and one third of the salary or wage compensation for other obligations.*

*An employer may collect employee's debts by withholding his/her salary or a portion thereof and/or by withholding wage compensation or a portion thereof only upon proceedings being conducted.*

*Severe violations of the working duty is unconscientiously handling with the property of the employer, or causing material damage of large scale determined by an act of the employer for which a disciplinary proceeding may be initiated by the employer or a director or executive director and/or the competent authority on the basis of an application that may be submitted by any employee or knowledge that there has been a violation of the working duty. Therefore, a disciplinary proceeding is conducted at the employer's. The competent authority may entrust the conduct of disciplinary proceedings to a professional person from the*

*administration of the employer or to a third party. In the procedure of determining the liability of the employee, the competent authority or authorized person shall, with the employee's consent, enable the participation of a representative of the trade union of which the employee is a member. Disciplinary proceedings shall be urgent and upon completion of the proceedings, the competent authority shall take a decision which is final and against which the employee may initiate proceedings before the competent court within 15 days of delivery of the decision. Initiation of proceedings before the competent court shall not stay the enforcement of the decision.*

## **Article 5 – Right to organise**

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Forming trade unions and employers' associations***

The Committee asks to be informed on the regulations adopted by the Ministry of Labour and Social Welfare in order to implement Section 155 of the Labour Law. It requests to be informed on the procedures aimed at entering or deleting a trade union from the register. The next report should also contain information on the possibilities of appeal against a decision taken by the Ministry with respect to registration, as well as on the suspensive effect of the appeal procedure.

### ***Answer:***

*Pursuant to Article 1 of the Law on Representativeness of the Trade Unions ("Official Gazette of Montenegro", No. 26/2010 and 36/2013), employees shall, according to their free will, organise in trade unions. The Union shall acquire legal personality on the day of its entry into the Registry of Trade Union Organizations kept by the state administration authority responsible for labour affairs i.e. the Ministry of Labour and Social Welfare. The procedure and method of registration of trade union into the Registry, change of registration, contents, method of keeping and deletion from the Registry is prescribed by the Ministry by the Regulation on the Registration of Trade Union organizations ("Official gazette of Montenegro" no. 33/2010). The trade union organization submits to the Ministry: the application for registration in the Registry, the act on the establishment of a trade union organization, the decision on the selection of a trade union representative, the authorization for the union representative, the statute or rules on the organization and the manner of work of the trade union organization, within 15 days from the date of founding the trade union organization. The Ministry is obliged to register the trade union organization in the Registry and issue a certificate on the registration of the trade union organization within 30 days from the date of receipt of the application and the necessary documentation. The change of name, seat and address of the trade union organization and trade union representative is also entered into the Registry.*

*The aforementioned Rulebook does not provide for an appeal because, in the procedure of entry into the Registry, the Ministry does not issue a decision but a certificate of registration of the trade union organization in the Registry.*

*The trade union organization is deleted from the Registry if it has made a decision on termination of the trade union organization, if the work of the trade union organization is prohibited by a final court decision, in accordance with the law, and if the registration was done on the basis of incorrect information from the applicant, and/or on the basis of an unauthorized person's application, on the day of issuing the final decision in the administrative procedure.*

*An appeal against the decision on the removal of a trade union organization from the register shall be applied in accordance with the Law on General Administrative Procedure, and an administrative dispute may be initiated against this decision by the Administrative Court within 20 days from the date of delivery.*

The Committee asks whether fees are charged for the registration of trade unions and, if so, it wishes to know their amount.

*Answer:*

*The Ministry of Labour and Social Welfare keeps the Registry of Trade Unions ex officio and, in accordance with the Law on Administrative Procedure, it issues the certificates of recorded facts. The trade union organization does not pay any fees related to registration in the Trade Union Registry.*

The Committee asks confirmation that, further to the category of "employees", the right to organise is guaranteed by the legislation also to other categories of workers, including home workers and persons who exercise rights resulting from work.

*Answer:*

*The Labour Law stipulates that employees are guaranteed the right to trade union association and activities, without previous approval, as well as that the trade union organization decides independently on the manner of its representation with an employer. Furthermore, the Law on Representativeness of Trade Unions stipulates that employees organize in trade unions according to their free will.*

*Trade union, in terms of the Law on the Representativeness of Trade Unions is considered to be: a trade union organized at the employer; a trade union organized within a branch of activity, group or sub-group of activities, and trade union organized at the level of Montenegro. Until today, the Ministry of Labour and Social Welfare has not received a request for registration of the trade union organization of workers who work from home and, accordingly, no trade union organization of employees working from home is registered in the Registry of Trade Unions. Each trade union organization, submitting the act on the establishment of a trade union organization, the decision on the election of a trade union representative, the authorization for the union representative and the statute or the rules on organization and the manner of work of the trade union organization, shall be registered in the Registry of trade union organizations.*

*When it comes to the category of pensioners, the Federation of Pensioners' Associations of Montenegro is organized in Montenegro, which is a non-partisan, humanitarian organization that deals with all issues of relevance to the elderly population in Montenegro. The activities of the Federation are regulated through the existence of various bodies: the Steering Committee, the Assembly and numerous commissions in charge of various fields. The*

*Federation is accessible to all interested, throughout the entire territory of Montenegro and through the work of 23 municipal associations of pensioners. The Pensioners' Association cooperates with all relevant institutions and organizations, including the Ministry of Labour and Social Welfare, the Pension and Disability Insurance Fund of Montenegro (PIO Fund) and local self-government. In this way, the Federation is engaged in public representation of interests and rights of pensioners.*

#### *Activities of the Federation of Pensioners' Associations*

*The Federation continuously implements membership actions throughout the territory, such as financing and humanitarian assistance to members, vacations and rehabilitation, socializing and cross-border meetings.*

*The Federation provides relief to all members in resolving housing issues as well as access to health services through cooperation with health care centres. In cooperation with the Pension and Disability Insurance Fund of Montenegro, the Federation provides favourable conditions in numerous resorts for pensioners when it comes to summer and winter holidays. In addition, the Federation has a cooperation agreement concluded with more than 60 companies in which all members can purchase different products with a number of advantages. In cooperation with the Government of Montenegro, as well as other donors, the Federation provides financial or humanitarian assistance to its members through its municipal associations. Along with this, the Federation also deals with organizing sports activities, competitions from different disciplines.*

Article 161 of the Labour Law foresees, *inter alia*, that employers' federations shall file an application with the Ministry for the purpose of registration, and the Ministry shall regulate the method and the procedure of registering employers' federations and closer criteria for determining representativeness of employers' federations. **The Committee asks for information on regulations possibly adopted by the Ministry of Labour and Social Welfare in order to implement Article 161§§2 and 3 of the Labour Law.**

*Answer:*

*The Rulebook on the method and the procedure of registering employers' federations and closer criteria for determining representativeness of authorized associations of employers ("Official Gazette of Montenegro", No. 34/2005) prescribes the method and the procedure of registering employers' federation and closer criteria for determining the representativeness of authorized employers' federation, within the meaning of Article 161 para. 2 and 3 of the Labour Law. The entry into the records of employers' federation is done on the basis of application for the purpose of registration.*

*The application for registration is submitted by the president of the association and/or a person authorized by him, the decision on registration with the competent body and the decision on the election of the president, or the authorization for the person authorized by*

*him. The employers' federation is obliged to report any change in the facts that are entered in the Record Book kept by the Ministry within 15 days of such change date. The employer's federation shall be deleted from the Record Book on the basis of the decision on deletion from the register of associations, issued by the competent authority.*

*An authorized association of employers is considered representative, if it is entered in the Record Book in accordance with the Rulebook, if the members of the association have at least 25% of the employees in the economy of Montenegro and participate in the gross domestic product at least 25% if it has signed a business cooperation agreement with an authorized trade union organization if its main goal and activity is the conduct of social dialogue and collective bargaining, and if it is a member of an international organization of employers dealing with the issue of social dialogue at the international or regional level (IOE or UNICE).*

*If it is established in the procedure that two or more employers' associations fulfil the stated conditions of representativeness, the association of employers for social dialogue and collective bargaining shall be the one whose members have a higher percentage of employees in the economy of Montenegro.*

*The request for determining the representativeness of an authorized association of employers shall be submitted to the Ministry. Along with request, it will also be submitted to the Ministry:*

- Statute of the employers' association;*
- Membership form filled in according to the Statute of the Association;*
- Membership list which contains: the name of the member of the association, the head office (address and telephone number);*
- Evidence of the number of employees of the association;*
- Proof of total income according to the final account for the previous year expressed as a percentage of the gross national product of the Republic, signed by the authorized person and certified by the stamp of the competent authority, which calculates the income;*
- Agreement on business cooperation with the authorized organization of the trade unions;*
- Certificate of membership in an international or regional organization of employers, which deals with the issue of social dialogue and a translation of the certificate certified by a court interpreter.*

*The Ministry decides on the request within 15 days from the date of submission of the request.*

**The Committee wishes to know whether a requirement of minimum membership is established by law or regulation with respect to both trade unions and employers' organisations. In this respect, it recalls that requirements as to minimum numbers of**

members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations (Conclusions XIII-5 (1997), Portugal).

*Answer:*

*Laws and regulations do not specify a minimum membership requirement in relation to trade union and employers' organizations. The Law only prescribes for the conditions for determining the representativeness of trade unions and employers' associations.*

*Freedom to join or not to join a trade union*

The Committee asks whether the Labour Law or any other acts prohibit any closed shop practices (whether pre- or post-entry) or security clauses (automatic deductions from the wages of all workers, whether or not union members, intended to finance a trade union present within the undertaking).

*Answer:*

*The trade union at the employer is composed of its employees and they are included in the union on the principle of voluntariness. Employees and employers are entitled, according to their free will, without prior approval, to establish their own organizations and to join them, under the conditions laid down by the statute and rules of those organizations. The amount of the union membership fee is determined by the Statute of the trade union organization, while the employee, who is a member of the union, is deducted the fee amount from the salary on the basis of the membership application to that trade union organization.*

*For example, the Statute of the Federation of Trade Unions of Montenegro, as a representative organization of trade unions at the level of Montenegro, stipulates that a trade union member pays membership fee per month where he/she is unionized and exercises his/her union rights. The amount of the basic union membership fee, necessary for financing the activities of the Federation is 1% of the salary of a trade union member.*

*In accordance with the General Collective Agreement, the employer shall pay, to the account of a special Fund of the representative trade union at the level of Montenegro, the amount of 0.2% on salary of an employee who is a member of that trade union, as the increased cost in the function of quality performance of work, prevention of work-related disability and recreational leave of employees.*

The Committee asks that the next report contain up to date information on any judicial decisions concerning forms of reprisal or discrimination of workers in the areas of

recruitment, dismissal or promotion in relation to their trade union membership or activities.

*Answer:*

*Due to discrimination of employees in relation to their union membership or activities, one case was terminated in the Basic Court in Bijelo Polje, in which the claim was upheld and it was established that discrimination by the defendant against a plaintiff was done in the manner that the defendant, for a certain period of time, made it impossible her to perform the jobs of the workplace to which she has been deployed. The defendant is prohibited of exercising the activity that bears potential treat of discrimination i.e. the prohibition of repetition of discrimination activity and ordered the removal of the consequences of discriminatory treatment. Due to discrimination made, the defendant is obliged to pay the amount of EUR 1,500 to the plaintiff in the name of compensating for physical pains suffered due to offended honour, dignity and integrity, and to compensate for the costs of the proceedings. The Court found that the defendant treated the plaintiff more unfavourably than the other employee, but that the defendant did not prove the existence of a real and valid reason for doing so, and that the reason for such treatment of defendant is acting of plaintiff in the union activities, indicating certain irregularities in the work of the defendant and participation in a strike of workers. The proceedings have been validly terminated.*

*We are also informing that the Basic Court in Kolasin is in the process of a lawsuit related to the annulment of the decision on the cancellation of the contract of employment of the President of the Trade Union of the PI Cultural Centre of the Municipality of Kolasin. Given that the process is on-going, it is not possible to provide a detailed commentary on this subject. In case of need, and after the case is finally settled, the Supreme Court of Montenegro may provide and submit to the Committee complete information on this case.*

*We point out that the Supreme Court of Montenegro, as the highest court in the country, ensures uniform application of the law by the courts and closely follows the case law of the European Court of Human Rights in order to harmonize national case law with European legal standards in the area of freedom of assembly and association (Article 11 of the European Convention on human rights and fundamental freedoms), i.e. the prohibition of discrimination (Article 14 of the European Convention on Human Rights and Fundamental Freedoms) in employment.*

*The Supreme Court of Montenegro will continue to monitor the field of discrimination based on gender identity as well as the discrimination of workers in the field of employment, dismissal and improvement in order to respect the application of the Revised European Social Charter. Also, representatives of the Supreme Court of Montenegro actively participate in inter-institutional working bodies, initiatives and communication with the non-governmental sector in order to contribute to the quality of gender equality dialogue in the society, the status of women in the field of labour relations and the right of employees of association, as one of the basic civil rights and freedoms.*

*The work program of the Government of Montenegro foresees the adoption of the new Law on the Representativeness of Trade Unions for the III quarter of 2017.*

*The draft of the Law on the Representativeness of Trade Unions was drawn up by a working group comprised of the representatives of the Ministry of Labour and Social Welfare, representative and representatives of all social partners (Union of Employers of Montenegro, Union of Free Trade Unions of Montenegro, and Confederation of Trade Unions of Montenegro).*

*The new Law on the Representativeness of Trade Unions will envisage sanctions including adequate fines - for acts of union discrimination of trade union members and officials based on trade union membership or legitimate trade union activities.*

#### ***Trade union activities***

The Committee recalls that “Article 5 protects not only the right of workers to join or not to join a trade union, but also the right of trade unions to organise freely and to perform their activities effectively, which is essential for the protection of workers’ economic and social interests” (Conclusions XII-2 (1992), Germany). On this basis, trade unions and employers’ organisations must be largely independent when it concerns their infrastructure or functioning. In this respect, the Committee underlines that trade union officials must have access to the workplace and union members must be able to hold meetings at work, insofar as employers’ interests and company requirements permit (Conclusions XV-1 (2000), France) Furthermore, it underlines that excessive limits on the reasons for which a trade union may take disciplinary action against a member constitute an unwarranted interference in the autonomy of trade unions inherent in Article 5 (Conclusions XVII (2004), United Kingdom).

**The Committee asks that the next report provides detailed information on the implementation of the above-mentioned principles. In particular, it wishes to know if the right of trade unions and employers’ organisations to draw up their constitutions and rules and elect their representatives freely is specifically secured. Moreover, the Committee asks whether the above-mentioned organisations have the right to establish federations and confederations and to affiliate with international organisations.**

*Answer:*

*The Labour Act (Article 159) stipulates that an employer is obliged to provide the employees with free exercise of trade union rights. An employer is obliged to provide the trade union organization with the conditions for efficient performance of trade union activities protecting the interests and rights of employees, in accordance with the collective agreement.*

*The General Collective Agreement stipulates that the employer is obliged to provide the union with the conditions for the effective performance of trade union activities, including: - premises for work and holding meetings within business premises of the employer; - technical and administrative support for the work of the trade unions to the extent necessary for the exercise of trade union activities (use of telephone, fax, Internet, bulletin boards, computers, photocopiers), if the employer has these means; - other means and conditions for work of trade unions, in accordance with the collective agreement. The exercise of the said rights shall be regulated by a collective agreement with the employer. The employer shall provide the respect of the following rights to work and activities of trade unions: - the right to participate in trade union activities at the local, national and international levels; - inviolability of trade union Funds, property, trade union premises, trade union correspondence and telephone conversations; - access of the media to trade union premises.*

*The Ministry of Labour and Social Welfare is responsible, on the basis of the prescribed documentation, to register the trade union organization and trade union representative in the Registry of Trade Unions, without interfering with their internal relations, that is, in the process of their selection and the conditions for the adequacy of representatives of employers 'and workers' organizations, the content of the statute and rules of trade union organizations and employers' organizations. Trade union organizations may stipulate by statute or rules that in addition to one trade union representative, which is entered into the Registry, there are also several union representatives within a trade union organization. Trade unions are free to set up associations at the branch level as well as at the level of Montenegro on their own choice, as well as to join international organizations.*

### *Representativeness*

The report states that in accordance with the Law on trade union representativeness ("Official Journal of Montenegro", No. 26/2010 and 36/2013), in order to be recognised as "representative", a trade union must be legally registered, independent from State authorities, employers and political parties, and financed mainly from membership fees and other own sources. It is pointed out that in addition to these legal conditions, within the undertaking representative status is granted to trade unions when they are composed of at least 20% of the total number of employees; at the level of branch activity, group or sub-group of activities, when they have at least 15% of the total number of employees in the branch of activity, group or sub-group of activities; and at national level, if they are affiliated with at least five trade unions at the level of branch activity, group or sub-group of activities and they are composed of at least 10% of the total number of employees in Montenegro. **The Committee wishes to receive detailed information on the provisions establishing the above-mentioned percentages and asks whether the social partners have ever questioned them.**

*Answer:*

*Provisions determining percentage for the representativeness of trade unions are contained in Art. 9, 10 and 11 of the Law on the Representativeness of Trade Unions. These provisions*

*prescribe the conditions for determining the representativeness of the trade union at the employer, at the branch level, group or sub-group of activities and at the national level.*

*The aforementioned provisions were considered again while drafting the Law on the Representativeness of Trade Unions, by the working group, consisting of representatives of the Ministry of Labour and Social Welfare and representatives of all social partners (Union of Employers of Montenegro, Union of Free Trade Unions of Montenegro, and Confederation of Trade Unions of Montenegro).*

*Although the proposal of the Government of Montenegro was to reduce the threshold for determining representativeness, the social partners took a unique position and the stated percentages were retained in the new legal solution, hence the social partners did not question the established percentages. It is expected that the new Law on the Representativeness of Trade Unions will be adopted by the Government of Montenegro by the end of 2017.*

The report indicates that at the enterprise level "trade unions representativeness shall be determined by the director on the proposal of the commission for determining the trade union representativeness". The report specifies that this commission consists of two representatives from the employer, the representative trade union (if it exists at the level of that employer) and the interested trade union. **The Committee asks to receive detailed information on the rules relating to the above-mentioned "director" and "commission" and wishes to know whether this system enjoys the confidence of the social partners.**

*Answer:*

*The Director, within the meaning of the above mentioned provisions, is the head of a legal entity in which the representativeness of the trade union organization is determined.*

*The representativeness of trade union at the employer is determined by the Director at the proposal of the Commission for determining representativeness of trade union. The Commission consists of two representatives: the employer, representative trade union, if it exists at that employer and interested trade union and it is established by the director within five days from the date of application for determining of trade union representativeness.*

*The method of work and decision making of the Commission is regulated in more details by the Rules of Procedure of the Commission, so the Government has no influence on the adoption of the Rules of Procedure and its application.*

*Article 17 of the Law on Representatives prescribes that the Commission formed by the Director within seven days from the date of its establishment makes a proposal by a majority of its members.*

*The Director shall make a decision on determining representativeness of the trade unions within seven days from the date of submitting Commission's proposal.*

*Members of the working group for drafting of the Law on the Representativeness of Trade Unions, consisting of representatives of the Ministry of Labour and Social Welfare,*

*representative and representatives of all social partners (Union of Employers of Montenegro, Union of Free Trade Unions of Montenegro, Confederation of Trade Unions of Montenegro) agree with the existing provisions regarding the establishment of representativeness at the employer, and the same provisions have been retained in the new Proposal of the Law.*

**The Committee asks that the next report provides information on the mandate and procedure of the body in charge of establishing trade union representativeness at the national level of branch activity, group or sub-group of activities, and to indicate whether the social partners have ever questioned its decisions.**

*Answer:*

*Representativeness of trade union at the level of Montenegro, or branch of activities, group or sub-group of activities is determined by the Minister, at the Committee's proposal, in accordance with the Law on Determining Representativeness.*

*The Committee is established by the Minister and consists of two representatives of each: the Government of Montenegro, representative trade unions and representative employers' federations.*

*The Government's representatives are appointed by the Government at the Minister's proposal, trade union's representatives are appointed by the representative trade union, and employer's representatives are appointed by the representative employers' federation in accordance with its regulation.*

*The request for determining representativeness of the trade unions at the branch level and at the level of Montenegro, as well as the evidence on the fulfilment of the general and special conditions for determining representativeness shall be submitted to the Committee.*

*In the procedure of determining representativeness of trade unions at the branch and at the level of Montenegro, the Committee determines whether the request and evidence is submitted in accordance with the Law on the Representativeness of Trade Unions.*

*If the Committee determines that the necessary evidence has not been submitted, the applicant will be required to eliminate observed shortcomings, within 15 days from the day of receiving a notice.*

*The Applicant is obliged, within 15 days, at request by the Committee, to submit membership application form for joining the trade union, the statement on the withdrawal from the trade unions, or the agreements and other evidences on joining the interested trade unions.*

*If the applicant fails to eliminate shortcomings, i.e. does not submit necessary evidence within the time limit, the Minister shall, at the proposal of the Committee, bring a conclusion on rejecting the request.*

*An administrative dispute may be initiated against this decision within 15 days from the day of submitting a conclusion.*

*The Committee is obliged to submit the proposal on determining representativeness of trade union to the Minister within 30 days from the day of submitting a request.*

*The Minister may require the Committee to reassess the proposal on determining representativeness, within eight days from the day of submitting a proposal, if he finds that all relevant facts for determining representativeness of a trade union have not been determined.*

*The Committee shall give its opinion regarding the request and submit the final proposal to the Minister, within three days from the day of submitting a request for reassessment of the Committee's proposal.*

*The Committee decides by majority votes of its members. The method of work and decision making of the Committee is regulated in more details by the Rules of Procedure of the Committee. Administrative and expert affairs for needs of the Committee are performed by the Ministry. The Committee works in sessions. The Chairman is elected, as a rule, by a majority of votes of the Committee's members by public voting. The Committee shall have a deputy chairman, by a majority of votes of the Committee's members by public voting. The chairman and deputy of the Committee cannot be representatives of the same social partner. The Committee has a secretary. The Secretary of the Committee is a professional person employed by the Ministry.*

*An administrative dispute with the competent Administrative Court may be initiated against a decision on the established representativeness of the trade unions at the national level and at the branch level of activity. So far, social partners have not initiated any such dispute.*

**The Committee understands that trade unions with no representative status do not enjoy any of the above mentioned rights. It asks confirmation of this and, if applicable, wishes to receive information on any other rights or procedures from which "non-representative" trade unions are excluded.**

*Answer:*

*A trade union organization decides independently on the manner of its representation with an employer. A trade union organization may appoint or elect one person to act as the trade union representative. An employer is obliged to provide the trade union representative with timely exercise of rights and access to information relevant for realization of the right. A trade union representative is obliged to carry out trade union activities in such a manner which will not affect the efficiency of the employer's operations. A trade union organization is obliged to inform the employer of the appointment of a trade union representative. Also, the trade union organization has the right to be informed about results of operations, development plans and*

*their influence to the position of employees, movements and changes in the salary policy and measures for improvement of conditions of work, safety and protection at work and other matters relevant for the financial and social status of employees. An employer shall inform a trade union organization of measures of safety and protection at work, introduction of new technology and changes in organization, schedule of working hours, night-time work and overtime work, passing of a program of introduction of technological, economic and restructure changes and a program for exercise of the rights of redundant employees and time and method of payment of salaries. The employer is obliged to timely inform and submit acts for the trade union organization in order to attend the meetings of the employer's bodies, which are examining the initiatives and proposals of the employer. The representative of the trade union organization has the right to participate in the discussion before the competent authorities of the employer. An employer shall timely inform and deliver acts for trade union organization for the purpose of attending meetings of employer's bodies where initiatives and proposals of the employer are discussed. A trade union organization representative shall be entitled to participate in a discussion before relevant employer's bodies.*

*Unlike unions that have not been established representativeness, the representative trade union has the right to collective bargaining and conclusion of a collective agreement at the appropriate level, participation in resolving 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 managing body of the Pension and Disability Insurance Fund of Montenegro, the Health Insurance Fund of Montenegro and the Employment Agency of Montenegro.*

The Committee underlines that domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone. However, for the situation to comply with Article 5 of the Charter, the following conditions must be met: 1) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; 2) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000), France). **The Committee asks whether the above mentioned conditions are fulfilled in Montenegro.**

*Answer:*

*The above mentioned conditions are prescribed in the legislation of Montenegro, in the Labour Law and the Law on the Representativeness of Trade Unions. This issue is more closely regulated by the Rulebook on the method and the procedure of registering employers' federations and closer criteria for determining representativeness of authorized associations of employers.*

*The Labour Law prescribes conditions for determining representativeness of employers' federations. An employers' federation shall be considered as representative if its members employ at least 25% of the employees in the economy of Montenegro and participate in the gross domestic product of Montenegro with at least 25%. Also, the Law on the Representativeness of Trade Unions set forth conditions for determining trade union*

*representativeness at the employer, at the branch level and at the level of Montenegro. A special condition for determination of representativeness of trade union at the employer is that trade union consists of at least 20% of employees of the total number of employees at the employer. Trade union organized at the level of branch of activities (sector), group or sub-group of activities, is deemed representative if, in addition to the general conditions prescribed by this Law, it has at least 15% of employees out of the total number of employees within the branch of activities, group or sub-group of activities. Trade union organised at the level of Montenegro is representative if it consists of at least five trade unions at the level of branch of activities, group or sub-group of activities and if it includes at least 10% of employees out of the total number of employees in Montenegro.*

*Criteria on the basis of which the representativeness of employers' and trade union's organizations is established cannot constitute an obstacle to the establishment of trade unions as they do not constitute a condition for founding trade unions. In order for the union to be founded, it is necessary to fulfil the conditions prescribed by the Law on the Representativeness of Trade Unions i.e. that it is registered in accordance with the Regulation on the Registration of Trade Union Organizations, that it is independent of state bodies, employers and political parties and that it is financed mainly from membership fees and other own sources.*

*Decisions on determining the representativeness of the trade unions are subject to review. Decisions in the process of review of the established representativeness are made in the method and procedure for determining the representativeness of trade unions. Such decisions are final and an administrative dispute can be instituted against them before a competent court.*

### *Personal scope*

Section 15 of the Law on Civil Servants and State Employees ("Official Journal of Montenegro", No. 50/2008, 86/2009 and 49/2010) provides that "civil servants or state employees shall have the right to trade union organization, in accordance with the general rules of procedure". **The Committee asks to receive detailed information on these rules.**

### *Answer:*

*Civil servant and state employee shall be entitled to trade union association in accordance with law. General labour legislation shall apply to rights, obligations and responsibilities of civil servant and state employee that are not regulated by the Law on Civil Servants and State Employees or separate law. In analogy with this, civil servants and employees are entitled to trade union organization in accordance with the Labour Law and the Law on the Representativeness of Trade Unions.*

## **Article 6 – Right to bargain collectively**

### *Paragraph 1 – Joint consultation*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee asks whether bipartite consultation is implemented in Montenegro. Should this not be the case, it requests that the next report explains the reasons of this situation and requests information on the steps taken to encourage bipartite consultation at local and national level.**

### *Answer:*

*Bipartite consultations at local and national level lead to the conclusion of branch collective agreements. A branch-level collective agreement shall establish minimum wage in a correspondent branch of activity, group or sub-group of activity, elements for determining basic salary and other earnings of employees and regulate the scope of the rights and obligations of employees arising from employment in accordance with the law.*

*A branch-level collective agreement for a branch of activity, group, or sub-group of activity shall be signed:*

- 1) for industry - a relevant body of the representative employers' federation and a relevant body of the representative trade union organization;*
- 2) for public companies and other public services founded by the State – a representative trade union organization and the Government, and for other public companies – a representative trade union organization and the founder;*
- 3) for public institutions founded by the State - a representative trade union organization and the Government, and for other public institutions - a representative trade union organization and the founder;*
- 4) for mandatory social insurance organizations - a representative trade union organization, management board, i.e. board of directors of those organizations and the Government;*
- 5) for public bodies and organizations and local government bodies - a representative trade union organization and the Government;*
- 6) for political, trade union, sports and non-governmental organizations - a representative trade union organization and the relevant body of the representative employers' federation;*
- 7) for foreign legal and physical entities (embassies, diplomatic-consular missions, foreign companies' regional offices etc.), a representative trade union organization and the relevant body of the representative employers' federation;*

8) *for persons who are self-employed in art or other cultural activity - a representative trade union of artists and a public administration body in charge of the cultural matters.*

*As a result of the bipartite social dialogue in Montenegro, 20 branch collective agreements were concluded for various branches of activity (listed under the responses given in Article 4), as follows:*

- *Branch collective agreement for the Metallurgy, Metalworking Industry and Machinery Industry, Devices and Vehicles*
- *Branch Collective Agreement for the Activities of Agriculture, Food and Tobacco Industry and Water Management*
- *Branch Collective Agreement for the Activities of Forestry, Wood Processing, Production and Processing of Paper*
- *Branch Collective Agreement for Road Transport*
- *Branch Collective Agreement for Energy*
- *Branch Collective Agreement for the Civil Works*
- *Branch Collective Agreement for Chemical, Pharmaceutical and Textile Industry*
- *Branch Collective Agreement for Informational, Graphic and Publishing Activities*
- *Branch Collective Agreement for the Field of Culture*
- *Branch Collective Agreement for the Field of Education*
- *Branch Collective Agreement for Maritime Traffic and Port Services*
- *Branch Collective Agreement for Social Activity*
- *Branch Collective Agreement for Housing-Utility Activity*
- *Branch Collective Agreement for the housing and communal activities of Montenegro*
- *Branch Collective Agreement for Telecommunications*
- *Branch Collective Agreement for Institutions of Pupils & Students Standards*
- *The Branch Collective Agreement for Health Care Activity*
- *Collective Agreement for the Activity of Tourism and Catering of Montenegro*
- *Branch Collective Agreement for the Administration and Justice Sector*
- *Collective Agreement for the Public Institution “Centre for Vocational Education“*
- *Collective Agreement for the Public Institution “Examination Centre“.*

In order to be in conformity with Article 6§1, the criteria of representativeness should be prescribed by law, objective, reasonable and subject to judicial review, which offers appropriate protection against arbitrary refusal (cf. Conclusions 2006, Albania). The Committee further recalls that consultation must take place in the private and public sectors, including the civil service (Conclusions III (1973), Denmark, Germany, Norway, Sweden and *Centrale générale des services publics* (CGSP) v. Belgium, Complaint No. 25/2004, decision on the merits of 9 May 2005). **The Committee asks that the next report provide detailed information on representativeness and indicate whether the principles mentioned above are fulfilled.**

*Answer:*

*Article 8 of the Law on the Representativeness of Trade Unions prescribed for general conditions for determining trade union representativeness: that trade union is entered into the Registry in accordance with the Law on the Representativeness of Trade Unions, that trade union does not depend on state authorities, employers and political parties and that the trade union is predominantly financed from membership fees and other own sources.*

*The fulfilment of these conditions is valued on the basis of the certificate of entry into the Registry, the Articles of Association, and/or the rules of the trade union organization and the union's statement on the manner of financing. A special condition for determining the representativeness of the trade union at the employer is that trade union consists of at least 20% of employees of the total number of employees at the employer.*

*Trade union organized at the level of branch of activities (sector), group or sub-group of activities, is deemed representative if, in addition to the general conditions prescribed by this Law, it has at least 15% of employees out of the total number of employees within the branch of activities, group or sub-group of activities.*

*Trade union, organized at the level of Montenegro is deemed representative if it consists of at least five trade unions at the level of branch of activities, group or sub-group of activities and if it includes at least 10% of employees out of the total number of employees in Montenegro.*

*The representativeness of trade union at the employer is determined by the Director at the proposal of the Commission for determining representativeness of trade union. The Commission consists of two representatives of each: the employer, representative trade union, if it exists at that employer and interested trade union.*

*If requested by the representative trade union or interested trade union at the employer, the Commission member may be representatives of trade union at the branch level and/or at the level of Montenegro in which that trade union organization is affiliated, instead of representatives of a representative trade union or interested trade union with employers. The Commission shall be established by the Director within five days from the date of application for determining of trade union representativeness. The Commission shall make a proposal within a period of seven days from the date of forming the Commission by majority votes of its members.*

*The Director shall bring a decision on determining representativeness of the trade union within seven days from the day of submitting Commission's proposal.*

*If an interested trade union at the employer believes that representativeness of trade union is not determined pursuant to the Law or it has not received a decision within eight days from the date of its adoption, it shall be entitled to submit a complaint to the Committee for determination of trade unions' representativeness. Interested trade union may also submit a complaint to the Committee in a case where the director has not formed a Commission and if the employer does not issue the certificate based on which is determined the total number of employees of the employer within seven days from the day of application.*

*According to the complaint of interested trade union at the employer, the Minister of Labour shall be responsible for its solving in the second instance on the proposal of the Committee.*

*The Committee shall be established by the Minister and shall include two representatives of each: the Government of Montenegro, the representative trade unions and the representative employers' federations.*

*The Government's representatives shall be appointed by the Government at the minister's proposal, and trade union's representatives shall be determined by the representative trade union, and employer's representatives shall be determined by the representative employers' federation, in accordance with its regulations.*

*The Committee is obliged to submit the proposal on determining representativeness of trade union to the Minister within 30 days from the day of submitting a request.*

*The minister may require from the Committee to reassess the proposal for resolving the complaint, within eight days from delivery of decision, if he finds that all facts, relevant to the resolving of the complaint, have not been determined.*

*The Committee shall respond to the request of the minister and shall submit to the minister a final proposal within eight days from submitting of the request for reassessment of the Committee's proposal.*

*An administrative dispute may be instituted before the Administrative Court against a decision on the complaint of the interested trade union.*

*Representativeness of trade union at the level of Montenegro, or branch of activities, group or sub-group of activities shall be determined by the Minister responsible for labour affairs, at the Committee's proposal, in accordance with this Law.*

*The request for determining representativeness of trade union at the branch level and at the level of Montenegro, and the evidence of meeting general and special conditions for determining representativeness shall be submitted to the Committee.*

*In the procedure of determining representativeness of trade union at the branch level and at the level of Montenegro, the Committee shall determine whether the request and the evidence were submitted in accordance the Law on determining representativeness.*

*If the Committee determines that the necessary evidence has not been submitted, the applicant will be required to eliminate observed shortcomings, within 15 days from the day of receiving a notice.*

*The Applicant is obliged, within 15 days, at request by the Committee, to submit membership application form for joining the trade union, statements on the withdrawal from the trade unions, or the agreements and other evidences on joining the interested trade unions.*

*If the applicant fails to eliminate shortcomings, i.e. does not submit necessary evidence within the time limit, the Minister shall, at the proposal of the Committee, bring a conclusion on rejecting the request.*

*An administrative dispute may be initiated against this decision within 15 days from the day of submitting a conclusion.*

*The Committee is obliged to submit the proposal on determining representativeness of trade union to the Minister within 30 days from the day of submitting a request.*

*The Minister may require the Committee to reassess the proposal on determining representativeness, within eight days from the day of submitting a proposal, if he finds that all relevant facts for determining representativeness of a trade union have not been determined.*

*The Committee shall give its opinion regarding the request and submit the final proposal to the Minister, within three days from the day of submitting a request for reassessment of the Committee's proposal.*

*The Committee decides by majority votes of its members. The method of work and decision making of the Committee is regulated in more details by the Rules of Procedure of the Committee. Administrative and expert affairs for needs of the Committee are performed by the Ministry. The Committee works in sessions. The Chairman is elected, as a rule, by a majority of votes of the Committee's members by public voting. The Committee shall have a deputy chairman, by a majority of votes of the Committee's members by public voting. The chairman and deputy of the Committee cannot be representatives of the same social partner. The Committee has a secretary. The Secretary of the Committee is a professional person employed by the Ministry.*

*Trade unions that do not fulfil the representativeness requirements in accordance with this law may conclude an agreement on association with other unions.*

The Committee emphasises that consultation at the enterprise level is dealt with under Article 6§1 and 21 of the Charter (right to information and consultation). For states which have ratified both provisions, consultation at the enterprise level is examined under Article 21 (Conclusions 2004, Ireland). **In view of the fact that Montenegro has not accepted Article 21, the**

Committee asks that the next report provide detailed information on consultation at the enterprise level.

*Answer:*

*Employer's Collective Agreement shall apply to employees of the employer. Employer's Collective Agreement shall establish minimum wage, elements for determining basic salary, wage compensation and other earnings of employees and regulate broader rights, obligations and responsibilities of an employee arising from and based on employment in accordance with the law and collective agreement. Employer's Collective Agreement shall be signed between a relevant body of the employer and a representative trade union organization. Employer's Collective Agreement in public sector, institution or other public service founded by the State shall be signed between representative trade union organizations, the director and the Government, and for other public companies and public services - a representative trade union organization, the director and the founder.*

*Participants in signing of a collective agreement shall negotiate the agreement. Each party may initiate negotiations by offering the other party, in written form, a draft of a new text or amendment to the text of the collective agreement. The party offered such a draft agreement shall provide its opinion of the offered draft agreement for negotiations in writing within 15 days. If parties do not continue negotiations or do not reach agreement within three months from the beginning of the negotiations, they shall address the Agency for Amicable Settlement of Labour Disputes. A collective agreement shall be considered negotiated as of the moment of its signing by authorized representatives of all parties. General and branch collective agreement shall be registered with the Ministry and published in "Official Gazette of Montenegro" and the modality of publishing employer's collective agreement shall be envisaged by that agreement.*

## **Article 6 - Right to bargain collectively**

### *Paragraph 2 - Negotiation procedures*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee asks whether free and voluntary bargaining is ensured in domestic law and in practice. In that context, it wishes to know what procedures have been put in place to promote voluntary bargaining between employers or employers' organisations, on the one hand, and workers' organisations on the other, with a view to regulating conditions of employment through collective agreements.**

*Answer:*

*Organizations of trade unions and employers' federations voluntarily and freely enter into negotiations and conclude collective agreements. A collective agreement shall define the rights, obligations and responsibilities arising from and based on employment, the procedure of amending the collective agreement, mutual relations between participants of the collective agreement and other matters of importance for an employee and an employer. A collective agreement shall be concluded in written. A collective agreement shall be applied directly.*

*Employers' organizations and labour organizations negotiate and conclude branch-level collective agreements whereby is established minimum wage in a correspondent branch of activity, group or sub-group of activity, elements for determining basic salary and other earnings of employees and regulated the scope of the rights and obligations of employees arising from employment in accordance with the law.*

*The result of such negotiations was the conclusion of 20 branch collective bargaining agreements for various sectors of activity, which are listed in the answer to the previous question.*

The Committee points out that States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned, including collective action. Trade unions must be allowed to strive for the improvement of existing working conditions of workers, and the scope of trade unions' rights in this area should not be limited by legislation to the attainment of minimum conditions (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013, §§ 111 and 120). **The Committee asks whether these principles are fulfilled in Montenegro.**

*Answer:*

*Trade union will be enabled full freedom in fighting for better working conditions, and the scope of rights of trade union organisations is not limited by the law.*

*In relation thereto, the Labour Law does not prescribe a mandatory content of collective agreements, but establishes what may be a subject matter of collective agreements. Therefore, The General Collective Agreement establishes basic elements for defining salary, wage compensation, other earnings of employees and the scope of the rights and obligations arising from employment in accordance with the law. A branch-level collective agreement establishes minimum wage in a correspondent branch of activity, group or sub-group of activity, elements for determining basic salary and other earnings of employees and regulate the scope of the rights and obligations of employees arising from employment in accordance with the law. Employer's collective agreement establishes minimum wage, elements for determining basic salary, wage compensation and other earnings of employees and regulate broader rights, obligations and responsibilities of an employee arising from and based on employment in accordance with the law and collective agreement.*

The Committee underlines that it is open to States Parties to require trade unions to meet an obligation of representativeness subject to certain general conditions, set out in the conclusion relating to Article 5. With respect to Article 6§2, however, any requirement of representativeness must not excessively limit the possibility of trade unions and employers' organisations to participate effectively in collective bargaining. In order to be in conformity with Article 6§2, the criteria of representativeness should be prescribed by law, objective, reasonable and subject to judicial review, which offers appropriate protection against arbitrary refusal (Conclusions 2006, Albania). The Committee has accordingly held that restricting collective bargaining to trade unions representing at least 33% of employees at the level at which the agreement was concluded is contrary to Article 6§2 (Conclusions XIX-3 (2010), "The former Yugoslav Republic of Macedonia"). **The Committee asks whether these principles are fulfilled in Montenegro.**

*Answer:*

*The subject matter criteria are fulfilled in the legislation of Montenegro because they are prescribed by law; they are objective, reasonable and allow for judicial review. We also emphasize that they represent the result of tripartite social dialogue and consensus of all social partners.*

The Committee notes that, according to statistics from the European Industrial Relations Observatory (EIRO, Montenegro: Industrial relations profile), 100% of the workforce are covered by the general collective agreement and approximately 75% by branch collective agreements. **The Committee asks that the next report provides information on the measures taken by the Government in order to achieve the above mentioned coverage.**

*Answer:*

*General Collective Agreement is negotiated for the territory of Montenegro and applied to all employees and employers, and branch collective agreements is negotiated for branches of activity, groups, or sub-groups of activity and applied to employees and employers in a branch, group or sub-group. The Government of Montenegro, the Union of Employers of Montenegro, Confederation of Trade Unions of Montenegro and the Union of Free Trade Unions of Montenegro have concluded a General Collective Agreement valid by 1 July 2018. In Montenegro, 20 branch collective agreements have been concluded in particular for the activities of metallurgy, metalworking industry and production of machines, devices and means of transport, activities of agriculture, food and tobacco industry and water management, forestry, wood processing, production and processing of paper, for road transport, energy, construction and building materials industry, chemical, pharmaceutical and textile industries, information, graphic and publishing activities, culture, education, maritime traffic and port services, social services, housing and communal services, telecommunications, pupils and student standards, health care, tourism and catering industry in Montenegro and collective agreement for the area of administration and judiciary. The General Collective Agreement is directly applicable for a branch of activity for which the collective agreement has not been concluded.*

## **Article 6 - Right to bargain collectively**

### *Paragraph 3 - Conciliation and arbitration*

The Committee takes note of the information contained in the report submitted by Montenegro.

**The Committee asks that the next report provides information on the average duration of conciliation procedures in Montenegro.**

*Answer:*

*Regarding the question of the duration of the conciliation procedure in Montenegro, we inform that, pursuant to the Law on the peaceful labour dispute resolution, the deadline for the termination of proceedings before the Agency is 30 days from the date of opening of the hearing. The deadline may be extended, with the existence of objective reasons thereabout.*

*Proposal for a peaceful resolution of labour dispute before the Agency can be submitted by employees and employers individually or jointly. The proposal of the parties in the procedure of peaceful labour dispute resolution - arbitration proceedings, is based on the principle of voluntariness.*

*Likewise, the arbitrator's decision is final and enforceable if the parties have previously reached agreement in the procedure before the Agency in connection with the resolution of the dispute. From the above, it can be concluded that the principle of voluntariness is also present when making a decision on the solution of a concrete dispute.*

**The Committee asks the next report to provide details on the nature and conditions of arbitration procedures.**

*Answer:*

*The provisions of the Law on Peaceful Labour Disputes Resolution concerning the manner and procedure for resolving collective labour disputes in activities of public interest were transferred to the new Law on Strike ("Official Gazette of Montenegro", No. 11/2015), which came into force on 20 March 2015.*

*Pursuant to the Law on Strike within activities described in more detail in Art. 18, 19 and 20 of the same Law, disputing parties shall, within 24 hours of announcing the strike, submit a joint proposal for the peaceful resolution of a labour dispute before the Agency. If the disputing parties do not act on this manner, the competent government authority which received a notice of decision to go on strike is obliged to inform the Agency within 48 hours of delivery of such decision to go on strike. In that case, the Agency's Director shall initiate the procedure ex officio and determine a conciliator from the Directory of conciliators and arbitrators.*

*Pursuant to the Law on Peaceful Labour Disputes Resolution, the conciliator is obliged to schedule a hearing within three days from the date of receipt of the proposal and*

*documentation regarding the subject matter of the dispute and to inform the disputing parties thereof. Upon ending the conciliation proceeding, the conciliator concludes the hearing and, with the parties in dispute, adopts the recommendation on the manner of dispute resolution. Recommendation shall be issued in writing, with explanatory note.*

*If the recommendation fails to be adopted in this manner within 30 days from the date of concluding the hearing, the conciliator may propose the recommendation to the parties in dispute. Recommendation of the conciliator shall not be binding for the parties in dispute. If the disputing parties do not accept the recommendation, the conciliation procedure is deemed unsuccessful.*

## Article 6 - Right to bargain collectively

### *Paragraph 4 - Collective action*

The Committee takes note of the information contained in the report submitted by Montenegro.

Article 66 of the Constitution provides that: "Employees shall have the right to strike. The right to strike may be restricted to employees in the Army, police, state organs and the public service for the purpose of the protection of public interest, in accordance with the law." The legislation governing collective action is the Act on Strikes (No. 43/2003, as amended). The report points out that a draft law on the right to strike, prepared by the Government, is currently examined by the Parliament. The Committee takes note of this information and asks that the next report contain detailed information on any legislative development which may have implications on the right to collective action. **In this respect, the Committee asks to be informed on the implementation of Article 6§4 of the Charter through legislation and in practice, with respect to both employees and employers.**

*Answer:*

*The new Law on Strike was published in the "Official Gazette of Montenegro", no. 11/2015 of 12 March 2015 and entered into force on 20 March 2015. Please, find attached the text of the Law.*

*In accordance with the Labour Law, participants in signing of a collective agreement shall negotiate the agreement. Each party may initiate negotiations by offering the other party, in written form, a draft of a new text or amendment to the text of the collective agreement. The party offered such a draft agreement shall provide its opinion of the offered draft agreement for negotiations in writing within 15 days. If parties do not continue negotiations or do not reach agreement within three months from the beginning of the negotiations, they shall address the Agency for Amicable Settlement of Labour Disputes.*

*Participants in signing of a collective agreement, by amending and supplementing the collective agreement may agree to settle the disputes before the Agency, by submitting a proposal for the participation of conciliator in collective bargaining.*

*Collective labour dispute in accordance with the Law on Peaceful Labour Disputes Resolution shall be the dispute that arises in the procedure of concluding, as well as amendments to collective agreements, in case when the employer fails to apply the specific provisions of the collective agreement to all employees, in case when the employer fails to apply the specific provisions of its acts to all employees, regarding the exercise of the right to trade union organizing, action and determination of the right to trade union representativeness, in exercising the right to strike and on other affairs between trade unions and employers in connection with exercising their rights arising from and based on work.*

*Furthermore, article 4 of the Law on Strike stipulates that the strike committee and the employer shall, from the date of announcement of a strike and during the strike, try to*

*peacefully resolve the dispute or to initiate the procedure for the amicable settlement of the dispute, in accordance with the Law on Peaceful Labour Disputes Resolution.*

*Pursuant to the Law on Peaceful Labour Dispute Resolution, participants in signing of a collective agreement, by amending and supplementing the collective agreement and/or participants in bargaining may agree to settle the disputes before the Agency for Amicable Settlement of Labour Disputes. In these disputes, a conciliator attends negotiations, provides expert assistance to the negotiating parties and points to proposals of collective agreements that are not in accordance with the law and other regulations.*

### ***Entitlement to call a collective action***

The decision to go on strike and warning strike within the undertaking shall be made by the responsible authority of authorised trade union organisations or of more than half of the employees working in the undertaking or its parts. The decision to go on strike in the branch and industry, or the decision to go on general strike and warning strike shall be made by the responsible authority of authorised trade union organisations.

The Committee recalls that, in both the public and the private sector, reserving the decision to initiate a strike to representative trade unions alone, or to the most representative, is a restriction that is incompatible with Article 6§4 (Conclusions XV-1 (2000), France). The reference to "workers" in Article 6§4 concerns the holders of the right to collective action and the Article says nothing about the nature of a group entitled to call a strike. It follows that this Article does not require States to authorise all groups of workers to decide on strike action, but offers States the possibility of making a choice as to the groups entitled to call a strike and hence of restricting this right to trade unions. However, a restrictive choice is only consistent with Article 6§4 if the establishment of a trade union is not subject to formalities such as to hamper the sometimes speedy decision-making necessary when calling a strike. The restriction on the power to initiate collective action which may be imposed on certain trade unions still applies even when workers may legally stop working in response to an appeal by a trade union of which they are not members. The Committee also points out that the principle of recognition of workers' right to take collective action in cases of conflicts of interests, including the right to strike, established by Article 6§4, should under no circumstances be subordinate to the State's interest in fostering relations with trade union organisations which, in the event of a dispute, can legitimately negotiate on behalf of the largest possible number of employees concerned.

**The Committee asks that the next report contain details on the implementation of the above mentioned principles.**

***Answer:***

***The Law on Strike defines that a strike is a disruption of work organized by employees in order to protect their professional, economic and social interests arising on the basis of work. The work disruption is an organized and continuous refusal of employees to carry out their tasks. Employees are free to decide on their participation in the strike and they should not be***

*prevented, or exposed to threats or coercion to participate or not participate in the strike. The strike is organised by a strike committee consists of employees who organize, implement and ensure the legitimacy of the strike.*

*The strike differs according to the level at which it is organized, and so there is a strike at the employer; branch strike, which is organized in a particular sector, group, sub-group , or activity and the general strike, which is organized for the territory of the state.*

*Concerning the strike at the employer, the strike committee shall be obliged to announce a strike by submitting a decision on going on strike to the employer, no later than five days prior to a day set for commencing the strike, or 24 hours prior to commencing the strike of warning, unless another deadline is determined by Law.*

*The strike is manifested as a peaceful gathering of employees at the workplace or within the business premises of the employer and it may be manifested by the staff not attending the work.*

*Organization of a strike or participation in a strike under the conditions set forth by the Law shall not represent a violation of work duty, cannot be a ground for initiation of the procedure for determining disciplinary and material liability of an employee, for removing the employee from work and cannot have, as a consequence, termination of employee's employment.*

### **Specific restrictions to the right to strike and procedural requirements**

The Law on Strike set forth that in order to protect the public interest, the employees of the Army of Montenegro, police, state bodies cannot exercise the right to go on strike if that would endanger the general interest of the citizens, national security, safety of persons and property as well as the functioning of the authorities (Article 8(a) of the Law on Amendments to the Law on Strike 2008). **The Committee asks what definition of public administration is in this context.**

*Answer:*

*In order to protect the public interest, the employees of the Armed Forces of Montenegro, police, state bodies and public service can organize a strike in a way that will not endanger national security, safety of persons and property, the general interest of citizens, as well as the functioning of the authorities in accordance with the law.*

*Employees in the Armed Forces of Montenegro, police, state bodies and public services, employees in activities of public interest i.e. activities whose work disruption, due to its nature, could jeopardize the life and health of people or the general interest of citizens and the activities related to the provision of services in the field of secondary and higher education, if the strike, because of length of its duration or its scope, could reach such proportions that it jeopardizes the implementation of the education program for the current school year, as well as the employees of the employer with special technological processes (chemical industry, ferrous and non-ferrous metallurgy) where the work disruption, due to its nature, could result*

*in a damage of working assets, or cause an immediate jeopardy to life and health of employees and create unfavourable conditions for the working and living environment can start a strike, if the technological minimum of work is established that provides safety for people and property or is an indispensable condition for the life and work of citizens and/or, protecting national security as well as the functioning of the body authorities.*

*In accordance with the Law on State Administration, the state administration carries out administrative affairs within the rights and duties of Montenegro. State administration affairs are performed by ministries and other administrative bodies that are established as administrative bodies within the ministry, and may be administrations, secretariats, departments, directorates and agencies.*

**The Committee asks the Government to state, in relation to every service subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asks whether such restrictions are in all cases proportionate to achieve the objective of ensuring, in a democratic society, the respect for the rights and freedoms of others or the public interest, national security, public health, or morals.**

*Answer:*

*The strike of employed persons by the Army of Montenegro, the police, state bodies and the public service, in activities of public interest, whose termination of work due to the nature of work could jeopardize the life and health of people or the general interest of citizens, strike in the field of secondary and higher education and with the employer with special technological processes where the work disruption, due to its nature, could result in a damage of working assets, or cause an immediate jeopardy to life and health of employees and create unfavourable conditions for the working and living environment, shall be provided with the technological minimum of work.*

*The assessment of whether the organization of the strike of employed persons by the Army of Montenegro, the police, state bodies and the public service endangers national security, security of persons and property, the general interest of citizens and functioning of government authorities shall be given by the state authority responsible for national security, within 24 hours from the announcement of the strike. If the state authority in charge of national security assessed that the strike will endanger national security, security of persons and property, the general interest of the citizens and the functioning of government authorities, the strike cannot be organized in those activities. Based on that assessment, the body for the needs of which the assessment has been made shall pass the relevant document.*

*Employees who perform mentioned activities may commence the strike, if the minimum work process is previously enabled so as to provide the security of people and property or is an*

*indispensable prerequisite for citizens' lives and work, or it protects the national security as well as the operating of the government authorities.*

*If the strike in above mentioned activities is organized at the part of the employer, the duty of providing the minimum work process shall be applied only to that part.*

*Exceptionally, the employees performing the activities in the field of secondary and higher education are obliged to adhere to the minimum working process, if the strike, because of length of its duration or its scope, could reach such proportions that it jeopardizes the implementation of the education program for the current school year.*

*Employees who are required to work during the strike in order to ensure minimum work process shall be determined by the management body of the employer, upon the proposal of the strike committee.*

*The strike committee has the right to propose the rotation of employees who are required to work during a strike, during certain time intervals.*

*In the event that the strike committee does not submit a proposal i within 24 hours before the start of the strike, the management body of the employer has the right to appoint the employees who are required to work for the provision of minimum work process. A strike committee shall be obliged to cooperate with the employer during a strike, for the purpose of ensuring the minimum work process.*

*Also, disputing parties in the mentioned activities shall, within 24 hours of announcing the strike, submit a joint proposal for the peaceful resolution of a labour dispute before the Agency.*

*If the disputing parties do not submit a joint proposal for the peaceful resolution of a labour dispute before the Agency, the competent government authority which received a notice of decision to go on strike is obliged to inform the Agency thereof within 48 hours of delivery of such decision to go on strike and, in that case, the Agency's Director shall initiate the procedure ex officio and determine a conciliator from the Directory of conciliators and arbitrators.*

*Conciliation proceeding shall be conducted in accordance with the law governing the peaceful resolution of labour disputes.*

**The Committee asks that the next report specifies what the consequences would be in the event that an agreement between employees (or their representatives) and employers is not reached.**

**Answer:**

*A strike lasts until the disputing parties reach an agreement, and it may be terminated pursuant to a decision made by the competent body which made a decision on going on strike.*

*For each new strike, participants in the strike shall be obliged to submit a new decision on strike.*

### *Consequences of a strike*

The report points out that the employee who participates in a strike is not entitled to salary. In this respect, the Committee recalls that any deduction from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their participation in the strike (Conclusions XIII-1 (1993), France, and *Confédération française de l'Encadrement (CFE-CGC) v. France*, Complaint No. 16/2003, decision on the merits of 12 October 2004, §63). Workers participating in a strike who are not members of the trade union having called the strike are entitled to the same protection as trade union members (Conclusions XVIII-1 (2006), Denmark). **The Committee asks for information in the next report on the way in which the principles referred to above are respected.**

*Answer:*

*Employees, who go on a strike, shall have equal protection regardless of being members of trade unions or not.*

*Organization of a strike and/or participation in a strike under the conditions set forth by this Law shall not represent a violation of work duty, cannot be a ground for initiation of the procedure for determining disciplinary and material liability of an employee, for removing the employee from work and cannot have, as a consequence, termination of employee's employment.*

*An employee who participates in a strike shall not be entitled to a wage unless the disputing parties agree otherwise.*

*An employee who is obliged to work during a strike, for the purpose of ensuring minimum work process shall be entitled to wage in proportion to the time spent at work.*

*The employee who participates in a strike shall be entitled to social insurance as if being at work, in accordance with regulations on social insurance*

## **Article 26 - Right to dignity in the workplace**

### *Paragraph 1 - Sexual harassment*

The Committee takes note of the information contained in the report submitted by Montenegro.

#### **Prevention**

**The Committee asks to be kept informed on the preventive measures taken to raise awareness about the problem of sexual harassment in the workplace and asks whether and to what extent employers' and workers' organisations are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.**

#### *Answer:*

*The Law on Prohibition of Harassment at Work ("Official Gazette of Montenegro, no. 30/2012) set forth as a preventive measures an obligation of an employer to provide an employee to work at the work place and working environment under conditions that ensure respect of his dignity, integrity and health, as well as to take the necessary measures to protect an employee from mobbing in accordance with this Law. An employer shall be liable to inform an employee in writing, before starting to work, about the rights, duties and responsibilities in relation to the mobbing, in accordance with this Law. An employer shall also be liable to, in order to identify, prevent and prohibit the mobbing, implement measures to inform and train employees and their representatives about the causes, forms and consequences of performing mobbing. The Law set forth that a legal person is in breach if it fails to provide preventive measures to protect the employee against mobbing at work or related to work and fails to inform the employee in writing before entering the employment and employees about prohibition to execute mobbing, duties and responsibilities related to the execution of mobbing, and how to recognize the methods and possibilities for protection against mobbing. For that misdemeanour, a legal entity shall be fined the pecuniary fine in amount between 500 Euros and 10,000 Euros for*

*The employer and employee are obliged to act in accordance with the rules on prevention and protection against mobbing. In relation thereto, the Ministry of Labour and Social Welfare have passed the Rulebook on the rules of conduct of employers and employees concerning prevention and protection from harassment at the workplace. The employer and employee are obliged to act in a way whereby is respected the dignity of employees and try to respect the rules of conduct the workplace in good faith.*

#### *Liability of employers and remedies*

**The Committee asks whether employers can be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.**

*Answer:*

*The Law on Prohibition of Harassment at Work stipulates that an executor of mobbing shall be considered an employer in the capacity of natural person, responsible person engaged by the employer in the capacity of legal entity, an employee or group of employees engaged by the employer or a third person with whom the employee or the employer have contact during the performance of tasks at the workplace. In this regard, the Rulebook on the rules of conduct of employers and employees concerning prevention and protection from harassment at the workplace has been adopted. The employers and employees as well as persons engaged outside the employment shall adhere thereto.*

*The Law on Prohibition of Harassment at Work applies to employers and employees, in accordance with the provisions regulating the labour issues, as well as persons engaged outside the employment, such as persons attending professional training and expertise; pupils and students attending practical training; volunteers; persons performing certain tasks while serving a sentence of imprisonment or corrective measures; persons in voluntary and public works, works organized in the common interest, labour activities and competitions, and any other person taking part in the work of the employer. The employer, in terms of this Law, is the state authority, a state administration authority and institution or department of local government, public institution, company and domestic or foreign legal or natural person or part of legal entity.*

### **Redress**

The Committee holds that victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. In addition, the right to reinstatement should be guaranteed for employees who have been unfairly dismissed or pressured to resign for reasons related to sexual harassment. **In the light thereof, the Committee asks the next report to provide information on any rules and example of case law regarding compensation.**

*Answer:*

*Having performed verification, it was indicated that the Basic Court did not have any cases in progress or decisions made regarding the compensation of victims because of harassment at work and in connection with work since 1 January 2017.*

**It also asks whether the right to reinstatement of employees who have been unfairly dismissed for reasons related to sexual harassment is guaranteed.**

*Answer:*

*An employee who is not satisfied with the outcome of the proceedings for protection against mobbing at the employer may initiate proceedings for protection against mobbing before the Agency for Amicable Settlement of Labour Disputes or before the competent court. Disputes initiated because of harassment at work shall have the character of labour disputes. An appeal may be filed against a court decision of which will decide the court of second instance.*

*An employee that finds a decision on termination of employment unsatisfactory for any reasons shall be entitled begin litigation with the competent court with the purpose of seeking protection of defined rights, not later than 15 days from the date of the receipt of the decision, and he/she may also begin litigation before the Agency for Amicable Settlement of Labour Disputes. In case of a dispute concerning termination of employment, the burden of proving justifiability and legality of the grounds for termination shall belong to the employer. If that procedure determines that there were no legal or justifiable grounds for termination of a contract of employment, whether prescribed by an act of the employer or agreed by the employer in the contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage in a procedure prescribed by the law.*

*If determined in a procedure that and employee's contract of employment was terminated without legal or justifiable grounds, he/she shall be entitled to a compensation of financial damage in the amount of the lost salary and other earnings he/she would earn at work, in accordance with the law, collective agreement and contract of employment, and payment of contributions for mandatory social insurance. Compensation of damage shall be reduced by the amount of earnings realized by the employer based on the contract of employment, upon termination of employment. If a procedure determines that the termination of employment resulted in violation of the rights of personality, honour, reputation and dignity, the employee shall be entitled to compensation of non-financial damage within the procedure prescribed by the law.*

**Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

The Committee takes note of the information contained in the report submitted by Montenegro.

***Protection granted to workers' representatives***

The report refers to the applicable legislation. Article 160 of Labour Law No. 49/2008 provides that: "(1) the representative of the trade union organization and representative of employees, during the performance of trade union activities and six months upon termination of trade union activities, shall not be held accountable with respect to performance of trade union activities, declared as redundant, assigned to another job position with the same or other employer with respect to performance of trade union activities, or placed, in another manner, in a less favorable position, if he acts in accordance with the law and the collective agreement. (2) The employer shall not place a representative of the trade union organization or representative of employees in a more or less favorable position due to his membership in a trade union or his trade union activities".

**The Committee asks that the next report provide information on the implementation of the above mentioned provision in practice.**

***Answer:***

***In Montenegro, employers adhere to and act in accordance with the mentioned provisions of the Labour Law in practice. Trade union representatives and employee's representatives did not contact the Labour Inspectorate for failing to comply with the provisions of Article 160 of the Labour Law, and, on this basis, there were no interventions by this body.***

**The Committee wishes to be informed on the remedies made available to workers' representatives to allow them to contest their dismissal. In this respect, the Committee also recalls that where a dismissal based on trade union membership has occurred; there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria). The Committee asks whether this principle is fulfilled in Montenegro.**

***Answer:***

***The Labour Law stipulates membership in the trade union is not considered a justified reason for the termination of the employment contract and/or, that the contract of employment cannot be terminated due to membership in the trade union.***

***A decision on termination of a contract of employment shall be passed by the employer and an employee that finds a decision unsatisfactory shall be entitled to begin litigation with the competent court with the purpose of seeking protection of defined rights, not later than 15 days from the date of the receipt of the decision, and he/she may also begin litigation before***

*the Agency for Amicable Settlement of Labour Disputes. In case of a dispute concerning termination of employment, the burden of proving justifiability and legality of the grounds for termination shall belong to the employer.*

*If determined during the procedure that there were no legal or justifiable grounds for termination of a contract of employment, whether prescribed by an act of the employer or agreed by the employer in the contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage in a procedure prescribed by the law.*

*If determined during the procedure that an employee's contract of employment was terminated without legal or justifiable grounds, he/she shall be entitled to a compensation of financial damage in the amount of the lost salary and other earnings he/she would earn at work, in accordance with the law, collective agreement and contract of employment, and payment of contributions for mandatory social insurance.*

*Compensation of damage shall be reduced by the amount of earnings realized by the employer based on the contract of employment, upon termination of employment.*

*If determined that the termination of employment resulted in violation of the rights of personality, honour, reputation and dignity, the employee shall be entitled to compensation of non-financial damage within the procedure prescribed by the law.*

#### *Facilities granted to workers' representatives*

The Committee asks that the next report indicates whether, according to the legislation, within the undertaking "trade unions' representatives" are regarded as "workers' representatives".

*Answer:*

*Employees shall have the right to establish their organizations and become members of those organizations at their own discretion, without previous approval, under the conditions defined by the statute and the rules of those organizations. A trade union organization shall decide independently on the manner of its representation with an employer and it may appoint or elect one person to act as the trade union representative. So, the trade union representatives are the representatives of company's employees.*

The Committee recalls that the facilities granted to workers' representatives may also include those mentioned in the R143 Recommendation concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, adopted by the ILO General Conference of 23 June 1971. These include: support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers representatives or other elected representatives to all premises, where necessary; the access without any delay to

the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorisation to post bills or notices in one or several places to be determined with the management board; and the authorisation to distribute information sheets, factsheets and other documents on general trade unions' activities. Other facilities may also be established, such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

**The Committee asks that the next report indicate whether the facilities accorded to workers' representatives include, also in practice, those mentioned in the paragraph above. In this context, it wishes to be informed on any measures taken by the Government (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework concerning the facilities to be accorded to workers' representatives.**

*Answer:*

***Labour Law, General Collective Agreement and the Law on Representativeness of the Trade Unions establish legal preconditions for the work and independence of trade unions.***

***The General Collective Agreement provided for more detailed normative conditions for trade unions' work and the same stipulates that the employer is obliged to provide the union with the conditions for the effective performance of trade union activities, including: premises for work and holding meetings within business premises of the employer, technical and administrative support for the work of the trade unions to the extent necessary for the exercise of trade union activities (use of telephone, fax, Internet, bulletin boards, computers, photocopiers), if the employer has these means, other means and conditions for work of trade unions, in accordance with the collective agreement. The exercise of the said rights shall be regulated by a collective agreement with the employer.***

***The employer shall provide the respect of the following rights to work and activities of trade unions i.e. the right to participate in trade union activities at the local, national and international levels, the inviolability of trade union Funds, property, trade union premises, trade union correspondence and telephone conversations, the access of the media to trade union premises.***

***The employer shall allow the representative of the trade union who does not carry out trade union activity in full-time working hours (professionally), based on the written notice, at least three days prior to his/her absence, leave from work with fringe benefits, on the occasion of attending trade union meetings, seminars, courses, congresses and conferences in the country and abroad. In addition to providing the said activities, a representative of representative trade union shall, if necessary, be provided the performance of activities for 20 hours per month.***

*While conducting trade union activities and six months after the cessation of these activities, a trade union representative at the appropriate level, and/or a representative of employees if the union is not organized with the employer, may not be held liable in connection with the performance of trade union activities, declared an employee whose work is no longer needed, reassigned to another position with the same or another employer in connection with the performance of trade union activities, or otherwise placed in a less favourable position, if he/she acts in accordance with the law and the collective agreement.*

*Trade union representative at an appropriate level who carries out trade union activity full-time (professionally) shall be entitled to return, upon termination of the trade union function, to a position he/she held before coming to this position, and if that position no longer exists, then the position corresponding to his/her qualifications. The employer may, at the request of the trade union, provide for professional performance of trade union representative's function, in such a manner that salaries, fringe benefits and other remuneration are borne by the employer. In this case, the employer and trade union regulate mutual rights and obligations in more details by a separate contract or agreement.*

*Supervision over applying the Labour Law, other labour regulations, collective agreements and contracts of employment shall be conducted by the labour inspection. In practice, employers in Montenegro adhere and act in accordance with the above-mentioned provisions. The representatives of trade union and employees did not address the Labour Inspectorate for failure to comply with the provisions of the Labour Law, and on this basis there were no interventions by this body.*

## **Article 29 - Right to information and consultation in procedures of collective redundancy**

The Committee takes note of the information contained in the report submitted by Montenegro.

### *Preventive measures and sanctions*

The Committee asks what sanctions exist if the employer fails to notify the workers' representatives about the planned redundancies. It also asks what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled.

*Answer:*

*The Labour Law stipulates that the employer shall immediately notify the trade union or the Employment Agency of Montenegro and the representatives of employees in writing if determines that, due to technological, economic and restructural changes, in the period of 30 days there shall be a number of redundant employees with a contract of employment for an indefinite period. The General Collective Agreement prescribes this obligation to notify in a manner that it is binding for the employer to inform a trade union once a year at an appropriate level of the planned introduction of technological, economic and structural changes, and the programme of realization of the rights of employees whose work is no longer needed. In relation to such notification, trade union, or the representatives of employees and the Agency shall submit their opinion regarding the notification to the employer within 15 days after receiving the notification. Upon receiving the opinion, the employer shall pass a program of measures for resolving redundant employees, which can determine other measures for exercising the rights of employees whose work has ceased to be necessary, in addition to the measures envisaged by the law.*

*A fine in the amount from EUR 2,000 to EUR 20,000 shall be imposed to an employer with the status of a legal entity if fails to pass a program of measures for resolving the redundant employees.*

## Conclusions of 2016

### MONTENEGRO

#### Article 1 - Right to work

##### *Paragraph 1 - Policy of full employment*

The Committee takes note of the information contained in the report submitted by Montenegro.

##### *Employment policy*

According to the Report, the Law on Employment and Exercising Rights with respect to Unemployed Insurance envisages that the Ministry of Labour and Social Welfare monitors and evaluates the impact of active employment measures. Based on these projections, the future measures and activities are planned.

The Committee notes that several activation measures had been taken, which however turned out not to be effective. Therefore, the situation is not in conformity with Article 1§1 of the Charter.

##### *Conclusion*

**The Committee concludes that the situation in Montenegro is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.**

##### *Answer:*

***Pursuant to the Law on Employment and Exercising Rights with respect to Unemployment Insurance, the Employment Agency conducts active employment policy measures aimed at increasing employment and/or decreasing unemployment. Active employment policy measures, pursuant to Article 31 of this Law, are:***

- 1) information on employment opportunities and conditions;***
- 2) mediation in employment;***
- 3) vocational guidance;***
- 4) training for independent work;***

- 5) *support to self-employment;*
- 6) *employment's subsidies;*
- 7) *adult's education and training;*
- 8) *professional rehabilitation of hard-to-employ persons;*
- 9) *public works;*
- 10) *scholarship;*
- 10a) *training for the work at the employer's;*
- 11) *other measures aimed at increasing employment and/or decreasing unemployment.*

*According to the Employment Agency of Montenegro, at the end of December 2015, the unemployment rate was 17.24%. In the same period of 2016, the unemployment rate was 21.33%, which is more by 4.09 percentage points compared to December 2015. At the end of September 2017, the unemployment rate was 21.01%, which is 2.83 percentage points more than in September 2016 (18.31%).*

*When it comes to the youth activity rate of 15-24, in the comparative period 2015-2016, a shift from 30.2% to 32.7% can be noted. There is also progress in the employment rate of young people from 18.8% to 21.0%, as well as the reduction of the unemployment rate from 37.6% to 35.9%.*

*Interviews are organized for all newly registered persons from the Employment Agency records, and they are conducted by professionally trained employment counsellors. At the interview, unemployed persons receive information about their rights and obligations which they have while they are registered with the Employment Agency. Unemployed persons, through these interviews in groups of 15-20 participants, meet with active employment policy programs, such as: informative - motivational seminars, trainings, retraining, specializations, vocational guidance, loans for self-employment, etc. Paying their attention on how important is their active role in seeking employment, presenting to them statistical data on relevant characteristics of the labour market, the demand for certain professions and the state of the Employment Agency records, pointing to the need of acquiring new knowledge in order to preserve working condition and easier integration into the labour market and receiving a number of useful information about the roles of the Employment Agency and the labour market. In the period from 1 July 2015 to 30 September 2017, a number of 9.115 persons went through this professional treatment.*

*Informative — motivational seminars (workshops) are programs intended for all unemployed persons, and their purpose is to inform the unemployed about all significant features of the labour market and employment. Also, they aim to motivate the unemployed persons to actively seek employment. These seminars greatly influence to the strengthening of confidence which is an important precondition for independent active job seeking. They learn the specific skills of writing applications, biographies, introducing to the employer. Specialist*

*workshops are conducted for persons who intend to become entrepreneurs. In the period from 1 July 2015 to 30 September 2017, a number of 669 unemployed persons went through this type of program. Our analyses show that these seminars have the stimulating impact on the unemployed persons to actively seek job and to participate actively in the programs of AEP.*

*Employment counsellors have been working on individual employment plan based on a structured interview for each unemployed person. Employment plan helps unemployed person to quickly get to work with a highly professional and vocational guidance of the counsellor. In the period from 1 July 2015 to 30 September 2017, a number of 94.700 interviews, 196.314 employment plans and 259.335 implementations of employment plans were made.*

#### *Professional treatment of unemployed persons*

<i>Professional treatment of unemployed persons</i>	<i>01/07-31/12/2015</i>	<i>01/01-31/12/2016</i>	<i>01/01-30/09/2017</i>	<i>Total:</i>
<i>Interview</i>	<i>23525</i>	<i>42682</i>	<i>28493</i>	<i>94700</i>
<i>Informative conversation</i>	<i>2349</i>	<i>3781</i>	<i>2985</i>	<i>9115</i>
<i>Employment plan</i>	<i>43145</i>	<i>90284</i>	<i>62885</i>	<i>196314</i>
<i>Employment plan realisation</i>	<i>50565</i>	<i>121261</i>	<i>87509</i>	<i>259335</i>
<i>Informative-motivation seminars</i>	<i>174</i>	<i>205</i>	<i>290</i>	<i>669</i>

*Programs of adult education and training were implemented for 1,657 persons from the Employment Agency records, of which 1,319 participants in education programs for acquiring professional qualifications and 338 participants in education programs for the acquisition of key skills.*

*Education programs for acquiring professional qualification and key skills have been implemented in cooperation with adult education providers.*

*If observed according to the level of education, the most included persons are with secondary school education (III and IV level of education), which is 55.5%, followed by faculty 32.0%, and 12,5 % persons with completed primary school. Participation of females in abovementioned programs is 59% and persons up to 24 years of age is 66%. The participation of long-term unemployed persons is 57%.*

*The cost of this program for 1,657 persons amounts to €711,562.14. However, due to employment directly and/or within the period of up to six months after its realization, 11% of 1,123 participants in this program (for 534 persons, realization of the program is underway with financial support of €48,904.47), the return of funds invested in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees, in the amount of €72,000 is recorded. Therefore, the real cost of financing this program for the period from 01 July 2015 to 31 December 2016 is €591,000.*

*Public works are carried out in cooperation with ministries, local administrations, public institutions, NGO sector, employers and other legal persons through social protection programs, ecological, educational, cultural and other similar programs based on community benefit and non-profit work which does not create unfair competition on the market. These programs facilitated the employment concerning the matters of public interest, for 2,769 unemployed persons out of which 57% persons who were in the unemployment record from the northern and less developed municipalities.*

*If observed according to the level of education, the most included persons are with secondary school education (III and IV level of education) 49%, followed by faculty 30%, and 21% persons with completed primary school. Females participate with 57%. Participation of persons up to 24 years of age is 12%, and over 55 years of age is 19%.*

*The participation of long-term unemployed persons and/or persons registered with the Employment Office more than 12 months, and who are, due to the consequences of prolonged unemployment insufficiently competitive, is 70%.*

*If observed from the financial aspect, the cost of this program for 2,769 persons amounts to €2,333,151.54. However, due to employment directly and/or within the period of up to six months after its realization, 22% of 1,706 participants in this program (for 1,603 persons, realization of the program is underway with financial support of €563,976.17), the return of funds invested in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees, in the amount of €257,000 is recorded. Therefore, the real cost of financing this program for the period from 01 July 2015 to 31 December 2016 is €1,512,157.*

*Program of professional training of persons who acquired higher education is implemented with the aim, on the one hand, to support persons with higher education in acquiring adequate practical knowledge that would make them more competitive in the labour market, and on the other hand, to animate the private sector for employing as many young people and opening new workplaces. Through nine-month vocational training, beneficiaries have compensation in the amount of 50% of the average net salary in Montenegro in the previous year.*

*In the period from 1 July 2015 to 30 September 2017, the program encompassed 6,515 beneficiaries out of which 2,958 were trained in public sector and 3,557 beneficiaries in the private sector (2015/2016 - 3,319 and 2016/2017 -3,196). In the respective period, employers expressed interest in participating in the program by advertising 18,187 job vacancies (2015/2016 - 9,014 and 2016/2017 - 9,173).*

*After the realization of the program, 35.64% of program beneficiaries were employed. Employing the beneficiaries in 2014/2015 amounted to 49.48% (3,701 beneficiaries), 2015/2016 – 45.08% (3,319 beneficiaries) and 2016/2017 - 15% (3,196 beneficiaries). It should be noted that employment information of the beneficiaries of the program 2016/2017 refers to employment immediately after the realization of the program.*

***Training for independent work of persons who acquired secondary education (III and IV level of education), is implemented for 132 persons, without experience corresponding to educational level and who has not reached the age of 24. The participation of females in this program is 46%. The program was implemented as a priority for unemployed young people, without experience in the acquired level of education from northern and less developed municipalities, and whose participation in the program is 70%.***

***The realization of the training program for independent work is financially supported at the monthly level, in the amount of total expenses for minimum wages of employees in the program, which per participant of the program is €322.22. The employer exercised the right to financial support for a period of six months.***

***If observed from the financial aspect, the cost of this program for 132 participants amounts to €165,926.65.***

***Due to the return of funds in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees in the amount of €110,880, the real cost of financing this programme is 55,046.65.***

***Immediately and/or within the period of up to six months after the program realization, 15% of 82 participants in this programme were employed (for 50 participants, realization of the programme is underway with financial support of €47,304.40), which further reduces the real costs of realisation of this programme.***

#### ***Training program for the work at the employer's***

***The program was implemented in cooperation with private sector employers who expressed willingness to fill vacancies through the implementation of the training program. The realization of the program enabled employment for 365 unemployed persons who were not employed in the last 12 months, of which 65% were persons from the northern and less developed municipalities. In the structure of employees, young people participate with 37%, and females of 45%.***

***At the same time, this program was used by 99 private sector employers who filled their vacancies in the service sector, tourism and catering, wood processing and other activities.***

***The realization of the training program for the work is financially supported at the monthly level, in the amount of total expenses for minimum wages of employees in the program, which per participant of the program amounts to €322.22. The employer exercised the right to financial support, with an average duration of six months (minimum three and maximum eight months).***

***If observed from the financial aspect, the cost of this program for 345 participants out of included 365 participants (20 persons are financed by the programme performer) amounted to €696,782.72.***

*Due to the increase of funds in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees in the amount of €278,713, the real cost of financing this programme is €418,069.72.*

*Immediately and/or within the period of up to six months after the program realization, 20% of 250 participants in this programme were employed (for 115 persons, realization of the programme is underway with financial support of €248,805.41), which further reduces the real costs of realisation of this programme.*

*Hence, the real cost per programme participant amounted to €1,168.63, and per employee within the period of up to six months after the programme realization €5,843.18*

**Program »Youth are our potential, let give them a chance«**

*The program "Youth are our potential, let give them a chance" included 49 young highly educated persons who have acquired entrepreneurial knowledge, specific business skills, skills in developing, managing and implementing projects, as well as knowledge and skills of cluster linking businesses. Participants of this program are enabled to be employed for a fixed period of 18 months, and in the work environment apply the acquired knowledge and skills. The participation of females in this program is 60%.*

*If observed from the financial aspect, the cost of this program for 49 participants amounts to €381,593.80. However, due to the return of funds in the Budget of Montenegro in the amount of €152,637.50, in the name of the contribution for mandatory social insurance of program employees, the real cost of financing this program amounted to €228,956.30.*

*Immediately and/or within the period of up to six months after the program realization, 49% of participants in this programme were employed.*

**The program "Stop the grey economy"**

*The program for the training and employment of young highly educated persons on the jobs for preventing informal business "Stop grey economy" includes 245 unemployed persons with a work experience of nine months at least, of which 56% are females. The program was implemented in cooperation with the Ministry of Labour and Social Welfare, Ministry of Finance - Tax Administration, Ministry of Internal Affairs - Police Administration and Administration for Inspection Affairs.*

*The participants of the program are trained and employed in technical support and assistance to officials of the Administration for Inspection Affairs, Police Directorate and Tax Administration in performing their duties: when registering taxpayers, contributors and insurance, controlling the correctness of registration applications and registration decisions, applying positive tax regulations, receipt and processing of tax returns, processing and compilation of tax records, work of call centres, realization of the Project "Be responsible" and other tasks of inspection services in all segments defined by the operational work plan.*

*The training and employment of young people in combatting grey economy contributed to resolving the problem of youth unemployment, the suppression of informal business and/or the grey economy. As non-formal business as a parallel activity to formal-regular business negatively influences the integration of young people in the labour market, and consequently on their socio-economic status, the program activities enable the participants to directly influence the creation of a better quality market environment. Also, the direct action of the participants of the program contributed to more efficient work of the institutions and increasing the confidence of citizens in the institutions of the system, which also reflected on more efficient budgetary prosperity.*

*If observed from the financial aspect, the cost of this program for 245 participants amounted to €297,965.12. However, due to the return of funds in the Budget of Montenegro in the amount of €147.000, in the name of the contribution for mandatory social insurance of program employees, the real cost of financing this program amounted to €150,965.12.*

*Immediately and/or within the period of up to six months after the programme realization, 33% of 100 participants in this programme were employed (for 145 participants, realization of the program is underway with financial support of €116,052.50) which further reduces the real costs of realisation of this programme.*

#### **Pilot program “Activation of Users of Family Financial Support”**

*The program for mitigating the consequences of long-term unemployment of the beneficiaries of family financial protection (support) covered 202 persons from the northern and less developed municipalities of Montenegro. Activities of preparing and selecting the participants for the program were realized with the program implementation municipalities in cooperation with centres for social work. In addition, in cooperation with the program implementation municipalities were defined program contents of significance for the development of 14 less developed local communities.*

*By engaging long-term unemployed persons who are insufficiently active in seeking employment due to reliance on social benefits and 32 socially useful, unprofitable program content, these persons are motivated and stimulated for more active job search.*

*The activation of these individuals contributed to the increased availability of social benefits for persons whose activation is not possible.*

*Immediately after the program realization and/or in the period of up to six months, 13% of program participants were employed. The cost of financing this program for 202 participants amounts to €40,300.*

#### **Vocational guidance**

*General programs of vocational guidance cover professional informing and professional counselling, and in relation to the method of work, they are divided into individual and group programs:*

*Individual programs of vocational guidance include on average two meetings of vocational guidance counsellor and his/her beneficiary (pupil, student or job seeker) while group programs are based on the workshop method where beneficiaries through group and individual activities acquire knowledge and skills. Group work includes from 7 to 16 participants, while the time frame of providing services ranges from 45 to 90, i.e. 270 minutes per day, depending on the structure of the program.*

*General programs of vocational guidance imply providing services:*

- *Professional informing;*
- *Professional counselling;*
- *Psychological treatment with the application of corresponding test battery*
- *Selection for employment.*

*Table 1. Review of beneficiaries of general programs of vocational guidance in the period from 1 July 2015 to 1 September 2017*

<i>Programs</i>	<i>Beneficiaries of vocational guidance</i>					
	<i>Unemployed</i>	<i>Employers</i>	<i>Pupils</i>	<i>Parents</i>	<i>Students</i>	<i>Persons seeking the change of employment.</i>
<i>Professional informing - group</i>	<i>1.712</i>	<i>60</i>	<i>5.129</i>	<i>39</i>	<i>238</i>	<i>66</i>
<i>Professional informing - individual</i>	<i>5.417</i>	<i>906</i>	<i>1.320</i>	<i>326</i>	<i>699</i>	<i>35</i>
<i>Professional counselling - group</i>	<i>424</i>	<i>0</i>	<i>2.929</i>	<i>0</i>	<i>206</i>	<i>0</i>
<i>Professional counselling - individual</i>	<i>1.512</i>	<i>41</i>	<i>1.306</i>	<i>196</i>	<i>95</i>	<i>105</i>

*During the mentioned period, the psychological treatment was provided to 1,111 persons, while the selection process was undergone by 1,092 persons.*

***The program »Career guidance and labour market in primary and secondary schools«***

*The program »Career guidance and labour market in primary and secondary schools« realized by the Employment Agency and the Ministry of Education, has been implementing continuously, as of 2011. Activities envisaged by this Program are conducted with the vocational guidance counsellor at the Centre for information and professional counselling as*

well as in educational institution.

*The program was launched with the intention to provide the youth in the educational system who are entering into the labour market and/or continuing education with a basis for encouraging career development, proper choice of profession, choice of employment, developing the idea about entrepreneurship, and so on and/or that pupils in primary and secondary schools have the opportunity of timely professional informing about segments important for choice of profession and career development. This program is being implemented for pupils of primary and secondary schools who are continuing their education and for pupils of vocational schools who are entering into the labour market.*

**Table 3. Beneficiaries of the program »Career Guidance and the Labour Market in Primary and Secondary Schools« in the period from 1 July 2015 to 1 September 2017**

<i>ACTIVITIES</i>	<i>(number of visited schools)</i>	<i>(number of informed pupils)</i>
<i>Promotion of CIPS services in primary schools</i>	<i>73</i>	<i>5,395</i>
<i>Promotion of CIPS services in secondary schools</i>	<i>24</i>	<i>1,903</i>

*During the reporting period, the vocational guidance counsellors informed 7,298 pupils about services provided by the Employment Agency in the centres for information and vocational guidance by visiting primary and secondary schools.*

**Program »Encouraging career development of directly employable unemployed persons«**

*The Program “Encouraging career development of directly employable unemployed persons” is intended for persons who are registered with the Employment Office for the first time, in order to encourage the professional development of candidates for employment.*

*The Program is implemented through workshops, lasting from one to three days. It is so designed to concise a program aimed at social form, program focused on informing, motivating and actively job seeking. The number of participants of this program in the period from 1 July 2015 to 1 September 2017 is shown in the table.*

**Table 5: Beneficiaries of the program “Encouraging career development of directly employable persons”**

<b>GENERAL PROGRAMS</b>	<b>Number of seminars</b>	<b>Number of participants</b>
<i>Program of one-day workshop</i>	<i>51</i>	<i>476</i>
<i>Program of two-day workshop</i>	<i>26</i>	<i>245</i>
<i>Program of three-day workshop</i>	<i>1</i>	<i>11</i>
<b>Total</b>	<b>78</b>	<b>732</b>

**The Program “Encouraging career development of directly employable persons” have undergone 732 persons.**

***Information Booklet on entry into secondary school is intended for pupils who finished primary schools. It was printed in May 2016 and 2017 in 7,000 copies and distributed in all primary schools in Montenegro.***

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the report submitted by Montenegro.

### *Conclusion*

**The Committee concludes that the situation in Montenegro is not in conformity with Article 1§4 of the Charter on the following grounds:**

- **it has not been established that the right to vocational guidance within the education system and the labour market is guaranteed;**
- **it has not been established that vocational training and retraining is guaranteed for adult workers;**
- **it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.**

### *Answer:*

#### **Determining the percentage of disability**

*The Commission for Professional Rehabilitation determines the percentage of disability considering the medical, but also the social and other criteria, whereby it determines the abilities of persons with disabilities necessary for inclusion in the labour market, and/or the possibility of their employment. This means that disability is not determined only within the framework of a medical model (injuries and illnesses), but in interaction with various barriers that can prevent persons with disabilities from participating effectively and equally in society with persons without disabilities.*

*The first instance commissions issued findings and opinion on the established percentage of disability for 4,853 persons (50% women) in the reporting period.*

#### **Inclusion of persons into professional rehabilitation programs, determination of remaining work capacity and employment opportunities**

*Based on the opinion of the Commission for Professional Rehabilitation, the involvement of persons with disabilities in vocational rehabilitation programs is carried out, through which they are determined the remaining working ability, and after that, they are directed, trained, prepared and enabled for a certain job.*

### Recognition of the right to professional rehabilitation

*The Commission for professional rehabilitation gives opinion on:*

- *the need to include an unemployed persons with disabilities in measures and activities of professional rehabilitation with the aim of appropriate training for work, in order to achieve competitiveness on the labour market.*
- *the need to include an employed person with disabilities in appropriate measures and activities of professional rehabilitation activities, with the aim of retaining existing employment, promotion or changing a professional career.*
- *the need to include an employed person with disabilities in measures and activities of professional rehabilitation with the aim of exercising the employer's right to subsidies for grants for adjusting workplace and working conditions for employment of persons with disabilities, credit facilities under favourable conditions for the purchase of machines, equipment and tools necessary for employment of persons with disabilities and participation in financing personal expenses of assistants (assistants in the work) of persons with disabilities.*

*The first instance commissions for professional rehabilitation considered 246 cases at the request of persons for inclusion in the measures and activities of professional rehabilitation during the reporting period (around 50% women) and for all persons they adopted opinions on the need for inclusion based on which decisions were made on recognition of the right to professional rehabilitation.*

### Determination of remaining work capacity and employment opportunities

*For persons involved in the program of professional rehabilitation, after the implementation of measures 1 and 2 (counselling, encouraging and motivating persons with disabilities to actively seek employment and determining the remaining working capacity), the Commission for Professional Rehabilitation gives an opinion on the remaining working capacity and/or after realization of all necessary measures, an opinion is provided on the possibility of their employment, based on the report of the performer of professional rehabilitation.*

*The commissions reviewed the findings and assessments of performer of professional rehabilitation for 259 persons (about 53% of women) and gave opinions on the remaining working capacity for all persons during the reporting period.*

*The commissions for professional rehabilitation issued an evaluation of the employment opportunities for 51 persons (50% of women), on the basis of which decisions on the possibility of employment we made during the reporting period*

*In order to bring a final evaluation mark and/or decision on the possibility of employment of a person, it is necessary to evaluate all abilities of the person in terms of his/her employment,*

*which is a process and requires time, which depends on the identified problems and limitations regarding the inclusion of a person on the labour market.*

*The largest number of persons (90%) is evaluated as employable under special conditions in the open market with the adjustment of jobs and/or the workplace, and in special organizations - the work centre.*

**Professional rehabilitation – in the period from 1 July 2015 to 30 September 2017**

*Professional rehabilitation is a process that is being implemented with the aim of enabling the individual to the social and occupational integration. It includes measures and activities that enable persons with disabilities to prepare for labour market in a proper way, to keep their job, promote therein or change their career.*

*The whole process of rehabilitation is aimed at activating, encouraging and developing positive characteristics, abilities, skills and interests of an individual.*

*The most important segment of professional rehabilitation process is 000 of remaining working capacity, knowledge, existing work habits, professional interests of the individual, with the aim of his/her involvement in the work process. At this stage of the process, the state of health, social factors, professional and educational factors, mental abilities, personality and behaviour and working function of an individual are evaluated.*

*The measures and activities of professional rehabilitation are implemented in Podgorica, Pljevlja, Herceg Novi, Bar, Nikšić, Bijelo Polje and Tivat and/or all municipalities in which the performer of professional rehabilitation carry out their activities in accordance with the law during the reporting period and persons were included in all measures and activities foreseen by the Law on Professional Rehabilitation and Employment of Persons with Disabilities.*

*A total number of 339 persons with disabilities (181 women) were included in the measures of professional rehabilitation during the observed period.*

*There were 125 persons with disabilities (63 women), who were involved in the process of professional rehabilitation, were in employment relationship.*

## **Article 9 - Right to vocational guidance**

The Committee takes note of the information contained in the report submitted by Montenegro.

In response to the Committee's question concerning foreigners' access to vocational guidance (Conclusions 2012), the report indicates that, pursuant to the Law on Employment and Exercising Rights with respect to Unemployment Insurance of 2010, as amended, are entitled to vocational guidance services all foreigners with a permanent residence permit, refugees and persons entitled to subsidiary protection, who are registered as unemployed with the Employment Office as well as foreigners not registered as unemployed, who have legal residence in Montenegro (employees, pupils, students etc.). **The Committee asks the next report to clarify whether this means that holders of temporary residence titles have equal access as Montenegro nationals to vocational guidance services within the education system and in the labour market.**

*Answer:*

*Vocational guidance is one of the active employment policy measures, stipulated by Law on Employment and Exercising Rights with respect to Unemployment Insurance.*

*By vocational guidance is considered:*

- providing help to unemployed person, an employee, a pupil, a student and another person to objectively think about, plan for and succeed in his/her career;*
- Harmonisation of individual needs and capabilities of the unemployed person with the needs and requirements of the labour market.*

*An unemployed person is a person between 15 and 67 years of age who is a citizen of Montenegro and a foreigner with a permanent residence permit, recognized refugee status or subsidiary protection, who is registered at the Employment Agency of Montenegro, capable or partially capable of work, who is not employed and who is actively seeking employment.*

*According to above mentioned, foreigners who are registered at the Employment Agency of Montenegro as unemployed persons, have the right to include in active employment policy measures, including the vocational guidance.*

*Also, this right is entitled to foreigners who are not unemployed in terms of Law on Employment and Exercising Rights with respect to Unemployment Insurance, and who have legal residence in Montenegro (employee, pupil, student, etc.).*

*In relation to that, foreigners with of temporary residence are not in the records of the Employment Agency of Montenegro as unemployed persons and are not entitled to the services of vocational guidance provided by the Employment Agency.*

### *Vocational guidance within the education system*

The Committee does not find in the report any information on the number of beneficiaries of vocational guidance provided by school counsellors and psychologists. Furthermore, the report does not provide the information previously requested concerning the budget and staffing of vocational guidance services at school. The Committee accordingly reiterates its request for this information, both as regards the vocational guidance services provided by school counsellors and psychologists and those provided by CPIS. In the meantime, in the absence of the information requested, it does not find it established that the right to vocational guidance within the educational system is guaranteed.

*Answer:*

*The training the teachers program was accredited titled: "Skills of career management in vocational schools". The program is in the Catalogue of Continuing Professional Development of Teachers, adopted by the National Council for Education.*

*With the support of the IPA project "Modernization of education programs and teacher training" two three-day trainings of teachers for conducting career guidance in vocational schools were organized in November 2016 and March 2017. The training was attended by 48 teachers - members of career guidance teams from 18 professional and mixed schools.*

*In 2017, training as per five-module program for a total of 30 participants was organized for psychologists, pedagogues, teachers of different professions and coordinators for professional development from gymnasiums in Cetinje, Tuzi and Golubovci and three vocational schools in Podgorica.*

*Bearing in mind the importance of vocational guidance in the choice of profession and the need to enable pupils to acquire the skills necessary for career guidance, the Employment Agency of Montenegro is implementing the Program "Career Guidance and the Labour Market in Primary and Secondary Schools" for the pupils of primary schools and secondary vocational school who are entering the labour market or continuing education. In the first six months of 2017, the vocational guidance counsellors (there are eight of them) carried out professional information activities on segments important for the choice of occupations and career development in the Centres for Information and Professional Counselling with 3504 pupils in 50 primary schools, such as: the possibilities of continued education, the importance of the right choice of occupation and the choice of employment, developing the idea of entrepreneurship, the situation on the labour market, etc. In 2016, the number of visited primary schools was 23, where 2221 pupils were informed of the above. In 2016 and the first half of 2017, the services of individual career counselling, which included testing, with the use of psychological instruments, of 900 primary and secondary school students.*

### *Vocational guidance in the labour market*

The Committee asks the next report to clarify what vocational guidance activities are provided to people who are not registered as unemployed and the number of such beneficiaries.

*Answer:*

*Information Booklet on entry into secondary school is intended for pupils who finished primary schools. It is printed in 8,000 copies and distributed during May in all primary schools in Montenegro. Self-report surveys are an integral part of the Information Booklet.*

*As already mentioned, professional and mixed schools have organized presentations of educational offers, equipment of school cabinets, workshops, laboratories, opportunities offered by the completion of a particular program for primary school pupils.*

*In the school year 2016/2017, a number of 745 pupils of the eighth and ninth grade of the primary school studied the elective subject "Vocational Guidance". Also, the elective subject "Entrepreneurship" pointed out the importance of professional informing and counselling in the choice of occupation and career development, which was attended by the 1726 eighth and ninth grades pupils of the current school year.*

*Trainings in secondary schools for 30 participants in total were conducted: Target group: pedagogues, psychologists, teachers of different professions, coordinators for SLPD from schools: Gymnasium Cetinje, SVS Cetinje, Gymnasium "25. May"- Tuzi, SSU "Mirko Vešović" - Podgorica, PI Medical School Podgorica, PI SVS "Sergije Stanić"- Podgorica, PI Gymnasium "Petar I. Petrović - Njegoš" - Danilovgrad.*

*For children with special educational needs, the Individual Transition Plan "ITP" has been developed - it integrates primary and secondary education and vocational guidance for continuing education. It involves the cooperation of primary and secondary schools, joint activities in defining the needs, potentials, educational programs in which the child will be directed during high school. Instructions for preparation and realization of ITP were adopted by the National Council and they are binding.*

*As part of the amendments to the Law on Education, it became an integral part of the Law on Education of Children with Special Educational Needs.*

*ITP precisely involves vocational guidance, direct participation and collaborative work with a child: an analysis of achievement, needs, desires, chooses several school-directions, visits them and makes decisions, visits to VET practitioners and/or employers.*

*Three-day trainings for making the ITP were conducted for primary and secondary schools from Pljevlja, Bijelo Polje, Herceg Novi - 45 participants (professional associates, teachers of subject and practical classes). Training is predominantly focused on deeper*

*understanding of the concept of inclusive education, improvement of competence for creating and implementing ITP. The film "I do not give up" was made and promoted.*

*The ITP-2 has also been developed with the ultimate goal of increasing the employment rate, raising the motivation for employing persons with disabilities. ITP 2 provides guidelines in linking levels of education and employment, recommendations for pupils arising from reached achievements, acquired knowledge and skills during secondary vocational education towards the labour market. The school cooperates with various service providers: capacity assessment, professional rehabilitation performer, resource centres (RCs), employment services, employers, etc. The Instruction has been prepared. There is an on-going training for 5 municipalities: Podgorica, Niksic, Pljevlja, Bijelo Polje, Herceg Novi: representatives of secondary schools, resource centers, local employment bureaus (Ministry, Centre for Vocational Education, KulturKontakt).*

**The report does not provide the information requested concerning the budget allocated to vocational guidance in the labour market.**

*Answer:*

*The Employment Agency of Montenegro allocated the amount of EUR 100,000 to vocational guidance as a budget item.*

The Committee recalls that, in order comply with Article 9 of the Charter, vocational guidance must be provided:

- free of charge;
- by trained staff in sufficient numbers;
- to a significant number of people, attempting to reach the widest possible audience and;
- with a sufficient budget.

**The Committee asks for up-to-date information on these items to be systematically provided in all future reports, especially figures on the resources, staff and number of beneficiaries of vocational guidance in the labour market. It also asks for the next report to state what information tools (media, brochures, events, etc.) are implemented in the area of vocational guidance in the labour market.**

*Answer:*

*Pursuant to the Law on Employment and Exercising Rights with respect to Unemployment Insurance, the Employment Agency conducts vocational guidance as one of the active employment policy measures.*

### Vocational guidance

*General programs of vocational guidance cover professional informing and professional counselling, and in relation to the method of work, they are divided into individual and group programs:*

*Individual programs of vocational guidance include on average two meetings of vocational guidance counsellor and his/her beneficiary (pupil, student or job seeker) while group programs are based on the workshop method where beneficiaries through group and individual activities acquire knowledge and skills. Group work includes from 7 to 16 participants, while the time frame of providing services ranges from 45 to 90 and/or 270 minutes per day, depending on the structure of the program.*

*General programs of vocational guidance imply providing services:*

- *Professional informing;*
- *Professional counselling;*
- *Psychological treatment with the application of corresponding test battery*
- *Selection for employment.*

*Table 1: Review of beneficiaries of general programs of vocational guidance in the period from 1 July 2015 to 1 September 2017*

<i>Programs</i>	<i>Beneficiaries of vocational guidance</i>					
	<i>Unemployed</i>	<i>Employers</i>	<i>Pupils</i>	<i>Parents</i>	<i>Students</i>	<i>Persons seeking the change of employment</i>
<i>Professional informing -group</i>	1.712	60	5.129	39	238	66
<i>Professional informing - individual</i>	5.417	906	1.320	326	699	35
<i>Professional counselling - group</i>	424	0	2.929	0	206	0
<i>Professional counselling - individual</i>	1.512	41	1.306	196	95	105

*During the mentioned period, the psychological treatment was provided to 1,111 persons, while the selection process was undergone by 1,092 persons.*

**Program »Career Guidance and the Labour Market in Primary and Secondary Schools«**

*Program »Career Guidance and the Labour Market in Primary and Secondary Schools« realized by the Employment Agency and the Ministry of Education, has been implemented continuously as of 2011. Activities envisaged by this Program are conducted with the vocational guidance counsellor at the Centre for information and professional counselling as well as in educational institution.*

*The program was launched with the intention to provide the youth in the educational system who are entering into the labour market and/or continuing education with a basis for encouraging career development, proper choice of profession, choice of employment, developing the idea about entrepreneurship, and so on and/or that pupils in primary and secondary schools have the opportunity of timely professional informing about segments important for choice of profession and career development. This program is being implemented for pupils of primary and secondary schools who are continuing their education and for pupils of vocational schools who are entering into the labour market.*

**Table 3. Beneficiaries of the program »Career guidance and labour market in primary and secondary schools« in the period from 1 July 2015 to 1 September 2017**

<b>ACTIVITIES</b>	<b>(number of visited schools)</b>	<b>(number of informed pupils)</b>
<b>Promotion of CIPS services in primary schools</b>	<b>73</b>	<b>5,395</b>
<b>Promotion of CIPS services in secondary schools</b>	<b>24</b>	<b>1,903</b>

*During the reporting period, the vocational guidance counsellors informed 7,298 pupils about services provided by the Employment Agency in the Centres for information and vocational guidance by visiting primary and secondary schools.*

## ***Article 10 - Right to vocational training***

### ***Paragraph 2 - Apprenticeship***

The Committee takes note of the information contained in the report submitted by Montenegro.

In its previous conclusion (Conclusions 2012) the Committee wished to be informed about the existence of the system of apprenticeship, its length of the apprenticeship and division of time between practical and theoretical learning, as well as the number of people involved, the total spending both public and private and types of training and the availability of places for all those seeking them.

The Committee notes that the report does not provide any information about apprenticeships. Therefore, it considers that it has not been established that there is a functioning system of apprenticeships.

***Answer:***

***Program of vocational training of persons with acquired higher education has been implemented for six years in a row in accordance with the provisions of Law on Vocational Training of Persons with acquired Higher Education. There is a public call under way for potential users and/or university students who will undergo vocational training at the employers'. In the period from 15 September to 16 October, employers advertised more than 10,000 vacancies for vocational training for 2017/18.***

***During 2016/17, employers announced 9,173 vacancies for the vocational training of users, while the total number of persons with acquired higher education who applied for participation in the Program is 3,439. In 2017, 3,274 beneficiaries are vocationally trained with the chosen employer, and by the end of October they will complete the nine-month training, after which they will be required to take a State and/or vocational exam.***

***Mentioned program aims to facilitate the transition from the world of education to the world of work, and provide practical knowledge to students.***

***The program gave good results, for the reason that, based on the latest analysis and information provided by the Tax Administration of Montenegro, out of 14,252 beneficiaries, who were part of the Program in the previous four years, 6,856, or about 48% of them continued their work engagement. Out of the total number of engaged users, 2,447 (35.64%) is in the public sector, while 4,418 (64.35%) are engaged in the private sector.***

***As it was noticed that during initial tertiary education there is not adequately represented practical training for inclusive education, it is necessary to increase the competencies of personnel who pass through the vocational training program. For this purpose, the Ministry of Education has designed a training program for persons undergoing a vocational training program in order to improve their competences for applying new***

*practices in the classroom, all for the quality of inclusive teaching and optimal educational and developmental achievements of children. To this end, it would be standardized and fully customized the educational package prepared by the UNICEF Office in Macedonia with the Faculty of Education in Zurich. Activities are selected, scenarios for workshops are developed and pilot training module for trainees for inclusive education is made. PI Primary School "21. May" is designated as a punctum-school, since the defectologist has undergone training for this program. An analysis of the number of trainees is done and the groups are formed.*

*Five groups of participants were formed: coastal area, Podgorica, the area of Nikšić and Danilovgrad and two groups from the northern part of Montenegro. It was determined that these were only recently graduated teachers of class teaching, pedagogues, psychologists, defectologists. A total of 97 trainees received training: 11 from the coast, 22 from Nikšić and Danilovgrad, 14 from Podgorica and 50 from the north of Montenegro.*

*The first training was organized for schools from the south/coastal region of Montenegro at the primary school "Blažo Jokov Orlandić", on 28-29 March 2017. Then, for the schools from Nikšić, Danilovgrad, Šavnik, Plužina in the Primary School "Luka Simonović", Nikšić, on 06-07 April 2017, for schools from Podgorica and Cetinje at the Primary School "21. May", Podgorica, on 18-19 April 2017 and for schools from the northern region in the PI Primary School "Dušan Korać", Bijelo Polje on 26 - 28 April 2017.*

*Training mainly involved topics such as inclusive principles, tolerance, work with specific disabilities, understanding the concept of social inclusion in the broadest context, the role of staff in school, the function and responsibility of other actors of society and the system. Then, it included practical tasks followed by presentations, explanations, comments and suggestions of the trainer on the following topics: inclusive education - approach, participation, achievement; understanding diversity; knowledge, skills and competencies needed to work with a pupil with disability whether intellectual, physical, hearing, vision or autism; their opinion about the its application (work on individual education and development programs (IEDPs) and case studies based on previous workshops).*

*The program has been reaccredited.*

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

The Committee takes note of the information contained in the report submitted by Montenegro.

At the proposal of the Ministry of Education, the Government adopted the Adult Education Strategy for the period 2015-2025 and the Adult Education Plan for the period 2015- 2019. Also, the Ministry in cooperation with the Centre for Vocational Education adopted the Methodology for ensuring and improving the quality of institutional work in the institutions of primary, secondary and higher vocational education and adult education. **The Committee asks the next report to provide information about the implementation of the Strategy.**

### *Answer:*

*As regards the implementation of the Adult Education Strategy for the period 2015-2025, the following activities have been realised:*

*The Ministry of Education and the Centre for Vocational Education organized the XVI Days of Education and Teaching of the Adults, with a topic "Human Resources - the Key to Economic and Social Development" in the period from 16-23 October 2017.*

*Workshops were realized with the aim of familiarizing students and teachers with Europass documents (Europass CV, Europass Language Passport, Europass Mobility and Europass Diploma Supplement/Certificate*

*Amendments to the Law on Adult Education have improved the provisions related to andragogical training of staff working in adult education. In total, 102 adult education providers were licensed.*

*In 2017, ten modularized educational programs were developed - they enable gradual acquisition of qualification of the level and acquiring vocational qualifications for students who do not complete education, adults or students with special educational needs - acquisition of vocational qualification.*

*Under the project the "National Coordinator" financed from the EU funds, it was prepared the "Report on Adult Education in Montenegro" prepared by an intersectoral working group, coordinated by the Centre for Vocational Education.*

*With the support of IPA Component IV, under the Project "Modernization of Educational Programs and Teacher Training", 6 training sessions for a total duration of 10 days were organized for 85 participants for sectoral commissions in the field of construction, services, tourism, economics and electrical engineering.*

### *Employed persons*

The Committee wished to receive information about the types of continuing vocational training and education available on the labour market for unemployed persons, the overall participation rate of persons in vocational training and the total expenditure.

*Answer:*

*The Human Resources Management Authority continuously conducts vocational training and advancement of state and local civil servants and employees through the following training programs:*

#### *a) General training programs*

- Program of vocational training and advancement of civil servants and state employees*
- General program of vocational training and advancement of local civil servants and state employees*

#### *b) Specific training programs*

*Training program for taking the professional exam for work in state administration authorities - VSS; Training program for taking the professional exam for work in state administration authorities - SSS; Training program for acquiring and improving knowledge and skills in the area of management; Training program for acquiring and improving knowledge and skills for introduction to employment; Training program for acquiring and improving knowledge and skills in the field of cooperation between state bodies, local self-government units and non-governmental organizations; Training program for acquiring and improving knowledge and skills in the field of internal financial control system in the public sector; Training program in the field of financial management and control; Training program in the field of internal audit; Training program for court administration; Training program for lecturers of the Human Resources Management.*

#### *c) Special training programs*

*Training and Certification Program of internal auditors in the public sector of Montenegro; Training program for acquiring public sector accounting certification, 2016 - 2024.*

#### *d) Accredited training programs*

*Education program for acquiring key skills for human resources management.*

*During 2016, out of 1,494 registered participants, 897 attendees attended the training, of which 306 men and 591 women. In terms of the structure of the participants, the highest numbers of attendees were university diploma holders, and as far as the age structure of*

*the attendees is concerned, the highest number of participants' was 26 through 45 years of age.*

*For the purposes of monitoring the realization of the Annual Adult Education Plan, the Centre for Vocational Education collects data about activities and the number of participants that have been realized for the priority area "Improving Employees' Competencies" in accordance with the Adult Education Plan 2015-2019.*

*Information about activities and number of attendees for 2016:*

- The HRM Authority of Montenegro organized trainings for employees in state administration and local self-government from the general program of professional development and specific programs that included 2407 employees.*
- The Ministry of Labour and Social Welfare organized various forms of non-formal education for employees from its sector, which included 1121 employees.*
- The Ministry of Tourism and Sustainable Development organized various forms of non-formal education, which included a total of 200 employees and associates of the Ministry.*
- The Ministry of Agriculture and Rural Development organized various non-formal education programs for employees from its sector and agricultural producers from various areas, which included a total of 1922 employees and agricultural producers.*
- The Directorate for Development of Small and Medium Enterprises organized various forms of non-formal education in which 451 entrepreneurs were involved*
- The Chamber of Commerce of Montenegro organized various forms of non-formal education for employees in companies and partner institutions that included 1158 participants.*
- The Union of Employers of Montenegro has organized various forms of non-formal education, which included 473 employers.*
- The Centre for Vocational Education organized programs for the professional advancement of teaching staff that included 366 teachers and teacher training programs involving 102 teachers/trainers.*

### *Unemployed persons*

In its previous conclusion the Committee wished to receive information about the types of continuing vocational training and education available on the labour market for unemployed persons, the overall participation rate of persons in training and the total expenditure. It also asked what was the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

In addition, the Committee wished to be informed of the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises and households as regards continuing training.

*Answer:*

The types of continuing vocational training and education available on the labour market for unemployed persons are:

*The types of continuing vocational training and education available on the labour market for unemployed persons are: education and training of adults, vocational training of persons who acquired higher education, training for independent work and training at the employer.*

*Programs of adult education and training were implemented for 1,657 persons from the Employment Agency records, of which 1,319 participants in education programs for acquiring vocational qualifications and 338 participants in education programs for the acquisition of key skills.*

*Education programs for acquiring vocational qualification and key skills have been implemented in cooperation with adult education providers.*

*If observed according to the level of education, the most included persons are with secondary school education (III and IV level of education) of 55.5%, followed by faculty 32.0%, and 12.5% persons with completed primary school. The participation of females in this program is 59% and persons up to 24 years of age 66%. The participation of long-term unemployed persons is 57%.*

*The cost of this program for 1,657 persons amounts to €711,562.14. However, due to employment directly and/or within the period of up to six months after its realization, 11% of 1,123 participants in this program (for 534 persons, realization of the program is underway with financial support of €48,904.47), the return of funds invested in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees, in the amount of €72,000 is recorded. Therefore, the real cost of financing this program for the period from 01 July 2015 to 31 December 2016 is €591,000.*

*Program of vocational training of persons who acquired higher education is implemented with the aim, on the one hand, to support persons with higher education in acquiring adequate practical knowledge that would make them more competitive in the labour market, and on the other hand, to animate the private sector for employing as many young people and opening new workplaces. Through nine-month vocational training, beneficiaries have compensation in the amount of 50% of the average net salary in Montenegro in the previous year.*

*In the period from 1 July 2015 to 30 September 2017, the program encompassed 6,515 beneficiaries out of which 2,958 were trained in public sector and 3,557 beneficiaries in the private sector (2015/2016 - 3,319 and 2016/2017 -3,196). In the respective period, employers expressed interest in participating in the program by advertising 18,187 job vacancies (2015/2016 - 9,014 and 2016/2017 - 9,173).*

*After the realization of the program, 35.64% of program beneficiaries were employed. Employing the beneficiaries in 2014/2015 amounted to 49.48% (3,701 beneficiaries), 2015/2016 – 45.08% (3,319 beneficiaries) and 2016/2017 - 15% (3,196 beneficiaries). It should be noted that employment information of the beneficiaries of the program 2016/2017 refers to employment immediately after the realization of the program.*

*Training for independent work of persons who acquired secondary education (III and IV level of education), is implemented for 132 persons, without experience corresponding to educational level and who has not reached the age of 24. The participation of females in this program is 46%. The program was implemented as a priority for unemployed young people, without experience in the acquired level of education from northern and less developed municipalities, and whose participation in the program is 70%.*

*The realization of the training program for independent work is financially supported at the monthly level, in the amount of total expenses for minimum wages of employees in the program, which per participant of the program is €322.22. The employer exercised the right to financial support for a period of six months.*

*If observed from the financial aspect, the cost of this program for 132 participants amounts to €165,926.65.*

*Due to the return of funds in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees in the amount of €110,880, the real cost of financing this programme is 55,046.65.*

*Immediately and/or within the period of up to six months after the program realization, 15% of 82 participants in this programme were employed (for 50 participants, realization of the programme is underway with financial support of €47,304.40), which further reduces the real costs of realisation of this programme.*

#### *Training program for the work at the employer's*

*The program was implemented in cooperation with private sector employers who expressed willingness to fill vacancies through the implementation of the training program. The realization of the program enabled employment for 365 unemployed persons who were not employed in the last 12 months, of which 65% were persons from the northern and less developed municipalities. In the structure of employees, young people participate with 37% and females 45%.*

*At the same time, this program was used by 99 private sector employers who filled their vacancies in the service sector, tourism and catering, wood processing and other activities.*

*The realization of the training program for the work is financially supported at the monthly level, in the amount of total expenses for minimum wages of employees in the*

*program, which per participant of the program amounts to €322.22. The employer exercised the right to financial support, with an average duration of six months (minimum three and maximum eight months).*

*If observed from the financial aspect, the cost of this program for 345 participants out of included 365 participants (20 persons are financed by the programme performer) amounted to €696,782.72.*

*Due to the increase of funds in the Budget of Montenegro, in the name of the contribution for mandatory social insurance of employees in the amount of €278,713, the real cost of financing this programme is €418,069.72.*

*Immediately and/or within the period of up to six months after the program realization, 20% of 250 participants in this programme were employed (for 115 persons, realization of the programme is underway with financial support of €248,805.41), which further reduces the real costs of realisation of this programme.*

*Hence, the real cost per programme participant amounted to €1,168.63, and per employee within the period of up to six months after the programme realization €5,843.18*

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 1 - Vocational training for persons with disabilities*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Definition of disability***

In its previous conclusion (Conclusions 2012), the Committee requested that the next report confirm whether a definition of disability exists. According to the report, the Law on Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette of Montenegro, no. 49/08, 73/10 and 39/11) defines a person with disabilities as “a person with permanent consequences due to physical, sensory, mental or emotional damage or disease, which cannot be eliminated by treatment or medical rehabilitation, and who is faced with social and other restrictions that affect the person’s ability to work and employment opportunities, to maintain employment and advance within it, and which has no possibility or has a reduced ability to, under equal conditions, be included in the labour market”.

**The Committee asks whether this definition applies to all legislation that may affect people with disabilities. The Law on Prohibition of Discrimination against Disabled Persons was amended in 2015. This amendment entered into force outside the reference period, the Committee asks whether the definition of disability has changed.**

### ***Answer:***

***A definition of persons with disability pursuant to the Law on Professional Rehabilitation and Employment of Persons with Disabilities as well as the law on prohibition of Discrimination against Disabled Persons has not been amended. Persons with disability may exercise rights to professional rehabilitation of people with disabilities, measures and incentives for their employment, financial and other issues important for professional rehabilitation and employment of people with disabilities.***

### ***Anti-discrimination legislation***

**The Committee requests that the next report contain information as to whether this Law offers effective remedies to those who believe that they have been excluded or isolated, or deprived in any other way of the effective right to education. In this connection, the Committee also wishes to be informed of any relevant case law concerning discrimination based on disability in education and training.**

*Answer:*

*The Parliament of Montenegro has passed a new Law on the Prohibition of Discrimination on 26 June 2015.*

*Provision of the Article 21 regulates “Discrimination in the area of education and vocational training”, as follows:*

*Discrimination based on developmental disabilities or disabilities at all levels of education within the meaning of regulations governing the area of education shall be considered to be:*

- 1) preventing, limiting or impeding to a person with disabilities the choice of educational program and enrolment and access and stay in educational institution, in accordance with its possibilities;*
- 2) preventing, limiting or impeding to a person with disabilities the attendance of classes and knowledge verification, as well as participation in other educational activities, including also participation in extracurricular activities and competitions;*
- 3) failing to take and failing to implement special measures referred to in Article 5 of this Law for establishment and provision of individualized support for uninterrupted attendance of classes and knowledge verification, as well as participation in other educational activities, including also participation in extracurricular activities and competitions, in accordance with regulations governing the area of education; and*
- 4) excluding a person with disabilities from educational institution when in the same or similar situation his peers are not subjected to that.*

*Compliance with the aforementioned provisions is ensured through the penal policy of the aforementioned law, which imposed penalties for an offense committed by a legal entity in the amount of €10,000-20,000; and/or a responsible person in a legal entity, a responsible person in a state body, a state administration body and a local self-government unit with a fine ranging from EUR 1,500 to EUR 2,000; and/or in the amount of EUR 5,000 to EUR 6,000, for an offense committed by an entrepreneur, while for an offense committed by a natural person a fine of EUR 150-2000 shall be imposed.*

*In addition to the Law on Prohibition of Discrimination against Persons with Disabilities, as lex specialis, on 29 June 2017, the Parliament of Montenegro adopted the general Law on Amendments to the Law on Prohibition of Discrimination. In addition to the fact that the general Law on Prohibition of Discrimination recognizes "disability" as the basis of discrimination, this Law regulates discrimination in the area of education, upbringing and vocational training in Article 15 in the following way:*

*“Discrimination in the field of education and vocational training is considered to be making difficult or denying the enrolment into educational institution and institution of high education and the choice of educational programme at all levels of education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other educational activities, classification of children, pupils,*

*participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law.”*

*In addition to the fact that the general Law on Prohibition of Discrimination regulates the forms, grounds and areas of discrimination, a very strict penalty policy is ensured (from EUR 1000 to EUR 20,000 for a misdemeanour committed by a legal entity; and/or from 500 euros to 2,000 euros for a misdemeanour committed by responsible person in the legal entity, state body, state administration body, local self-government body and local government authority; from EUR 300 to EUR 6,000 for a misdemeanour committed by an entrepreneur; and from EUR 150 to EUR 2,000 for a misdemeanour committed by a natural person). Also, this Law defines the mechanisms for protection against discrimination and the procedure before the Protector and the court.*

*The latest amendments to the Law on Prohibition of Discrimination have reached the level of full compliance with the EC Directives.*

*In addition to legislative activities, and in order to implement the Law on Prohibition of Discrimination against Persons with Disabilities, the Government of Montenegro adopted the "Analysis of Compliance of Legislation in Montenegro with the Law on Prohibition of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities with recommendations for harmonization. The Analysis included a number of regulations in the field of education and vocational training.*

*The analysis showed that the legislation of Montenegro is mostly in line with the standards of the Law and the UN Convention in this area. The General Law on Education is partially complied with the standards of the UN Convention. The Law on Pre-school Education, the Law on Primary Education, the Law on Gymnasium, the Law on Vocational Education and the Law on Higher Education generally follow the standards of the Law on Prohibition of Discrimination against Persons with Disabilities and the UN Convention. The Law on Education of Children with special educational needs conforms to the Law and the UN Convention.*

*Commission for monitoring the implementation of the Strategy for the Protection of Persons with Disabilities from Discrimination and Promotion of Equality for the period 2017-2021 monitors the implementation of recommendations for harmonization.*

*An important document dealing with issues related to education (upbringing) and vocational training, and professional rehabilitation is the "Strategy for the Protection of Persons with Disabilities from Discrimination and Promotion of Equality for the period 2017-2021" with the Action Plan for 2017-2018. This is the first strategic document in Montenegro that considers the issue of persons with disabilities from the aspect of human rights. The Government of Montenegro adopted this Strategy in December 2016.*

*When the area of education is concerned, a particular chapter of the "Strategy for the Protection of Persons with Disabilities from Discrimination and Promotion of Equality" (Chapter 7.6) established measures and activities in the field of discrimination in the field of upbringing, education and vocational training, and deadlines for their realization.*

*When the case law is concerned, according to the data of the High Misdemeanour Court in the period from 2009 to mid - 2017, there were no cases in which victims of discrimination are persons with disabilities - in the area of education.*

*However, the Supreme Court of Montenegro, as the highest judicial authority in the country, collected data from all Montenegrin courts and submitted a report to the Ministry for Human and Minority Rights. The report contains a detailed review of all cases of discrimination against persons with disabilities from 2010 to the date of submission of the report in June 2017. During the reporting period, there were two civil cases of discrimination against persons with disabilities before two courts, in particular before the Basic Court in Podgorica and Niksic. For the aforementioned period, there were no accusations/criminal proceedings in these courts due to discriminatory treatment of persons with disabilities.*

*In 2016, there were 6 requested cases opened, which are still in process before the Basic Court in Podgorica. In the mentioned cases from 2016, on the side of the defendant is the Centre for Social Work and the State of Montenegro for the discrimination of persons with disabilities, but not in the area of education and training. The Basic Court in Niksic received two lawsuits for establishment of the fact that the respondent acted discriminatory against persons with disabilities in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017. In one case, the lawsuit for discriminatory treatment was filed on 18 December 2011 and in another case on 10 April 2017. The lawsuit in the first case was partially adopted, while the lawsuit of the latter case is in procedure. The Basic Court in Niksic did not have rejected or dismissed lawsuits and/or indictments, nor suspended procedures for discriminatory treatment in the specified period. The Basic Court in Niksic did not issue decisions, which determine the provisional measure for preventing the danger of the occurrence of irreparable damage, in particular severe violation of the right to equal treatment or prevention of violence due to discriminatory treatment in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017.*

*The Basic Court in Niksic issued one final judgement for discriminatory acting against a person with disability in the specified period but not in the area of education and training.*

*The Ministry for Human and Minority Rights, in cooperation with UNDP, conducted a survey of attitudes of the public on the degree of discrimination of persons with disabilities and social distance to those persons in order to establish the factual situation of the situation of persons with disabilities in Montenegro and to locate areas where inequality is the most pronounced. The survey was conducted in September 2016 on a representative sample. The results of the survey show that the general population as well as the population of persons with disabilities clearly identify the areas of social and economic life in Montenegro where there are significant restrictions, obstacles and elements of discrimination against persons with disabilities that significantly prevent their equal integration into Montenegrin society. The results of the research show that although there is agreement that the envisaged legal measures are adequate and easily achievable, persons*

*with disabilities face the obstacles that prevent their smooth functioning in many aspects on an everyday basis.*

*The survey showed that 60% of Montenegrin citizens' thing that people with disabilities exercise their rights with the most difficulties in the area of employment, and the population of persons with disabilities is of similar opinion. The following critical areas identified by them are social protection and accessibility to public spaces, public buildings and public transport.*

The Committee requests that the next report provide information as to how the law on prohibition of Discrimination is being applied in practice and information on case law and complaints submitted to the competent authorities with regard to discrimination in access to education.

*Answer:*

*Regarding the application of Article 15 paragraph 1 of the Revised European Social Charter, the Protector points out that, pursuant to Article 33 of the Law on Prohibition of Discrimination ("Official Gazette of Montenegro" no. 46/10, 40/11, 18/14, 42/17 ) the courts, the state prosecutor's offices, misdemeanour authorities, the authority responsible for police affairs and inspection authorities are obliged to keep separate records on filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination. However, although this provision is clear and further concretized through the Rulebook on the content and manner of keeping separate records on cases of reported discrimination ("Official Gazette of Montenegro" no. 50/2014), the bodies that are explicitly listed and the Law and the by-law still have not established the record thereby only partly and unsystematically submit information on discrimination at the request of the Protector, which includes data on reported cases of discrimination against persons with disabilities in different fields and areas. Regarding the application of the Law on Prohibition of Discrimination against Persons with Disabilities, the Protector continuously (in official reports, other documents and public appearances) indicates that this vulnerable category continues to encounter numerous obstacles that are on their way to full integration in all areas of the social life and action. Apart from the problems related to the inaccessibility of facilities and areas in public use, barriers to the exercise of rights have also been registered in other areas, such as education, access to health and social services, inclusion in public and political life, employment and rehabilitation, life standard etc.*

*The equality of persons with disabilities in access to educational and higher education institutions remains questionable and encounters many problems on the path of full realization. The process of higher education from the standpoint of effective involvement of persons with disabilities and the application of the principles of affirmative action,*

*despite the constitutional and legal principles, has not yet been sufficiently achieved.<sup>1</sup> Most faculties are partly or not at all adapted to the needs of people with disabilities. This refers not only the physical inaccessibility of the rooms themselves, but also the expressed lack of customized content, assistive technologies in education, such as textbooks in the Braille, audio recordings, engaging gesture interpreters, etc.*

*The Ombudsman does not have information on the number of filed lawsuits due to discrimination of persons with disabilities in access to education, as well as information on the number of legally concluded proceedings wherein discrimination based on disability is established in the elimination of the right to equality in access to different levels of education.*

### *Education*

The report indicates that the Law on Education of Children with Special Educational Needs of 2004 was amended in 2010. **The Committee asks that the next report inform it of the actual impact of this Law on the integration of schoolchildren and students with disabilities in mainstream education.**

*Answer:*

*The legal framework goes beyond the medical approach. The principle is the right to live in a family. The first choice and imperative is the inclusive education: children attend regular schools. The option is provided for integrated classes in regular schools (7), with common teaching of individual subjects with peers in regular classes. They are referred to the resource centres when it is the only and best interest.*

*The commissions (18) were formed for orientation of children with special educational needs in the mainstream education system at the local community level. The Commission, consisting of experts of different profiles, proposes the program, additional professional assistance, personnel, spatial, material and other conditions that must be provided, makes recommendations on the basis of which IEDPs are being developed. In the previous period, commissions passed many targeted and thematic trainings in order to establish new values and principles, raise the level of competences, and manuals were also prepared, in order to improve the work of these commissions. Some of them are DCP model, test battery, autism, ADHD, visual impairment, intellectual disorders, behaviour, dyslexia, dysgraphia, combined interference, communication with parents, etc.*

*Using the recommendations of the commissions, IEDPs for each child are developed in educational institutions. IEDPs have been upgraded and, apart from targeted planning, it focuses on activities that help meet the needs of the child (methods, necessary adjustments, modes of adjustment, equipment, technology).*

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<sup>1</sup> University of Montenegro announced by the call for enrollment into basic and specialist studies that it decided 1% of candidates would be enrolled according to the affirmative action principle, from the population of people with disabilities, Roma and Egyptians.

*ITP has been developed which links primary and secondary education and vocational guidance aimed to continuing education. The Instruction has been done for the preparation and realisation of ITP which was adopted by the National Council and it is mandatory. The film "I do not give up" was made and promoted.*

*The ITP-2 has been developed with the ultimate goal to increase the employment rate, raise the motivation for employing persons with disabilities. ITP 2 provides guidelines in linking levels of education and employment, recommendations for pupils arising from reached achievements, acquired knowledge and skills during secondary vocational education towards the labour market. The school cooperates with various service providers: capacity assessment, professional rehabilitation performer, resource centres, employment services, employers, etc. The Instruction has been prepared.*

*At the Bureau for Education Services, the mobile service consists of four regional teams: Podgorica, Niksic, north and south, to support students with special educational needs in the mainstream education system. The number of mobile service members is: 23 (defectologists, psychologists in RC, regular schools), pupils: 174, half-hour activities: 1088. In addition, at the quarterly meeting of inclusive subject-matter group, members of mobile teams attended to exchange information, needs, agreements, development of cooperation and the like.*

*Professional literature was arranged to support teaching and professional staff in this area.*

*Special institutions are reformed into resource centres and are oriented to support inclusive education (early intervention, mobile activities, education, specialized teaching aids, assistive cabinets, etc.).*

With regard to special schooling, the special schools have been transformed into resource centres which focus their educational activity on severely disabled children, for whom these centres are the best and only solution (see also Conclusions 2012). The Committee requests that the next report provide information on the number of pupils attending these centres, the requirements for a child to be accepted, and how the enrolment fees are paid.

*Answer:*

*After the transformation, the resource centre is a special institution that performs educational process, habilitation, rehabilitation, early intervention, provides other educational institutions with advisory and professional support for the upbringing and education of children with a particular type of developmental disability, delivers training of teachers who perform educational and upbringing work with children with special educational needs, use of assistive technologies, sign language, image communication system, prepares, adjusts, produces, prints textbooks (Braille letter) and other teaching materials, lends to use didactic and teaching materials, aids, assistive technology.*

*They are referred to the resource centres when it is their sole and best interest, based on a decision on orienting. Education is free for everyone, as well as early intervention services.*

**MEIS**

<i>Primary</i>	<i>3095</i>
<i>Pre-school</i>	<i>926</i>
<i>Secondary</i>	<i>656</i>
	<i>4677</i>

	<i>RC "1 June", Podgorica</i>	<i>RC "Podgorica"</i>	<i>RC Kotor</i>
<i>Primary school</i>	<i>37</i>	<i>26</i>	<i>19</i>
<i>High school</i>	<i>34</i>	<i>10</i>	<i>18</i>

The Committee nonetheless recalls that, in order to effectively assess these statistics, it needs to know the total number of pupils with disabilities, the breakdown of pupils with disabilities between mainstream and special education, and the nature of their special needs. It also requests full and up-to-date data on the number of children with disabilities who are not enrolled in school and the steps taken to remedy this situation, and the number of persons with disabilities who leave the education system with no qualifications. It also requests specific data on the schooling of children with a mental disability, the success rate of children with disabilities as compared with other children, especially as regards access to vocational training, further education or entry into the open labour market. In the absence of this information, the Committee considers that it has not been established that the integration of persons with disabilities in education is effectively guaranteed.

*Answer:*

*The Montenegrin education system for children with disabilities, as the first choice and imperative, sets inclusive education: the children attend regular schools. In inclusive education, the basis for working with children with special educational needs is an individual development-education program (IDEP) that is conceived for each child. An Individual Transition Plan ITP-1 has been developed to combine primary and secondary education with the aim of continuing education and ITP-2, which facilitates easier transition to the labour market and an increase in the employment rate. Trainings take*

*place. Special schools transformed into resource centres: oriented to support inclusive education. For children with special educational needs, schools hire teaching assistants as technical support for the teaching year.*

### *Vocational training*

**The Committee repeats that it needs to know the number of persons with disabilities who are in vocational training in the open labour market and other existing training systems.**

*Answer:*

*Professional rehabilitation is a process that is being implemented with the aim of enabling the individual to the social and occupational integration. It includes measures and activities that enable persons with disabilities to prepare for labour market in a proper way, to keep their job, promote therein or change their career.*

*The whole process of rehabilitation is aimed at activating, encouraging and developing positive characteristics, abilities, skills and interests of an individual.*

*The most important segment of professional rehabilitation process is determining of remaining working capacity, knowledge, existing work habits, professional interests of the individual, with the aim of his/her involvement in the work process. At this stage of the process, the state of health, social factors, professional and educational factors, mental abilities, personality and behaviour and working function of an individual are evaluated.*

*The measures and activities of professional rehabilitation are implemented in Podgorica, Pljevlja, Herceg Novi, Bar, Nikšić, Bijelo Polje and Tivat and/or all municipalities in which the performer of professional rehabilitation carry out their activities in accordance with the law during the reporting period and persons were included in all measures and activities foreseen by the Law on Professional Rehabilitation and Employment of Persons with Disabilities.*

*A total number of 339 persons with disabilities (181 women) were included in the measures of professional rehabilitation during the observed period.*

*There were 125 persons with disabilities (63 women), who were involved in the process of professional rehabilitation, were in employment relationship.*

**Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

*Paragraph 2 - Employment of persons with disabilities*

The Committee takes note of the information contained in the report submitted by Montenegro.

*Employment of persons with disabilities*

The Committee recalls that it deferred its previous conclusion (Conclusions 2012) pending receipt of essential information, including the number of persons with disabilities of working age, the number of persons with disabilities in employment (in the open labour market and in sheltered employment) and the number of persons with disabilities who are unemployed.

*Answer:*

*The Law on Professional Rehabilitation and Employment of Persons with Disabilities stipulates that the Employment Agency of Montenegro organizes a Fund for Vocational Rehabilitation and Employment of Persons with Disabilities and that the funds of the Fund are primarily provided from a special contribution paid by employers who have not fulfilled the prescribed quota when employing persons with disabilities. These funds are paid into the Budget of Montenegro.*

*As of 1 January 2014, the Fund has been allocated as a separate budget position, in the revenue and expenditure side of the Budget of Montenegro and/or the Budget of the Employment Agency of Montenegro.*

*Pursuant to the Law, the Fund assets are to be used for measures and activities of professional rehabilitation for unemployed and employed persons with disability, co-financing special organizations for employment, active employment policy programs that person with disability takes part in, subventions, financing grant schemes and financial assistance for participants in professional rehabilitation measures.*

*In the period from 1 July 2015 to 30 September 2017, 539 persons with disabilities were employed, of which 406 persons were employed for a fixed term (these persons have been continuing their employment) and 133 persons were employed for an indefinite time period. Employers who hired the above mentioned persons are entitled to a wage subsidy.*

*Workplaces occupied by persons with disabilities are: executive director, assistant graphic technician, legal-administrative technician, accountant administrator, control and billing of commissions in the insurance company, tariff controller in the insurance company, auxiliary worker in the production of wood, librarian, accountant, TC operator, physiotherapist, masseur, commercialist -translator, etc.*

*On 30 September 2017, there were 5,884 persons with disabilities on the record of the Employment Agency of Montenegro, of which 2,849 were women or 48.42%.*

*It was spent €7,482,145.52 for the realization of the professional rehabilitation program during this period, in particular:*

- *professional rehabilitation programs – €267,594.42;*
- *salary subsidy – €2,433,992.53;*
- *subsidy (adaptation of the workplace and working conditions) - €157,687.43;*
- *subsidy (participation in funding personal costs of the work assistant of person with disability) – €192,871.00;*
- *active employment policy programs, involving people with disabilities (public work) – €58,577.27;*
- *financing grant schemes - €4,272,669.27;*
- *financial assistance to program participants – €43,531.94;*
- *fees to members of commissions for professional rehabilitation and the Council of the Fund– €55,221.66.*

*In the period from 1 July 2015 to 30 September 2017, the Management Board of the Employment Agency made three decisions on the basis of the Public Invitation for Financing Employment Projects for Persons with Disabilities of 3 November 2015, of 13 November 2016, and of 20 March 2017.*

*Financing of 124 projects for employment of persons with disabilities with a total value of €5,564,969.31 was approved in accordance with these decisions. These projects included 700 persons with disabilities, of which 480 persons are employed during the project.*

*The realization of 71 projects for employment of persons with disabilities continues even after the reporting period.*

The report indicates that data on persons who have difficulty performing various everyday activities (seeing, walking, hearing, etc.) were first collected in 2011. It states that persons who have difficulty performing everyday activities are those who are subject to practical limitations when performing or taking part in various activities. The report also underlines that the data were collected on the basis of what people declared, regardless of what their medical documentation stated. In 2011, 68 064 people in Montenegro (11% of the total population) had difficulty performing various everyday activities, and 34 333 of them were of working age (15-64).

The report describes the Law on Employment and Exercising Rights with respect to Unemployment Insurance (Official Gazette of Montenegro, no. 14/2010, 2012, 2013, 2015), which has been amended in order to improve the status of workers with disabilities in categories II and III who are registered as unemployed. **The Committee refers to its questions in the examination of Article 15§1 and requests clarification of the categories of disability.**

*Answer:*

*The Law on Professional Rehabilitation and Employment of Persons with Disabilities ("Official Gazette of Montenegro", no. 49/08, no. 73/2010, no.39/11 and no.55/16), the provisions of Article 6 prescribe the categories of persons with disability who can exercise the rights determined by this Law. Thus, the right shall be exercised by any person having the status of the person with disability in terms of the pension and disability insurance regulation; any person with developmental disorders, being classified in the specific category and degree of disorder who, in accordance with the law, completed education in the specialized institution; any person with developmental disorders, being classified in the specific category and degree of disorder, who completed regular education in accordance with the law; any person with disability or bodily injury arisen in accordance with regulations on the protection of war veterans with disabilities; any person who completed education through adjusted tuition and provision of additional expert assistance or through special educational programme in accordance with the special law.*

*Persons who have not acquired a status within the meaning of Article 6 paragraph 1 of this Law shall realize the status of persons with disabilities depending on the percentage of disability, in accordance with this Law.*

**The Committee underlines that it needs to systematically receive up-to-date data on the number of persons with disabilities who are in employment (in the open labour market or in sheltered employment), the number of those who are benefiting from an employment promotion measure and the number of those who are seeking work.**

*Answer:*

*The Ministry of Labour and Social Welfare as well as the Employment Agency of Montenegro do not keep records of employed persons with disabilities. The reason for this is that most of these persons did not acquire the status of a person with disabilities in accordance with the Law on Vocational Rehabilitation and Employment of Persons with Disabilities. The only record kept by the Employment Agency is the number of employers that are using subsidies for employed persons with disabilities.*

*Anti-discrimination legislation*

**The Committee requests that the next report contain information as to whether victims of discriminatory practices can be compensated for the financial losses and mental**

distress that they have suffered, whether judicial and non-judicial remedies are available to them, and whether there is any case law on this subject.

*Answer:*

*The provision of article 24 – 32 of the Law on Prohibition of Discrimination, as lex generalis, regulates the court proceeding for protection from discrimination. The provision of article 24 stipulates that “Anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection, in accordance with the law. The proceeding shall be initiated by filing a lawsuit.*

*The provisions of the law regulating civil proceeding shall be accordingly applied on the proceeding referred to in paragraph 2 of this Article, unless this law provides otherwise. The proceeding referred to in the paragraph 2 of this Article is urgent. In the dispute for protection from discrimination the revision shall be always allowed.”*

*The provision of article 26 of the Law on Prohibition of Discrimination lays down that by lawsuit can be claimed also (1) establishment of the fact that the respondent has acted discriminatory against the plaintiff; (2) prohibition of exercising the activity that bears potential threat of discrimination, i.e. prohibition of repetition of discriminatory activity; (2a) elimination of the consequences of discriminatory treatment; (3) compensation of damage, in accordance with the law; (4) publication in the media of the judgement establishing discrimination on the expenses of respondent, as well as in the cases referred to in paragraph 1, items 1 and 2 and 2a of this Article, the lawsuit may be exert together with the claim for protection of the right of which is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.*

*Redressing non-material damage is regulated by the Law on Obligations. When the case law is concerned, the Supreme Court of Montenegro, as the highest judicial authority in the country, at the request of Ministry for Human and Minority Rights collected data from all Montenegrin courts, all cases of discrimination of persons with disabilities from 2010 to June 2017.*

*Pursuant to this information, there were two civil cases of discrimination against persons with disabilities in two courts, in particular before the Basic Court in Podgorica and Niksic during the reporting period. For the aforementioned period, there was no accusations/criminal proceedings before Montenegrin courts due to discriminatory treatment of persons with disabilities, while in the same period there were civil cases for compensation on the grounds of discrimination of persons with disabilities.*

*According to data provided by the Supreme Court of Montenegro from June 2017, 6 procedures for the compensation of non-pecuniary damage based on discrimination of persons with disabilities were concluded before the Basic Court in Podgorica during the reporting period. (Case no. CC 157/13, CC .4981/13, CC 3634/14, CC 1843/14, CC 1132/14, CC 3647/15).*

*In 2016, there were 6 requested cases opened, which are still in process before this court: 1) CC 5589/16; CC 5736/16; CC 6038/16; CC 6094/16; CC 6139/16; CC 6140/16. In the mentioned cases from 2016, on the side of the defendant is the PI Centre for Social Work and the State of Montenegro due to discrimination of persons with disabilities.*

*The Basic Court in Niksic received two lawsuits for establishment of the fact that the respondent acted discriminatory against persons with disabilities in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017.*

*As regards one case, the lawsuit for discriminatory treatment was filed on 18 December 2011 and in another case on 10 April 2017.*

*The lawsuit in the first case was partially adopted, while the lawsuit of the latter case is in procedure.*

*The Basic Court in Niksic did not have rejected or dismissed lawsuits and/or indictments, nor suspended procedures for discriminatory treatment in the specified period.*

*The Basic Court in Niksic did not issue decisions, which determine the provisional measure for preventing the danger of the occurrence of irreparable damage, in particular severe violation of the right to equal treatment or prevention of violence due to discriminatory treatment in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017.*

*The Basic Court in Niksic passed one final verdict for discriminatory treatment in the mentioned period.*

*According to the data of the High Misdemeanour Court of 29 June 2017, there were no cases of victims of discrimination who are persons with disabilities in 2009.*

*According to the data of the Supreme State Prosecutor's Office of June 29, 2017, there were no criminal charges in which persons with disabilities were victims of discrimination in the period 2009/2010.*

*When non-judicial protection is concerned, the Constitution of Montenegro, the Law on Prohibition of Discrimination and the Law on the Protector of Human Rights and Freedoms recognize the Protector of Human Rights and Freedoms as an independent national mechanism for the protection against discrimination. Pursuant to Article 33 of the Law on Prohibition of Discrimination "the courts, the state prosecutor's offices, misdemeanour authorities, the authority responsible for police affairs and inspection authorities are obliged to keep separate records on filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination". The authorities shall deliver data from the separate records to the Protector not later than 31<sup>st</sup> January of the current year for the previous year, and at the request of the Protector they shall deliver the data from these records as well for a certain shorter period during the year.*

*In the previous period, and according to the reports, the Protector in his work dealt with complaints based on discrimination against persons with disabilities.*

*More details on complaints about protection against discrimination can be found on the link:*

*[http://www.ombudsman.co.me/Izvjestaji\\_Zastitnika.html](http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html).*

*According to the data of the Administration for Inspection Affairs no. 01-2017-7223/ 4 of 30 June 2017, the Administration for Inspection Affairs – Inspection of Social and Child Protection received two reports on discrimination against persons with disabilities, with the note that other inspectors of the Administration did not have any complaints related to the subject area.*

**In order to determine whether the right to non-discrimination in employment is actually being guaranteed for persons with disabilities, the Committee requested that the next report indicate what exactly is being done in terms of reasonable adjustments, whether the courts have been asked to hear any complaints resulting from breaches of the obligation to make reasonable adjustments, and whether the aforementioned obligation has led to an increase in the employment of persons with disabilities in the open labour market. Since the report leaves this question unanswered, the Committee considers that it has not been established that the obligation to make reasonable adjustments is effectively respected.**

*Answer:*

*Pursuant to the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, employers can use various subsidies for employment of persons with disabilities, one of which is the use of grants for adapting the workplace and working conditions for employment of persons with disabilities. By the end of June 2017, the Employment Agency of Montenegro paid around EUR 50,000 euros for adaptation of the workplace, while in 2016, it paid EUR 72,000 for this subsidy.*

*The amount of this subsidy is 100% of the eligible costs, which means that there is no upper limit of the financial framework for this type of subsidy, but it exclusively depends on the opinion of the performer of professional rehabilitation.*

#### ***Measures to encourage the employment of persons with disabilities***

The report also presents the National Strategy for the Development of Employment and Human Resources for 2011-2015, which aims to promote social inclusion, particularly the integration of persons with disabilities into employment. The results achieved are monitored by annual reports on the implementation of the measures and activities under the action plans. The report indicates that a strategy of this kind for the 2016-2020 period is currently being developed. The Committee recalls that, in order to assess whether the situation is in

conformity with Article 15§2, it needs to know the number of persons with disabilities who are benefiting from measures to facilitate their employment in the open labour market, and the overall rate of transfer of persons with disabilities in sheltered employment to the open labour market.

**It requests that the next report give details of other measures taken to encourage the employment of persons with disabilities, especially those who became disabled as a result of a workplace accident or occupational illness.**

*Answer:*

*In the period from 1 July 2015 to 30 September 2017, 539 persons with disabilities were employed, of which 406 persons were employed for a fixed term (these persons have been continuing their employment) and 133 persons were employed for an indefinite time period. Employers who hired the above mentioned persons are entitled to a wage subsidy.*

*In the period from 1 July 2015 to 30 September 2017, the Management Board of the Employment Agency made three decisions on the basis of the Public Invitation for Financing Employment Projects for Persons with Disabilities of 3 November 2015, of 13 November 2016, and of 20 March 2017.*

*Financing of 124 projects for employment of persons with disabilities with a total value of €5,564,969.31 was approved in accordance with these decisions. These projects included 700 persons with disabilities, of which 480 persons are employed during the project.*

**Professional rehabilitation - In the period from 1 July 2015 to 30 September 2017**

*A total number of 339 persons with disabilities (181 women) were included in the measures of professional rehabilitation during the observed period.*

*There were 125 persons with disabilities (63 women), who were involved in the process of professional rehabilitation, were in employment relationship.*

## **Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community**

*Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Anti-discrimination legislation and integrated approach***

The Committee requests that the next report contain information as to whether victims of discriminatory practices can be compensated for the financial losses and mental distress that they have suffered, whether judicial and non-judicial remedies are available to them, and whether there is any case law on this subject. The Committee notes that it has not been established that legislation guaranteeing effective protection for persons with disabilities against discrimination in the area of housing was in force during the reference period.

The Committee also asked whether the legislation provides effective remedies to persons with disabilities who have suffered discriminatory treatment in the aforementioned areas. As the report does not contain this information, the Committee repeats its question.

*Answer:*

*The provision of article 24 – 32 of the Law on Prohibition of Discrimination, as lex generalis, regulates the court proceeding for protection from discrimination. The provision of article 24 stipulates that “Anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection, in accordance with the law.*

*The proceeding shall be initiated by filing a lawsuit.*

*The provisions of the law regulating civil proceeding shall be accordingly applied on the proceeding referred to in paragraph 2 of this Article, unless this law provides otherwise.*

*The proceeding referred to in the paragraph 2 of this Article is urgent.*

*In the dispute for protection from discrimination the revision shall be always allowed.”*

*The provision of article 26 of the Law on Prohibition of Discrimination lays down that by lawsuit can be claimed also (1) establishment of the fact that the respondent has acted discriminatory against the plaintiff; (2) prohibition of exercising the activity that bears potential threat of discrimination, i.e. prohibition of repetition of discriminatory activity; (2a) elimination of the consequences of discriminatory treatment; (3) compensation of damage, in accordance with the law; (4) publication in the media of the judgement establishing discrimination on the expenses of respondent, as well as in the cases referred to in paragraph 1, items 1 and 2 and 2a of this Article, the lawsuit may be exert together*

*with the claim for protection of the right of which is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.*

*Redressing non-material damage is regulated by the Law on Obligations. When the case law is concerned, the Supreme Court of Montenegro, as the highest judicial authority in the country, collected data from all Montenegrin courts and submitted a report to the Ministry for Human and Minority Rights. The report contains a detailed review of all cases of discrimination against persons with disabilities, from 2010 to June 2017.*

*Pursuant to this information, there were two civil cases of discrimination against persons with disabilities in two courts, in particular before the Basic Court in Podgorica and Niksic during the reporting period. For the aforementioned period, there was no accusations/criminal proceedings before Montenegrin courts due to discriminatory treatment of persons with disabilities, while in the same period there were civil cases for compensation on the grounds of discrimination of persons with disabilities.*

*According to data provided by the Supreme Court of Montenegro from June 2017, 6 procedures for the compensation of non-pecuniary damage based on discrimination of persons with disabilities were finalized before the Basic Court in Podgorica during the reporting period. (Case no. CC 157/13, CC .4981/13, CC 3634/14, CC 1843/14, CC 1132/14, CC 3647/15).*

*In 2016, there were 6 requested cases opened, which are still in process before this court: 1) CC 5589/16; CC 5736/16; CC 6038/16; CC 6094/16; CC 6139/16; CC 6140/16. In the mentioned cases from 2016, on the side of the defendant is the PI Centre for Social Work and the State of Montenegro due to discrimination of persons with disabilities.*

*The Basic Court in Niksic received two lawsuits for establishment of the fact that the respondent acted discriminatory against persons with disabilities in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017.*

*As regards one case, the lawsuit for discriminatory treatment was filed on 18 December 2011 and in another case on 10 April 2017.*

*The lawsuit in the first case was partially adopted, while the lawsuit of the latter case is in procedure.*

*The Basic Court in Niksic did not have rejected or dismissed lawsuits and/or indictments, nor suspended procedures for discriminatory treatment in the specified period.*

*The Basic Court in Niksic did not issue decisions, which determine the provisional measure for preventing the danger of the occurrence of irreparable damage, in particular severe violation of the right to equal treatment or prevention of violence due to discriminatory treatment in the period from the adoption of the Law on Prohibition of Discrimination from 2010 to 28 June 2017.*

*The Basic Court in Niksic passed one final verdict for discriminatory treatment in the mentioned period.*

*According to the data of the High Misdemeanour Court of 29 June 2017, there were no cases of victims of discrimination who are persons with disabilities in 2009.*

*According to the data of the Supreme State Prosecutor's Office of June 29, 2017, there were no criminal charges in which persons with disabilities were victims of discrimination in the period 2009/2010.*

*When non-judicial protection is concerned, the Constitution of Montenegro, the Law on Prohibition of Discrimination and the Law on the Protector of Human Rights and Freedoms recognize the Protector of Human Rights and Freedoms as an independent national mechanism for the protection against discrimination as well as inspection bodies, prosecutor's offices and administrative authorities in charge of police affairs.*

*Pursuant to Article 33 of the Law on Prohibition of Discrimination “the courts, the state prosecutor's offices, misdemeanour authorities, the authority responsible for police affairs and inspection authorities are obliged to keep separate records on filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination”. The authorities shall deliver data from the separate records to the Protector not later than 31<sup>st</sup> January of the current year for the previous year, and at the request of the Protector they shall deliver the data from these records as well for a certain shorter period during the year.*

*In the previous period, and according to the reports, the Protector in his work dealt with complaints based on discrimination against persons with disabilities.*

*More details on complaints about protection against discrimination can be found on the link:*

*[http://www.ombudsman.co.me/Izvjestaji\\_Zastitnika.html](http://www.ombudsman.co.me/Izvjestaji_Zastitnika.html).*

*In relation to the observation of the Committee that there were no established legislation in force guaranteeing effective protection for persons with disabilities against discrimination in the area of housing during the reference period, we are informing you that provisions of Article 17 and 23 of the Law on Prohibition of Discrimination against Persons with Disabilities regulates the issue of limiting the right to independent living and life in community:*

*...limiting the choice of place of residence to a person with disabilities wherein by moving from one residence to another he may lose the right to housing of adequate standard in terms of the law governing social housing, as well as support for life in community, in accordance with the regulations governing the social and child protection; as well as that discrimination in the area of social and child protection and appropriate living standard covers inter alia ... “preventing, limiting or impeding exercise of the right to social housing in the local community by choice of a person or group of persons with disabilities”.*

*As stated in the above part of the text, the Law on Prohibition of Discrimination governs mechanisms for the protection against discrimination, regardless of the grounds and the area of discrimination.*

*In relation to the application of Article 15, paragraph 3 of the Revised European Social Charter, the Protector recalls that the Law on the Prohibition of Discrimination provides for substantive and procedural and legal framework for the protection against all forms of discrimination. This law provides for several procedures for the protection against discrimination, such as: proceedings before the Protector institution, litigation procedure and proceedings before the inspection bodies. The legal proceedings for the protection against discrimination shall be initiated by a lawsuit which may be requested: 1. establishment of the fact that the respondent has acted discriminatory against the plaintiff; 2. prohibition of exercising the activity that bears potential threat of discrimination, i.e. prohibition of repetition of discriminatory activity; 3. elimination of the consequences of discriminatory treatment; 4. compensation of damage, in accordance with the law; 5. publication in the media of the judgement establishing discrimination on the expenses of respondent.*

*Although the court procedure for the protection against discrimination is initiated, conducted and terminated according to the rules of civil procedure, it is characterized by certain specificities, whereby deviations from the general rules of civil procedure occurred, and raises the level of protection of victims of discrimination to a higher level. The characteristics of the court procedure that ensure effectiveness and efficiency in protection against discrimination are specifically related to the urgency of the procedure, the possibility of objective accumulation of lawsuits, the reverse burden of proof, extended active identity, and the prohibition of victimization.*

*In 2014, the Protector entered into three lawsuits in the form of interveners on the side of prosecutors, persons with disabilities, who were denied access to facilities and areas in public use. All three proceedings were finally concluded in favour of prosecutors who requested the determination of the commission of discrimination, the prohibition of the repetition of the discrimination in such a way that the building/premises of the defendant was made accessible to persons with disabilities, as well as compensation for non-material damage due to suffered discrimination and mental illness pain.*

*According to the information provided by the NGO Association of Youth with Disabilities of Montenegro submitted to the Protector during the preparation of the annual work report, three civil cases are not the only ones in which protection against discrimination was requested because of inaccessible buildings and areas in public use.*

*Regarding the housing care of persons with disabilities, the Government of Montenegro, on the basis of the Law on Social Housing ("Official Gazette of Montenegro" no. 35/13), adopted the Decision on the criteria and procedure for granting long-term loans to natural persons in order to provide residential building for social housing ("Official Gazette of Montenegro" No. 72/2015). This Decision identified the priority target groups in exercising the right to solve housing needs by granting a long-term loan for the purchase of an individual residential facility, among which persons with disabilities are also recognized as priority groups.*

*Article 17 of the Law on Prohibition of Discrimination against Persons with Disabilities of 2015 determined that discrimination based on disability is deemed limiting the choice of place of residence to a person with disabilities wherein by moving from one residence to another he may lose the right to housing of adequate standard in terms of the law governing social housing, as well as support for life in community, in accordance with the regulations governing the social and child protection. Through this normative guarantee, the form of discrimination against persons with disabilities in the area of housing is explicitly recognized, thus establishing the obligation of the state to provide accessible housing facilities through the programs of social housing in order to protect the right to live independently and live in the community.*

*Forms of financial aid to increase the autonomy of persons with disabilities*

The Committee requests that the next report clearly indicate all of the benefits and other forms of economic assistance available to persons with disabilities.

*Answer:*

*Persons with disabilities may realize rights to material benefits, depending on their financial and health situation, in particular the rights to: financial support, personal disability allowance, care and support allowance, health protection, funeral costs, one-time nonrecurring financial assistance, parental or guardian's allowance of the personal disability beneficiary.*

*Mentioned rights are exercised in the procedure prescribed by the Law on Social and Child Protection ("Official Gazette of Montenegro", no. 27/13, 1/15, 42/15, 47/15, 56/16, 66/16, 1/17, 31/17, 42/17 and 50/17) and the Law on Administrative Procedure ("Official Gazette of Montenegro", no. 56/14, 20/15, 40/16 and 37/17) implemented in the first instance by the Social Care Centre.*

*Financial support amount for individual, aforementioned rights are:*

- *Financial support based on working incapacity: EUR 63,50, if it is an individual and/or a person who does not have other family members and who does not have the means and assets in accordance with the conditions prescribed by law;*
- *The right to personal disability allowance - amount to 178.19 euros per month and the financial situation does not affect the eligibility thereof. The new amendments to the Law on Social and Child Protection applied from 01 July 2017 envisaged that the right to personal disability allowance may exercise a person with severe disability provided that he/she is not the beneficiary of the care and support allowance in accordance with this Law and/or the user of the right to a personal disability allowance, by automation, exercises the right to the care and assistance allowance.*

- *The right to care and support allowance – the amount of care and support allowance amount to 63.35 euros per month and the financial situation does not affect the eligibility thereof.*
- *Parental or guardian’s allowance of the personal disability beneficiary – the application of the said right started as of 1 January 2016. The amount of parental or guardian’s allowance of the personal disability beneficiary amounts to 193.00 euros per month and the financial situation does not affect the eligibility thereof.*

*The amount of financial support shall be determined in accordance with the financial capacity of the State. The manner of alignment of the financial support amount is laid down in article 38 of the Law on Social and Child Protection.*

*Also, it is necessary to mention the fundamental material benefits in the area of child protection which inter alia apply to persons with disabilities, as follows:*

- *Benefit for a new-born child;*
- *Child allowance (which is increased for children who are beneficiaries of the rights to care and support allowance for 31,87 euros and users of personal disability allowance for 39,57 euros)*
- *Costs of nutrition in pre-school institutions;*
- *Assistance for up-bringing and education of children and young people with special educational needs;*
- *Reimbursement of salary compensation and salary compensation for maternity or parental leave;*
- *The maternity leave pay;*
- *Reimbursement of salary compensation and salary compensation for part time work.*

*It should be pointed out that the person with disability also has other rights and benefits, such as: right to housing, home assistance, on the basis of the Government of Montenegro's Program they are entitled to subsidize for monthly electricity bills, the right to settle housing issues through local self-government bodies, the right to reduce communal expenses and subscription for TV, mobile phone, etc. through appropriate telecommunication companies and others.*

*Measures to overcome obstacles*

### *Communication*

The Committee wishes to know what is being done to promote access to new telecommunications technologies. It also asks what legal status is given to sign language.

*Answer:*

*The Law on Electronic Communications ("Official Gazette of Montenegro", No. 40/13, 56/13, 2/17) provided for in Article 3, Paragraphs 5 and 9 "Principles in the area of electronic communications" as follows:*

*"Ensuring the availability of universal services to all citizens in the territory of Montenegro, and meeting the needs of specific social groups, including the persons with disabilities and socially vulnerable users;*

*Ensuring benefits for users, including the persons with disabilities and socially vulnerable users, in relation to selection, price, terms for access and use and the quality of electronic communications services."*

*The said Law stipulates that persons with disabilities shall have equal access to electronic communications services and benefits of operator selection that are available to other users (Article 154), as well as ensuring unobstructed access to the emergency service numbers to persons with disabilities (Article 143). The prices, general terms and rights of Universal Service users must be the same throughout the territory and for all users in Montenegro and cannot be higher than the prices by which the operator provides the same services to its subscribers, with particular attention to the accessibility of services for persons with disabilities and socially led and socially vulnerable persons (Article 89).*

*Pursuant to the Law on Electronic Communications of 2014, the Rulebook on the provision of access to number "112" and emergency numbers to disabled persons and persons with reduced mobility ("Official Gazette of Montenegro", no. 42/14) was adopted and the Rulebook on the types of benefits and special measures for access to public electronic communications services for persons with reduced mobility and persons with disabilities ("Official Gazette of Montenegro", no. 43/14).*

*In January 2017, the Law on Amendments to the Law on Electronic Communications ("Official Gazette of Montenegro" No. 2/17) was adopted, which, inter alia, erases the term "persons with reduced mobility". Considering the problem in practice that emerged in the meaning of the term "persons with reduced mobility", the same was deleted, while persons with disabilities continue to exercise special measures and benefits in the use of universal service.*

*In 2017, in order to comply with the law, the Ministry of Economy in cooperation with the Ministry of Labour and Social Welfare, adopted the Rulebook on Amendments to the Rulebook on the provision of access to number "112" and emergency numbers to disabled persons and persons with reduced mobility ("Official Gazette of Montenegro, no. 34/17) and the Rulebook on Amendments to the Rulebook on the types of benefits and special measures for access to public electronic communications services for persons with reduced mobility and persons with disabilities ("Official Gazette of Montenegro, no. 26/17). The amendments refer only to terminological harmonization, so that persons with disabilities continue to realize the special measures and benefits prescribed by the Law.*

*The Ministry of Education formed a Working Group for the standardization of the sign language in Montenegro in 2009, consisting of representatives of the Ministry, the Alliance of Organization of the Deaf and Hard of Hearing of Montenegro, the Institute for Education*

*and Rehabilitation of Persons with Hearing and Speech Impairments in Kotor. The Working Group standardized the Montenegrin sign language based on the International Sign Language. The theoretical basis, dactylogy (single-handed and two-letter signs for two new letters of the Montenegrin language) was made at the Resource Centre for Hearing and Speech, Kotor. It was developed, accredited and offered a plan and training program for sign language. Defectologists of Resource Centre have passed andragogical and training for trainers (organized by the Centre for Vocational Education).*

### ***Housing***

The Committee notes from the report that the Ministry of Sustainable Development is responsible for enabling the permanent removal of architectural and other barriers in public spaces, transport systems, public facilities and residential buildings (see the report for more details). In co-operation with disabled persons' NGOs, the ministry also established an Action Plan for 2014 in order to adapt access to public buildings for persons with disabilities (see the report for more details). **The Committee asks the next report to contain information on the outcome of the Action Plan.**

### ***Answer:***

*The Ministry of Sustainable Development and Tourism, in cooperation with representatives of NGOs dealing with issues of persons with reduced mobility and persons with disabilities, has made the 2014 Action Plan for adaptation of structures in public use for access, movement and use of persons with reduced mobility. On this occasion, 13 priority objects were defined as follows:*

- 7 in Podgorica - Centre for Social Work, Republic Fund for Health Insurance, Parliament of Montenegro, Tax Administration, Ministry of Finance, Basic Court and Faculty of Economics,*
- 3 in Nikšić – Health Care Centre, Public Health Institution General Hospital, Hospital for Pulmonary Diseases “Brezovik”,*
- 2 in Berane - Health Care Centre "Dr Niko Labović", the main building and facility with the services of a chosen doctor for women, and the General Hospital in Berane, and*
- 1 in Pljevlja - Health Centre - laboratory building and X-ray.*

*By the conclusion No. 08-1335/3 of 31 October 2013, the Government of Montenegro adopted the 2014 Action Plan for adjusting 13 priorities public facilities for access, movement and use of persons with reduced mobility and persons with disabilities.*

### Realisation of the Action Plan:

#### In 2014

- *During 2014, the project documentation for all 13 facilities was made and revised.*

#### In 2015, finished objects

- *Centre for Social Work in Podgorica*
- *Tax Administration in Podgorica*
- *Parliament of Montenegro in Podgorica*
- *Health Care Centre in Berane – services of a chosen doctor for women - Phase I*
- *Health Care Centre in Pljevlja - laboratory building and X-ray of Parliament of Montenegro in Podgorica*

#### In 2016, finished object

- *Republic Fund for Health Insurance in Podgorica*
- *Basic Court in Podgorica*
- *Faculty of Economics in Podgorica*

#### In 2017, finished object

- *Health Care Centre "Dr Niko Labović",*
- *PHI General Hospital in Berane*

#### In 2017, work in progress

- *PHI Health Care Centre in Niksic – final works under way*
- *PHI Hospital for Pulmonary Diseases "Brezovik" – final works under way*
- *PHI General Hospital in Niksic – works in progress*
- *The Ministry of Finance Podgorica – works in progress*

The Committee asks whether grants are offered to persons with disabilities for renovation works, to install lifts and to remove obstacles to mobility; it also asks how many people have received them.

*Answer: We do not have such data.*

### *Culture and leisure*

The report also presents the National Cultural Development Programme, a strategic document which pays particular attention to equal inclusion of persons with disabilities in cultural activities, and Action Plan for its implementation. The Committee asks the next report to contain information on the outcome of these initiatives.

The Committee asks what measures the disabled have benefited from these activities.

*Answer:*

*The issue of persons with disabilities in culture requires improvement of their position in relation to overcoming barriers to accessibility to cultural objects and cultural goods according to established standards, dealing with cultural and artistic work, presentation of cultural contents that are intended for them in adequate formats. From the aspect of its competencies, the Ministry of Culture is focused on the areas of creativity, cultural heritage and cultural information that are recognized as a segment of public interest through a set of laws in these areas. Regarding the submitted reporting period and the enumerated laws in the field of culture, there were no changes in the normative framework.*

#### *Accessibility*

*The Ministry of Culture under the legal framework of the Protection of Cultural Property Act ("Official Gazette of Montenegro", no. 49/10, 40/11 and 44/17) notes at the general level that cultural property is only partially accessible, that the nature of these requirements depends on individual initiatives and the possibility of intervening thereon in a manner that does not violate the authenticity of the cultural property.*

*Namely, the "Cultural property" means any immovable, movable and non-material property determined, in accordance with this Act, to be of permanent historical, artistic, scientific, archaeological, architectural, anthropological, technical or other social significance. A cultural property may be a state or private property. Cultural property, as a valorised part of cultural heritage of general interest, shall be protected in accordance with the Protection of Cultural Property Act and international regulations, regardless of the time, place, creation method, origin, who owns them and whether they are secular or religious. Protection of cultural property is in public interest. As for a cultural property, protection shall also be provided for protected surroundings of an immovable cultural property, an object which, together with the immovable cultural property, makes historical, artistic, visual or functional whole, a building in which movable cultural property are permanently kept or displayed, the documentation of a cultural object, a property with previous protection, the obligatory publication copy and public archival materials.*

*Article 77 of the Protection of Cultural Property Act stipulates that by presentation is provided for accessibility of cultural property to public, for the purpose of fulfilment of cultural, scientific and educational needs and widening knowledge about their values and*

*importance. Persons with disabilities shall be provided access to cultural property in accordance with their needs, and as it is possible.*

*Therefore, if it is about adapting cultural goods to persons with disabilities, it depends on several factors, and above all the financial possibilities, the accessibility to the terrain on which the immovable cultural property is located, which sometimes requires large monetary resources.*

*Also, in order to perform any works on cultural goods, certain conditions are necessary.*

*For the development of a conservation project for implementation of conservation measures on a movable cultural property and for performing works on an immovable cultural property for which urban and technical development conditions are not issued, the Administration, at the request of the owner, that is the holder of a cultural property, shall issue conservation conditions. Conservation conditions, depending on the type of a cultural property and planned works, shall contain the type of a conservation measure, the elements strictly defined by the Law (Article 90 paragraph 4) and other conditions ensuring authenticity and integrity of a cultural property. A conservation project is a technical documentation for the implementation of conservation measures on a cultural property. A conservation project, depending on the type of cultural property, may be developed by public institutions for the protection of cultural property and other legal and natural persons in possession of a conservation license. A consent to a conservation project shall be given by the Administration, at the request of the owner, that is the holder of the cultural property. Conservation measures for immovable and movable cultural property may be performed by public institutions for protection of cultural property and other legal and natural persons in possession of an adequate conservation license.*

*Therefore, it is indisputable that there is a legal obligation to ensure that persons with disabilities have access to cultural property in accordance with their needs, but in line with the possibilities, since the protection of cultural goods is of public interest and in order to encroach into their integrity, the above preconditions and financial funds are needed. The State of Montenegro, in accordance with the budget guidelines and possibilities, meets the stated requirements, with the hope that we will work on improving the development of the potential of cultural goods that is their valorisation for the needs of persons with disabilities in the future.*

*In relation to accessibility for the given reporting period, the following activities have been realised:*

- *An access ramp was installed at the Saborna crkva (church) in Niksic*
- *Administration for Protection of Cultural Property approved the installation of ramps, the church of St. Anthony of Padua in Cetinje*
- *A ramp was mounted on the building of the Russian Embassy*

- *The conservation conditions for placing the ramp on the Austro-Hungarian Embassy of the building of the Academy of Fine Arts, for the needs of persons with paraplegia, have been issued.*

*There is still partial accessibility to the municipal cultural institutions that is being improved depending on the program on an annual basis, financial resources and objective opportunities for such type of intervention according to the established standards.*

### *Incentive and support for the creativity of persons with disabilities*

#### *Programs and projects*

*In accordance with the Law on Culture, it is defined the obligation of support and encouragement of the development of culture on the basis of public competition. The right to participate at the competition has also persons with disabilities and projects are evaluated according to legal criteria which among others include the contribution to the promotion of creativity of persons with disabilities. Past practice has shown that competition represents effective indicator of cultural production of the persons with disabilities.*

*Ministry of Culture until 2012 had the opportunity to financially support the implementation of projects organized by the NGO sector. After the entry into force of the Law on NGO, the system of supporting non-governmental sector is centralized and financial assistance for program activities of NGO can only be provided by the special commission within the Ministry of Finance, thus the Ministry of Culture was obliged to make amendments to the Law on Culture and comply them with the Law on NGOs. Ministry of Culture because of the current changes could not financially support the projects whose executors are registered as NGOs, nor the projects related to persons with disabilities because their executors mostly had that status.*

*At the 2017 competition for the co-financing of programs and projects in the area of cultural and artistic construction, as well as in previous years, a large number of projects for people with disabilities were not registered although the competition was open on an equal footing.*

*In 2017, the following projects were supported on this basis: "Never give up because everything is possible in life", poetry-music meeting of the blind and visually impaired persons of Montenegro, the implementer is the Berane municipality; Evening of young amateurs – creators, children and persons with disabilities and an exhibition called "Throughout of Montenegro," of an artist Mirsad Koljenovic who is a disabled person.*

*The Ministry of Culture has given the Association of Youth with Disabilities of Montenegro an area accessible to people with disabilities to hold a workshop. Namely, the*

*said association received funding for the realization of the project "To really live" by the Norwegian Foundation Uloba, which aims to introduce people with disabilities, their family members and decision makers with the principles of the philosophy of independent living. Workshops were realized in three cities, Pljevlja, Tivat and the third one for which the Ministry provided the premises in Cetinje.*

### *Cultural production in accessible formats for persons with disabilities*

*The Ministry of Culture has posted the signage of the services, directorates and all employees in the Braille letter and developed the guidance plans in Braille, which are at placed at the very entrance to the building. The Ministry will continue to provide in continuity signage in the Braille script and in adequate formats in the cultural institutions within our jurisdiction.*

*Under the framework of the Protection and Preservation of Cultural Property Program in 2017, with the financial support of the Ministry of Culture, the project for publishing the periodical "Glas" was supported, intended for the visually impaired. The periodical is published once a month in MP3 and DAISY format.*

*The library also sends a number of titles from its surpluses every year as a gift to city/public libraries in Montenegro whose funds can be used outside the library itself.*

### *2017 Activities*

*An access ramp for people with disabilities was built on the building of the Cultural Centre Tivat (Dom "Gracija Petović"), and through the reconstruction of the Great Hall of the Centre for Culture Tivat in 2018, adaptations were planned at the entrance, exit and places for persons with disabilities.*

*Since 2015, Tivat Centre for Culture has constantly engaged and used the services of professional photographer Mihail Đuričić, who is a person with disability. In cooperation with NGO "European Home" Tivat regularly supports and organizes all humanitarian actions and manifestations of associations of parents and children with special needs.*

*PI Cultural Centre Petnjica has provided access to disabled people on the upper side of the Cultural Centre. Also, they continuously cooperate with the NGO "Persons with Disabilities" by allocating rooms in which activities in the field of improvement of the position of persons with disabilities are realized. In cooperation with CAC "Bihor", which is an integral part of the Cultural Centre, a humanitarian concert for people with disabilities was organized. Books were purchased from persons with disabilities for the IV Reciter review.*

*In 2017, the Cultural Centre of Rožaje had several programs in which people with disabilities participated. The Centre provides rental services of premises and free technical and organizational assistance. At the festival of children's song "Zlatna pahulja 2017", one of the participants was a disabled person.*

*The Centre for Culture and Sports in Andrijevica is dedicated to the work and the needs of persons with disabilities. In this municipality, the NGO "For the Future of our Children" was registered. The PI "Centre for Culture and Sports" and the Municipality of Andrijevica as the Founder of the Public Institution help the work of this association in accordance with their financial capabilities.*

*On the territory of the municipality of Kotor, in contacts with the Cultural Centre "Nikola Đurković", good cooperation with the PI Resource Centre for Education and Rehabilitation of Persons with Hearing and Speech Disorders (Institute for deaf-mute children in Kotor) was highlighted. During the exhibitions, promotion of books, theatre performances and film projections, the protégés of the Institute are constantly present with their teaching staff.*

*The program of the Kotor Art Theatre presented in 2017 as well the rich children's stage creativity through fun-literary, visual, musical, educational-theoretical, inclusive programs. Children from the smallest to the teenage age could follow a variety of genres from classical theatre, puppetry, dance, shadow-theatre to street performances.*

*Also, the Montenegrin National Theatre signed with non-governmental organizations dealing with the protection of the rights of persons with disabilities a Memorandum of Cooperation in 2017 with the following signatories: NGO First Parents' Association for Children and Youth with Disabilities, Union of Associations of Parents of Children and Youth with Disabilities "Our Initiative", Ognjen Rakocevic Foundation, Association of Youth with Disabilities, Union of Associations of Paraplegics of Montenegro, Paraplegics Association of Podgorica, Association of the Blind of Montenegro, Association of Parents of Children and Youth with Disabilities "Paths", Children of Montenegro, Association of Multiple Sclerosis of Montenegro and the Alliance of Civil War Invalids of Montenegro. Thereby continues the need and aspiration of the national institutions for achieving cooperation in the field of improving the attendance of the program of the Montenegrin National Theatre.*

## *Article 24 - Right to protection in case of dismissal*

The Committee takes note of the information contained in the report submitted by Montenegro.

### *Scope*

The Committee notes that, in reply to its question whether certain categories of workers may be excluded from the protection against dismissal, the report states that during probation period the employee has all rights and obligations arising from employment in accordance with the task of the workplace; if the employee during the probation period does not meet the requirements of the working position, the employment shall be terminated upon expiry of the period determined in the employment contract. The Committee therefore understands that employees undergoing a period of probation are protected against dismissal on an equal ground with employees working under employment contract under indefinite period. **It asks for confirmation of this understanding, meanwhile the Committee reserves its position on this point.**

### *Answer:*

*The Institute of probation period as a special condition for the establishment of employment dates from previously applicable labour relations regulations. Thus, by the provisions of paragraphs 1 and 2 of Article 19 of the Labour Law, probationary period, as a special condition for employment, is constituted as an option and it may be defined by the systematization act. The probability of determining probationary period depends on whether and for which job position is determined by the act of systematization. The probationary period can be determined for each position if not regulated otherwise by a special law except for jobs for which the trainee is trained for independent work at the level of the appropriate professional qualification, or level of occupation.*

*The extent of probationary period, the method of its organizing and result assessment is defined by collective agreement or contract of employment.*

*The probationary period is done after the conclusion of the contract on employment, and consequently the employment relationship is based on a condition that can be postponed or terminated. This means that if the probationary period is assessed as successful, there shall be a deferred prerequisite, and the employee will remain in employment. However, if this work is not assessed as successful, the termination prerequisite is applied and the employment relationship is terminated. Thus, the results of the probationary period must be determined before the expiration of the deadline, as it may happen that, when the deadline expires and the results of the probation work are not found to be considered successful, that the employee remains legally employed.*

*It is determined that during the probationary period, an employee shall have all rights and obligations arising from employment relationship, in accordance with duties of the employee's position. If an employee fails to satisfy requirements of the position in the*

*probationary period, his/her employment shall cease upon expiry of the term defined by the contract of employment (termination prerequisite).*

*The same article stipulates that during the probation period, in exceptional circumstances, the employee and the employer can simply cancel the contract of employment even before the expiration of the period for which the contract was concluded with a written explanation in accordance with the collective agreement and the employment contract. The purpose of this legal provision is that employer's collective agreement and contract of employment determine the circumstances under which a contract of employment, during a probationary period, can be unilaterally terminated even before the set deadline.*

*Therefore, during the probationary period, the employee enjoys all employment rights and the right to be protected against dismissal in accordance with the law, collective agreement and labour contract.*

#### *Obligation to provide valid reasons for termination of employment*

The Committee recalls that under Article 24 dismissal of an employee at the initiative of the employer on the ground that the former reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. In its previous conclusion (Conclusions 2012) the Committee asked how the legislation complied with this approach. Due to the lack of the requested information, the Committee considers it has not been established that the legislation prohibits dismissal of an employee at the initiative of the employer on the ground that he/she has reached the pensionable age.

*Answer:*

*By virtue of law, employment is terminated irrespective of the will of the employee and the will of the employer in cases when the employee reaches the age of 67 and minimum 15 years of pension insurance, unless otherwise agreed between an employer and an employee. The insured then acquires the right to an old-age pension when he/she has fulfilled the conditions for a pension that he will be able to achieve only if he submits a request to the competent fund, which decides on the right of the insured to a pension.*

*And an employer may terminate a contract of employment of an employee if there is justified reason for such action, related to work ability of an employee, his behaviour and needs of an employer. Justified reasons are listed in the Labour Law, as follows:*

*1) if an employee fails to meet the results of work defined by collective agreement, employer's act or contract of employment, in a period of not less than 30 days;*

*2) if an employee fails to comply with obligations prescribed by the law, collective agreement and contract of employment, which shall be harmonized with the law and the collective agreement;*

*3) if an employee's behaviour is such that he/she cannot continue employment with the employer, in cases prescribed by the law and the collective agreement or employer's act, which shall be harmonized with the law and the collective agreement;*

*4) if an employee refuses to conclude an annex to the contract of employment referred to in Article 40 paragraph 1 items 1 and 2 of this Law;*

*5) if an employee refuses to conclude an annex to the contract of employment referred to in Article 40 paragraph 1 item 3 of this Law;*

*6) if an employee abuses the right to temporary inability to work;*

*7) due to economic problems in operations;*

*8) in case of technical and technological or restructural changes causing cessation of the need for work of an employee.*

*(2) An employer may terminate a contract of employment as referred to in paragraph 1, item 1 of this Article if the employer has previously provided instructions for work to the employee.*

*(3) An employer may terminate a contract of employment without the obligation to respect the notice period of termination referred to in Article 11 of the Labour Law, as provided in Article 144 Labour Law, in case referred to in Article 143, paragraph 1 item 2 and 3 of this article.*