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**Gender analysis and recommendations
for strengthening the inclusion of gender perspective in the
implementation of the Action "*Improving Procedural Safeguards in Judicial
Proceedings in Montenegro*"**

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Introduction

This Analysis has been developed in the period of September - October 2019, under the "Improving Procedural Safeguards in Judicial Proceedings in Montenegro"¹ Action, implemented by the Council of Europe, under the European Union and Council of Europe cooperation framework "Horizontal Facility for the Western Balkans and Turkey".

The Action aims to support Montenegrin authorities to further align the legal framework with the EU acquis, thus ensuring that the rights of suspects, accused persons and victims in criminal proceedings are effectively protected. In the context of the EU negotiation process, the Action contributes to the transposition of EU directives into national legislation and effective implementation of the rulings of the European Court of Human Rights (ECtHR) on national level. One of the aims of this Action is to **mainstream gender** and to strengthen meaningful **inclusion of European standards on anti-discrimination and gender equality** in the implementation of its activities.

The gender perspective has already been integrated into the Action design. In order to provide concrete recommendations on how to further strengthen gender mainstreaming during the implementation of the Action, the Council of Europe engaged national gender expert Sanja Elezović to further **assess the opportunities and challenges relating to mainstreaming gender perspective in the justice sector**, and to propose **recommendations for strengthening the inclusion of gender perspective in the implementation phase of the "Improving Procedural Safeguards in Judicial Proceedings in Montenegro" Action.**

The Council of Europe takes this opportunity to thank all stakeholders who were interviewed during the process of developing this Analysis for their valuable insights and inputs related to the gender perspective of procedural rights in Montenegro.

¹ The Action is implemented in close partnership with the Constitutional Court, Supreme Court, Prosecution Offices, Ministry of justice, Ministry of Labour and Social Welfare, Ministry for Human and Minority Rights, Judicial Training Centre, State Agent before the European Court of Human Rights, Police Directorate, law faculties, Bar Association, free legal aid offices and NGOs specializing in human rights.

Methodology

The Analysis is based on the findings from the desk review of the national and international legislative instruments, reports of the Council of Europe and United Nations monitoring bodies and relevant analyses, as well as on the inputs of the main stakeholders of the Action.

1. **Desk review** encompassed the following documents and sources:

- Legal and institutional framework for gender equality in Montenegro;
- Sex-disaggregated statistics and gender sensitive information related to the justice sector in Montenegro;
- Relevant Council of Europe documents, including the Gender Equality Strategy, gender mainstreaming toolkit on co-operation, the GREVIO report on Montenegro, Analysis of Penal Policy in Domestic Violence in Criminal and Misdemeanour Proceedings in Montenegro (developed under the previous HF I Action), Country Gender Equality Profile for Montenegro;
- Other relevant international and national analyses developed by national institutions, including Report of the CEDAW Committee, Analysis of Approved Cases of Free Legal Assistance and Requirements for Financing at Annual Level for the Period of January 1 - October 1, 2018 developed by the Montenegrin Ministry of Justice, as well as the analyses of national and international NGOs. The full list of literature is available in the last part of this Analysis.

2. **Interviews/meetings with relevant stakeholders** from the judiciary, NGO sector and academia, based on open questions and discussion (the list of stakeholders is presented in Part 3 of the Analysis).

The **main aspects** of the Analysis have been defined in accordance with the guidelines defined by the Council of Europe within the Scope of Assignment for the Consultant:

- Stakeholders' role in terms of mainstreaming gender equality perspectives in the Action activities
- Existing judicial framework, and the extent to which it takes into account gender equality
- Judicial practice and how it affects men and women differently, including penal policies concerning gender-based and domestic violence
- Access to free legal aid for clients coming from vulnerable or indigent groups, including women in vulnerable situations
- Practical implementation of programs and initiatives in the sector of justice, and the extent to which they take into account the specific needs of women

The Analysis consists of the following parts:

1. Gender, justice and free legal aid in Montenegro - opportunities and challenges, that covers the review of legal and institutional framework for gender equality, basic gender statistics and analysis of the main elements of access to justice for women, including vulnerable groups (Roma and Egyptians, women with disabilities and rural women), which are relevant from the point of view of the Action outcomes.

2. Recommendations for strengthening gender perspective in the Action "Improving Procedural Safeguards in Judicial Proceedings in Montenegro". This part contains the review of gender aspects of the Action's log frame and recommendations for strengthening gender aspects in some of its segments. The recommendations integrate inputs of interviewed persons, recommendations of GREVIO and CEDAW reports, the Analysis of Penal Policy in Domestic Violence in Criminal and Misdemeanour Proceedings in Montenegro developed by the Council of Europe in 2017, as well as the recommendations from monitoring reports of independent human rights defenders and national NGOs.

3. Conclusions

4. List of Interviews

5. Literature

6. Annexes: Annex 1 presents a log frame table for project "HFII: Improved Procedural Safeguards in Criminal Proceedings in Montenegro" (2372), with proposals for the integration of gender considerations, while Annex 2 contains extracts from the Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence related to the connection of Articles 2, 3, 6 and 14 of the ECHR with Istanbul Convention.

Gender, justice and free legal aid in Montenegro - opportunities and challenges

Legal and Institutional Framework for Gender Equality

Gender equality in Montenegro is guaranteed by the Constitution, international treaties ratified by Montenegro and national legislation. The **Constitution**² sets the equality of all citizens as one of its main principles and provides an opportunity for the introduction of special measures for achieving overall equality, including gender equality. **International treaties** include conventions of the United Nations, Council of Europe, OSCE, EU directives regulating human rights in general, as well as conventions specifically targeting gender equality, like the Convention on Elimination of All Forms of Discrimination against Women (CEDAW)³, Security Council Resolution 1325⁴ (Women, Peace and Security) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁵. **National legislation and strategic documents** include:

Law on Gender Equality (adopted in 2007 and amended in 2010, 2011 and 2015)⁶, accompanied by the Action Plans for Gender Equality (2007-2010, 2011-2016 and 2017-2021), is the "umbrella" law and addresses the national dimension of the main areas of concern defined within the Beijing Platform for Action. The Law explicitly defines direct and indirect gender-based discrimination and stipulates "equal participation of women and men, as well as persons of other gender identities in all areas of public and private sectors, equal status and equal opportunities for exercising all rights and freedoms and the use of personal knowledge and abilities for the development of society, and enjoying equal benefits from the results of their work"⁷. The Action Plan 2017 - 2019 sets priorities and goals for all mentioned areas. The economic empowerment of women is also supported through the National Strategy on Women's Entrepreneurship (2015-2020)⁸ that provides priorities, goals and supportive measures for female entrepreneurs.

Law on Anti-discrimination (adopted in 2010, amended in 2011, 2014 and 2017)⁹ defines discrimination based on gender in the explanatory memorandum. The Law recognises direct and indirect types of discrimination and explicitly calls for protection from discrimination based on disability, sex, nationality, race, religion, language, ethnic or social origin, sexual orientation, political or other beliefs, financial status, other personal characteristics. Multiple

² The Constitution of Montenegro, (The Official Gazette of Montenegro, No. 01/2007) <http://www.skupstina.me/index.php/en>

³ Convention on Elimination of All Forms of Discrimination against Women <http://www.un.org/womenwatch/daw/cedaw>

⁴ Security Council Resolution 1325 (Women, Peace and Security), <https://www.peacewomen.org/SCR-1325>

⁵ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

⁶ Law on Gender Equality, <http://www.minmanj.gov.me/biblioteka/zakoni>

⁷ The Law on Gender Equality, Paragraph 2

⁸ Strategy for Development of Women Entrepreneurship 2015-2020, <http://www.mek.gov.me/biblioteka/strategije>

⁹ Law on Prohibition from Discrimination, <http://www.minmanj.gov.me/biblioteka/zakoni>

discrimination is prohibited as a particularly grave form of discrimination. Strategic documents for the protection of vulnerable groups include the following: Strategy for the Protection of Persons with Disabilities from Discrimination and Promotion of Equity 2017-2021, Strategy for Social Inclusion of Roma and Egyptians 2016-2020 and Strategy for Improving the Quality of Life of LGBT People 2013-2018.

Law on Protection from Domestic Violence (adopted in 2011)¹⁰, accompanied by the **National Strategy for Protection from Domestic Violence** (2011-2016 and 2016-2020)¹¹, defines domestic violence as “omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.”¹² In Article 20, the Law prescribes the protection of victims in misdemeanour procedure, introduces the right of a victim to free legal aid, provides for restraining orders for perpetrators¹³, mandates reporting of violence for professionals who assist victims and obliges institutions to provide full and coordinated protection to victims through multidisciplinary teams¹⁴. Article 36, paragraph 2 sets out a higher penalty for any act of domestic violence committed in the presence of a child.

Criminal Code (the first law was adopted in 2003 and amended in 2006, 2008, 2010, 2011, 2013, 2015, 2017 and 2018)¹⁵ defines domestic violence as "violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member"¹⁶ and defines criminal offenses against marriage and family¹⁷. Article 220 of the Criminal Code imposes imprisonment of up to one-year for violence that endangers “physical or mental integrity of a family member and imposes maximum penalties if the offender uses a weapon or tool, inflicts “heavy bodily injury,” or seriously impairs victim’s health. In article 42a, the Code defines the aggravating circumstance for a criminal offense which is committed "out of hatred of race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person". Articles 66 to 78 of the Criminal Code⁸⁸ prescribe the types, conditions and the manner of the imposition of security measures applied when there are legal requirements for their pronouncement with regard to the type of criminal offense. The court may render one or more security measures to the perpetrator of the criminal offense when there are conditions for their pronouncement.

Law on Free Legal Aid (adopted in 2012 and amended in 2015) in the Article recognize victim of trafficking in human beings and victims of domestic and family violence enjoying protection in accordance with the Law on Protection against Domestic Violence as privileged beneficiaries of the right to free legal aid. In accordance with Article 2, free legal aid involves

¹⁰ Law on Protection from Domestic Violence, <http://www.mrs.gov.me/biblioteka/zakoni>

¹¹ Strategy for Protection from Domestic Violence 2016-2020, <http://www.mrs.gov.me/biblioteka/strategije>

¹² Law on Domestic Violence Protection, Official Gazette of Montenegro, No. 46/10, August 6, 2010, Article 2

¹³ Eviction of perpetrator from the apartment or other living space, prohibition of approaching to victim, prohibition of harassment and entry, mandatory treatment for addiction diseases, as well as mandatory psychosocial treatment for perpetrators.

¹⁴ Article 17

¹⁵ Krivični zakonik Crne Gore ("Sl. list RCG", br. 70/2003, 13/2004 - ispr. i 47/2006 i "Sl. list CG", br. 40/2008, 25/2010, 32/2011, 64/2011 - dr. zakon, 40/2013, 56/2013 - ispr., 14/2015, 42/2015, 58/2015 - dr. zakon, 44/2017 i 49/2018), <https://www.paragraf.me/propisi-crnegore/krivicni-zakonik-crne-gore.html>

¹⁶ Article 8

¹⁷ Article 119

providing the necessary resources to fully or partially cover the costs of legal advice, drafting of letters, representation at proceedings before a court, the Prosecutor's Office and the Constitutional Court of Montenegro and in proceedings for extrajudicial dispute resolution and litigation before a public executor. The right to legal aid includes the right to exemption from the costs of court proceedings (except for the costs of defence counsel and proxies which is exercised in accordance with other laws).

Institutional framework for the implementation of gender equality includes **Parliamentary Committee for Gender Equality** as a permanent body of the Parliament, that has jurisdiction in creating and monitoring the implementation of policies in the field of gender equality, the **National Council for Gender Equality** established in 2016 as an advisory body that will monitor the implementation of gender equality policies at the national and local levels, and the **Protector of Human Rights and Freedoms** authorized to deal with complaints related to the work of courts in the event of delays in proceedings, misuse of procedural authorizations or non-enforcement of court decisions and to report to the Parliament of Montenegro once a year in order to present the cases on which he/she acted, the statistical review of the state of human rights and freedoms, the recommendations and measures for the improvement of human rights and eradication of the observed failures, as well as assessing the situation in the field of discrimination. The institutional framework also includes the **Department for Gender Equality of the Ministry for Human and Minority Rights**¹⁸ that coordinates activities related to gender equality, conducts gender analyses and participates in drafting action plans at national and local levels, publishes data related to violence¹⁹, monitors the implementation of international documents and conventions and takes measures for their transposition into the legal system of Montenegro and coordinates work of **gender focal points in respective ministries**, who are in charge of monitoring the implementation of gender-related strategies and policy documents - above all, of the Activity Plan for Gender Equality, as well as the Strategy for Protection from Domestic Violence, Strategy for implementation of Security Council Resolution 1325 ("Women, Peace and Security"), as well as the Strategy for Women Entrepreneurship. Gender focal points are members of government commissions for monitoring the implementation of policy documents.

Other main actors in the implementation of gender equality are **local offices for gender equality in municipalities**, which are implementing local action plans on gender equality and other local policies related to women, the **National Employment Service of Montenegro** that implements active employment policy measures designed to increase employment and support self-employment of women through financial and non-financial support measures, the **Vocational Education and Training Centre (VETC)**, which organizes trainings on entrepreneurship for unemployed persons registered with the Employment Agency of

¹⁸ From 2003 to 2009, the Office for Gender Equality existed as an independent body within the General Secretariat of the Government. In April 2009, the Office was transformed into the Department within the Ministry and ceased to be an independent body.

¹⁹ Annual reports on violence against women and domestic violence are available at: <http://www.mmp.gov.me/>

Montenegro, the **Investment and Development Fund of Montenegro**, with the jurisdiction of granting loans and guarantees to encourage the establishment and development of SMEs, including special loans and credits for women's entrepreneurship, **Committee for Women Entrepreneurship** within the **Chamber of Commerce** that serves as a forum for networking, collaboration and discussion on topics of interest for women entrepreneurs, the **Directorate for SMEs**, within the Ministry of Economy, which is in charge of the implementation of the Strategy for Development of Women's Entrepreneurship, as well as NGOs implementing programs for the protection of women's human rights, protection from violence, empowerment and support for female entrepreneurs, etc.

Women and Men in Montenegro - access to and share of resources and decision making²⁰:

Demography: According to the 2011 census, women make 50,6% of population in Montenegro. There are more boys in the youngest group of the population (52%), while in the oldest population group, over 65 years of age, there are more women (57.6%). Out of the total number of women, 65.5% live in urban areas, while for men this percentage is at 63.2.

Education: Majority of the population has good access to education. Elementary education is compulsory in Montenegro and the **completion rate of majority population is high for both elementary and secondary education**. According to UNESCO Institute for Statistics, completion rate for women in primary education is 93.30% and 89.47% in secondary education. **Women outnumber men within the group of highly educated population** - 57,4% of women has a diploma in undergraduate studies, 51,7% in basic studies, 67% in specialist studies and 61% in master studies. The existence of traditional gender roles in society is present in education and it is visible in the **concentration of women in the so-called "female areas" - education, social science, arts and humanities**. Among masters, women make a majority in the following fields: education (100%), social sciences business and law (68.5%), arts and humanities (73,4%). Women with masters' degrees make 50% in the following fields: mathematics and computer sciences, as well as the agriculture and veterinary medicine, while in the fields of health and welfare there are 33,3% women with masters degrees and 48,5% in the field of services. **Vulnerable groups (especially Roma and Egyptians) are mostly illiterate or have incomplete elementary education**. Majority of RE girls attending primary education do not transit to secondary schools. According to the census conducted in 2011, there are 1559 illiterate men and 6590 illiterate women in Montenegro (mostly Roma and Egyptians). In the age groups of over 70 years there are ten times more illiterate women than illiterate men. The average age of illiterate women is 66, and 44 for men.

²⁰ Sources: The Montenegrin Statistical Office (MONSTAT) specialized research Women and Men in Montenegro, 2019, available at: <https://www.monstat.org/userfiles/file/publikacije/ZENE%20I%20MUSKARCI%20U%20CRNOJ%20GORI%20-%202016%20za%20STAMPU.pdf>, UNESCO Institute for Statistics and

Employment: Although better educated than men, **women are less represented on the labour market.** According to ILO Labour Force Survey from 2017, the highest unemployment rate in Montenegro is within the age group from 15 to 24 years and it is 33.1% for women and 30.7% for men, while the highest activity rates are in the age group from 25 to 49 years and amount to 87.5% for men and 73.5% for women. Women make 46% of overall employed population. The same as in education, it is evident that **traditional gender roles in society also result in the concentration of women in education and caregiving professions.** Women make a majority among employees in education (75.3%), but they are in an absolute minority in managing positions in education institutions, except in preschool education. In the sector of transport, there are 27% of women. Although legislation guarantees equal pay for women and men for equal job, the **pay gap exists and women make 86.4% of a salary of a man.** As noted in the Report of the Protector of Human Rights and Freedoms, "**women employment is characterized by more frequent acceptance of jobs that are less paid, and also of temporary jobs, and jobs with poor working conditions**"²¹.

Share of resources: Montenegrin legislation guarantees the same inheritance rights to women and men, but tradition also prevails in this case and the **percentage of men owners of property and business significantly outnumber the percentage of women.** According to agriculture census data from 2010, men are holders of family farms in 87.13% of cases. Among owners of immovable property - house, apartment and office space, only 4% are women. When it comes to entrepreneurship, women are owners of business in only 9.4% of cases. **Women businesses are mainly concentrated in the sectors of health and social welfare (21%)** and in the sector of professional, scientific and technical activities (17.4%).

Decision making: Statistics show that **women are underrepresented in political and economic decision making at the national level.** In Parliament, men occupy the positions of Speaker and 2 deputy Speakers, while out of 81 deputies, 19 are women. In the Government, 4 key positions (Prime Minister and 3 deputy prime ministers) are men. Out of 18 ministers, only 4 are women. Women are also **underrepresented at the local level.** Out of 24 mayors, only 2 are women. The same distribution of sexes exists between presidents of city councils (2 women, 22 men). The **"glass ceiling" for women persists in the most prestigious and higher paid positions.** According to MONSTAT, there is a substantial gender gap among legislative, official, and manager positions. Accordingly, only 22.0 % of legislators, officials and managers are women, and the absolute majority are men (78,0%).²² When it comes to economic decision making, **women make a minority among high level decision makers in private enterprises.** According to the results of the study carried out by the Union of Employers of Montenegro in 2012²³, women are most present in middle management (54%), while the average representation of women in company management boards is 28.2%. Roma and Egyptians are not politically represented in Montenegro.

²¹ Report of the Protector for Human Rights and Freedoms for 2016, page 167, http://www.ombudsman.co.me/docs/1491305524_final-izvjestaj-za-2016-04.pdf

²² Women and Men in Montenegro, 2016, page 98 MONSTAT and Ministry of Human and Minority Rights <http://www.monstat.org/userfiles/file/publikacije/ZENE%20I%20MUSKARCI%20U%20CRNOJ%20GORI%20-%202016%20za%20STAMPU.pdf> (accessed in July 19, 2017)

²³ This research has been conducted for the purpose of the International Labour Organization (ILO) Global Report on Women in Business and Management, and results of the research have been published 2015, in the report Women in Business and Management: Gaining Momentum", http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_316450/lang--en/index.htm

Judicial framework, practice and penal policies from the gender prospective

As explained above, the equality of women and men in Montenegro is guaranteed by Constitution and by a set of laws and ratified international instruments. In Article 3 (Availability of courts and equality of parties), the **Law on Courts**²⁴ guarantees equal access and equal treatment before a court to everyone. This article is gender neutral, but given the overall legislative framework, it is clear that "everyone" implies both women and men. Gender equality standards pertaining to equal access to justice for women are addressed by a variety of standards and four major treaties of the Council of Europe ratified by Montenegro²⁵, while the obligation of non-stereotyping derives from two international human rights treaties that Montenegro also ratified²⁶. However, gender stereotypes, norms of sexuality, rape myths and institutional discrimination is not rare in practice, especially when it comes to survivors of violence, Roma and Egyptian women, rural women, women with disabilities and in general, people from marginalized groups, migrants and asylum seekers.

The mismatch between *de jure* equality and *de facto* **discrimination of women** is still present in **judicial practice**. Legal professionals are not immune to **gender stereotypes, assumptions and subconscious attitudes can influence their behaviour and affect their decisions** in various procedures before state and municipal institutions, as well as in court procedures. Professionals bring not only their academic training, professional experience, legal diligence and good intentions to their work, but also their values, beliefs, and opinions. However, the reporting rate on discrimination is still low - as the Protector of Human Rights and Freedoms reported,²⁷ in the period of January - August 2018, there were only two complains about violation of rights in the procedures before the institutions related to gender-based violence and only one related to domestic violence. The Protector also notices that the courts still make little or no application of the aggravating circumstance referred to in Art. 42a of the Criminal Code, when pronouncing a sentence for a criminal offense committed out of hatred of race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person. **The lack of knowledge and understanding of Istanbul Convention and ECtHR case law** among legal professionals is one of the main obstacles to the implementation of international standards of protection from violence against women and domestic violence. As the recently developed Analysis of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro²⁸ showed, "it was only in one case in criminal proceedings that a court invoked the Istanbul Convention prompting the conclusion that

²⁴ **Law of Courts** (adopted in 2015), defines the following courts in Montenegro: Misdemeanor court, High Court for Misdemeanors, Basic court, High Court; Commercial Court, Administrative Court, Court of Appeal and the Supreme Court.

²⁵ European Convention on Human Rights, the European Social Charter, the Convention on Action against Trafficking in Human Beings, and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

²⁶ Convention against all Types of Discrimination of Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD)

²⁷ Izveštaj o zaštiti od diskriminacije sa stanovišta djelovanja institucije Zaštitnika ljudskih prava i sloboda Crne Gore za period 01.01 - 31.07.2018. godine, https://www.ombudsman.co.me/docs/1541165543_izvjestaj--diskriminacija-01.011--31.07.2018.pdf

²⁸ Analyses of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro, Council of Europe Programme Office Montenegro, Podgorica, 2018, p.57

judges, do not invoke international legal standards or case law of ECtHR when adjudicating in domestic violence cases".

The understanding of social beliefs, gender norms and especially economic and decision-making disparities between women and men (or wives and husbands) is also crucial not only in cases of domestic violence and trafficking in human beings, but also in **other criminal proceedings**. Women rarely have a role in making decisions on business and ownership of their husbands. Power inequality and the subordinate position of wife in relation to business of her husband makes the wife and children vulnerable in situations of seizure of family property during criminal procedures against the husband. Also, gender sensitive approach is of the utmost importance in **civil proceedings**, especially in divorce cases, with regard to division of jointly acquired property, child custody, and determining alimony and child-support payments. In most cases, **legal professionals do not take into account unpaid homework, child care, care of elders**, etc., which is, in most cases, done by women, when evaluating the contribution to the common property of husband and wife during marriage. In the case of parenthood, impacts of gender stereotypes have to be considered as well as their influence on judicial decisions about who will get custody rights in a divorce.

Statistics show that **male perpetrators are dominant in all groups of criminal acts**. For example, in 2017, property crimes, which are the most common type of offenses, perpetrators were male in 98.6% cases. During 2017, 2251 adult perpetrators were convicted, which is 6.4% more than in 2016. The participation of females was 8.2%, while that of males was 91.8%. When it comes to **domestic violence, women make the vast majority of victims of this type of offense**. In 2017, out of the total number of convicted persons for the criminal offense of "domestic violence", 96.6% were male and 3.4% female. The reporting rate of violence against women and domestic violence is rising, as well as the number of cases that end in a court verdict. **The rate of misdemeanour cases outnumbers the rate of criminal ones**, and the annual court statistics show that **one in 10 cases of violence is qualified as a criminal one**. In 2017, criminal courts of Montenegro processed 206 cases of domestic violence, whereas 126 cases were finalised in 2017 with enforceable judgment/verdict. In the same year, misdemeanour courts worked on 1790 cases of domestic violence and 1366 cases were finalised with enforceable decisions during that year.

The majority of violence survivors are complaining about **re-victimization during investigation and the court procedures**, including demeaning comments and assumptions, repeated and lengthy questioning, and especially about pressure to reconcile and to "save the marriage". Risk assessments and safety plans for victims are usually developed without their knowledge and consent. During investigation and court procedures, **victims are not fully informed about their rights, court sessions, the verdict and sentencing, and perpetrators' release from custody**. All of this threatens their safety, increases insecurity and makes them more vulnerable. This is especially so in cases where they have children, who are direct or indirect victims of violence. Victims are also exposed to the pressure of economic survival and taking care of children during the process, because they are **economically dependent on the abuser** in most cases. Victims of **sexual violence** are in an extremely difficult position. Montenegro does not have any specialized services and centres for psychological counselling and trauma support and victims are additionally traumatized through regular medical and forensic procedures, and also through investigation and court procedures. As noted by

GREVIO, "**rape victims' experiences with the criminal justice system indicate deeply ingrained societal attitudes that hamper effective judicial outcomes, which only adds to the reluctance to report.** GREVIO is therefore concerned that although victims are under no obligation to report, law enforcement officials are so obliged. Prosecution of rape is then initiated *ex officio*, within a seemingly insensitive system that offers little or no support to rape victims."

The GREVIO report referred to the Research on Perception of Judges in Montenegro about violence against women and domestic violence²⁹ and noted that "numerous concerns were raised regarding the **attitudes many judges and prosecutors display towards women victims** of domestic violence, their frequent attempts at **downplaying the violence, delays in handling such cases** and their overall **reluctance to issue protection orders**. These attitudes play out particularly persistently on the level of misdemeanour courts where judges seem to understand even less the gendered dynamics of domestic violence and what causes it. Problematic assumptions which **attribute domestic violence to alcohol addiction, personality disorders or poverty** seem to persist across all professions and must be more thoroughly addressed. The similarly widespread tendency of **encouraging women to reconcile with abusive partners** must be addressed with equal determination"³⁰.

One of the main principles of the Convention on Prevention and Protection from Violence against Women and Domestic Violence (Istanbul Convention) is **victim-centered approach** that can **guarantee them safety and protection of human rights throughout the entire institutional and court procedure**. However, survivors of violence often complain that their rights are violated in the investigation procedure. Prosecutors rarely order additional investigations as a way to learn about the history of the abuse, or other criminal history of the perpetrator. Cases of violence against women, even those with physical injuries, are frequently classified as a misdemeanour offence. **High number of repeated cases of violence and inadequate sentencing policy keeps victims far from being secure and protected**. Criminal proceedings are also not effective in this respect - as noted in the GREVIO report from 2018³¹, "**proceedings are slow to be opened, and often they are based solely on the victim's testimony**. In the absence of any additional robust evidence, cases often fail if victims decide not to testify in court".

The analysis of **Penal Policy** in Domestic Violence in Criminal and Misdemeanour Proceedings in Montenegro (developed under the previous HF I Action)³², showed that in criminal cases,

²⁹ GREVIO Baseline Evaluation Report for Montenegro, p.8

³⁰ Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju (Perceptions of representatives of the judiciary), November 2015, p.18. Research carried out in the framework of the project "Access to Justice for Victims of Domestic Violence", UNDP Office Montenegro in partnership with the Center for Women's Rights and the Ministry of Human and Minority Rights.

³¹ GREVIO Baseline Evaluation Report for Montenegro, p.53

³² Report has analysed legislation and court practice/enforceable judgments during 2017. The Research is based on mixed qualitative and quantitative methods of data collection and analysis. The number of judgments (verdicts) that the research analyzed in order to receive quantitative data is: 108 enforceable criminal judgments (verdicts) from 2017 and 1370 enforceable Misdemeanour Decisions (verdicts)

out of 126 rulings (total number of finished cases in 2017) there were 121 guilty verdicts, four acquittals and one dismissed case.^[SEP] In misdemeanour proceedings, out of 327 decisions (30 per cent representative sample) there were 209 guilty decisions, 139 acquittals, three dismissals and 12 decisions on discontinuation of the process. The sentencing decisions of the 121 criminal judgments were examined and analysed to survey the frequency and characteristics of sanctions imposed for domestic violence. Thus, it was found that there were these following types of criminal sanctions imposed on defendants: punishments, warning measures, security measures and correctional measures. Of the imposed punishments- 3 were fines, 52 were prison sentences, and 9 were community service sentences. Of the imposed warning measures, 47 were suspended sentences and 2 were judicial warnings. Finally, there were 11 security measures imposed and 2 correctional measures. The majority of prison sentences were of short duration: 87% per-cent of prison sentences were of one to six months in length, while 13 % were of six to twelve months in duration. The shortest imposed sentence was 30 days in five cases and the longest was of one year in only one case. The average length of imposed sentences was three months and 23 days. There were only two court warnings.³³

The Analysis also noted that ***the rate of recidivism***, especially special recidivism in both misdemeanour and criminal proceedings but ***particularly in criminal proceedings, is very high, i.e.*** one in every two defendants is a recidivist and one in every three is a special recidivist.³⁴ Both CEDAW and GREVIO expressed concerns regarding penal policy in cases of violence and the high rate of recidivism.

Access to free legal aid for clients coming from vulnerable or indigent groups, including women in vulnerable situations

Roma and Egyptian women are significantly affected by all types of discrimination and social deprivation, including non-regulated legal status, poverty, unemployment, low education rate, high risk of infectious and chronic diseases, violence, environmental hazards etc. According to the 2011 Population Census, there are 8024 Roma and Egyptians in Montenegro and 48% of them are women. As reported in Multiple Indicators Cluster Survey (MISC)³⁵, there is a ***high level of acceptability of gender-based domestic violence among the Roma and Egyptian population***; 41% of women and 53% of men agreeing that a husband has the right to beat his wife in some cases when "she deserved to be bitten" (compared to 2.7% of women and 4.5% of men from the majority population in Montenegro, who were asked the same).

from 2017. Regarding the qualitative data gathering process, a representative sample of 100 % of all judgments (verdicts) in criminal and 30% of decisions in misdemeanor proceedings was utilized.

³³ Pages 37- 40

³⁴ Pages 34 - 35

³⁵The Survey was conducted 2013 by Montenegrin Office for Statistics and UNICEF, <http://www.monstat.org/userfiles/file/medjunarodna%20saradnja/2013%20Montenegro%20MICS%20and%202013%20Roma%20Settlements%20in%20Montenegro%20MICS.pdf>

With the introduction of the **National SOS Line for Victims of Domestic Violence (NSOSL)**, financed from the state budget and ran by NGO SOS Nikšić, as well as with the **introduction of NGO outreach services for vulnerable groups and Roma and Egyptian settlements**, women are in a better position to report violence. In the period of March 2018 - August 2019, 51 Roma and Egyptian women and girls requested assistance through the NSOSL.

Illegal child marriages are still present among this population. This practice exposes girls to the worst forms of violations of basic human rights, diminishing their prospects for education, employment and social integration, destroys their health and negatively affects all aspects of the life of a person. **Although Montenegro has the legal framework in place for fighting the practice of illegal child marriages, the institutional framework is not yet prepared to effectively and efficiently prevent, and legally process these cases and protect the victims.** Institutions cooperate with Roma women NGOs on raising awareness and preventing illegal marriages, but in the last 6 years, out of 50 cases reported by the NGO Centre for Roma Initiatives, **none have been processed by the courts.** According to NGO³⁶ conducted survey among the Roma population, in 2014, **72.4% of respondents were married at the age between 12 and 17.** In 59.1% of cases, the decision to marry was made by parents, or family members, or the Council of Elders³⁷. Only 18.3% of the respondents knew their future husband/wife a month or less than a month before the marriage, while as many as 44.2% of them did not know their future spouse. 60.2% of male and 61.6% of female respondents confirmed that **boy's family gave money to the family of the girl** (between €200 and €4,000).

When it comes to the issue of keeping the tradition of illegal child marriage despite legal prohibition, **the majority of respondents (75.8% of them) believe that the state and its institutions should fight against illegal child marriages and 81.3% said that the state institutions should work on the prevention of such marriages.** The problem of illegal child marriage (forced marriage) in Montenegro is pinpointed by the CEDAW Committee and the EU as a burning issue and the state expressed full readiness to start building the institutional framework for the prevention, support and protection of victims, including capacity building for institutions and the development of a Protocol for the prevention and protection from illegal child marriage.

Rural women living in remote communities are at a high risk of violence, since communities located in mountains adhere to strong patriarchal norms and cultural consideration against the disclosure of "private matters", including domestic violence. **Services are hardly accessible for rural women, due to the difficult terrain in their areas and isolation.** According to the 2011 census, 36.8% of the overall population lives in rural areas. Villages in Montenegro are mostly located far away from cities and many villages are difficult to reach, especially in the north, where severe winters keep villages isolated for more than six months every year. Also, due to the mountainous terrain in the north, where the majority of the rural population (59.7%) live, households in villages are usually isolated from each other, and local roads are

³⁶ NGO Centre for Roma Initiatives conducted in 2014 the research "Arranged Marriage Stronger than the Law?" The research covered 643 Roma and Egyptians (323 women and 320 men) from Nikšić, Podgorica, Berane and Ulcinj in order to assess their attitude towards the tradition related to arranged child marriage.

³⁷ In Roma and Egyptian tradition, the Council of Elders represent the unofficial high decision-making body within the community.

poorly maintained, which makes accessing these villages even more difficult. **Violence against women from rural areas is underreported. NGOs funded by donors are organising field visits and working on the establishment of outreach services in the most isolated parts of the country.** In the period of March 2018 - August 2019, 72 field visits to villages in Nikšić, Šavnik, Žabljak and Plužine were organised by NGOs SOS Nikšić, Women's Safe House Podgorica and Montenegrin Women's Lobby. NGO representatives were also accompanied by guests from institutions - Centre for Social Welfare and police officers from the Security Centre Nikšić.

Women with disabilities are excluded from social life and exposed to various types of discrimination, including stigma and domestic violence. In most cases (especially in the north), these women spend most of the life at home. **Sexual rights and motherhood are not recognised** and it is widely believed that women with disabilities should simply forget this aspect of life. **Montenegro does not have accurate records on people with disabilities**, but according to estimations of the World Health Organisation, 10% of the overall population belongs to this category. The number of women with disabilities can be approximated in accordance with the data obtained from the Employment Bureau of Montenegro, where 2846 women were registered by September 2017. Out of this number, 84% of women live in the north of the country, mostly in rural areas. **Services and support, including medical care, are hardly accessible to women with disabilities.** National legislation regulating protection from discrimination, as well as social inclusion of people with disabilities, is fairly developed and incorporates International standards. However, the implementation is slow and institutions are not prepared to offer adequate services. **Discrimination and violence against women with disabilities remains underreported.**

The Law on Free Legal Aid explicitly mentions victims of the criminal offense of "domestic violence and victims of human trafficking". However, only **small percentage of claims is submitted by victims of those criminal acts.** According to Analysis developed by the Ministry of Justice in **2018**³⁸, out of 472 demands submitted by categories of vulnerable persons, victims of domestic violence and human trafficking make **6.14%**. Regarding the percentage of approved requests, of the total 391 approved requests, 7.16% are concerned with these offenses. The Research on Free Legal Aid System in Montenegro **2012 - 2019**³⁹ developed by NGO Civic Alliance and the Ministry of Justice, published in September 2019 also indicates the similar situation - in the entire period of implementation of free legal aid legislation, only **4%** of approved cases of free legal aid are related to victims of violence against women and domestic violence and victims of trafficking in human beings.

The level of awareness about the existence of and services available under the legal aid system is very low. As pointed out in the Research, in the period of 2012 - 2019, a number of

³⁸ Analysis of approved cases of free legal aid and resources required for annual financing for the period of 1 January - 1 October 2018e – Ministry of Justice, Podgorica, October 2018, available on www.mpa.gov.me

³⁹ Analysis of Free Legal Aid System Research in Montenegro - Creating an Effective and Sustainable Free Legal Aid System 2012 - 2019 by NGO Civic Alliance and the Ministry of Justice, published in September 2019, available on <https://gamn.org/wp-content/uploads/2019/09/GA-Istra%C5%BEvanje-sistema-besplatne-pravne-pomo%C4%87i-u-Crnj-Gori-2012-2019-3.pdf>

surveys were conducted, which, among other things, addressed the issue of informing citizens about free legal aid. The results of a public opinion poll conducted by NGO CEMI in 2013 show that only **one third of respondents (30.1%) know that there is a Law on Free Legal Aid** in Montenegro, while of that third, 73.2% are unaware of or little acquainted with the content of this law. The Human Rights Action (HRA) and CEMI conducted a public opinion poll in 2016 which showed that **citizens still lacked sufficient information and knowledge about the opportunities and rights afforded by the Free Legal Aid Act**. One of the basic questions is whether there is a Law on Free Legal Aid in Montenegro- 46.6% of citizens answered that it exists, while 29.7% of citizens still do not know that there is a law governing the area of providing free legal aid. As many as 78.7% of citizens said that they are not aware of the rights conferred on them by this Law.

The majority of victims of violence are economically dependent of their abusers and are not able to cover the costs of litigation, including court and other administrative fees, cost of transportation, cost of gathering of evidence, as well as indirect costs of litigation. Even in the case of the victim being employed, she is rarely able to cover attorney's fees. Free legal aid is affordable only in the basic courts in mayor towns and it is underused, as mentioned above. **Roma and Egyptian women** are in an especially deprived position when it comes to legal aid, given the fact that majority of them are uneducated, poor and live in isolated communities, far from free legal aid offices. Only part of this population speaks Montenegrin, while majority speak Romani and Albanian. For them, accessing the justice system is very difficult, not only because of the language barrier, but also due to the lack of financial resources, physical isolation and lack of awareness on how to access the justice system. NGO services and especially the abovementioned **field visits of NGO mobile teams** to Roma settlements are of the utmost importance for **providing proper information of rights and services that are available to women**. The same benefits of NGO mobile teams' visits are available to other vulnerable groups - **women with disabilities and rural women**. In the period of March 2018 - August 2019, NGOs organised 36 field visits by lawyers in 4 abovementioned towns⁴⁰ in Montenegro.

Recommendations for the strengthening of gender perspective in the “Improving Procedural Safeguards in Judicial Proceedings in Montenegro” Action

Assessment of the existing log frame from the point of view of inclusion of gender

⁴⁰ Nikšić, Šavnik, Žabljak, Plužine

considerations, with proposals for improvements⁴¹

Given the national legal and social context explained above from the angle of gender equality and vulnerability of some of the social groups, this Action has a good potential to support the creation of a favourable environment for the implementation of the main principles of diversity and equality in practice. Within the Action, those principles have already been integrated in some of the Action's segments. In line with the first part of the Analysis, this part presents recommendations for the improvements of some of the Actions' segments on all levels, in order to contribute to its consistency and a more focused approach to the implementation of diversity and gender equality.

The rationale/*intervention logic* of the Action is to allow people affected by criminal proceedings (victims, suspects and accused) to enjoy their rights and legal certainty in law and practice, in line with European standards. With regard to *human rights factors of the intervention logic*, the Action defines the "promotion of human rights based perspective in the context of criminal proceedings within both highest-level decision-makers and end beneficiary institutions".

Recommendations on the level of intervention logic:

- Within "Human rights factors" of the intervention logic, add words "including diversity and gender perspectives" after words "human rights based perspective".
- Within "Sources and means of verification" of the intervention logic, add GREVIO Report 2018 and Report of the CEDAW Committee
- Within "Baseline description" add "GREVIO Report 2018 and UN Convention against all Forms of Discrimination of Women (CEDAW)"

The Action defines two intermediate outcomes (1 and 2):

- The alignment of the legal framework on procedural rights (with specific focus on Articles 5 and 6 of the ECHR) with the EU *acquis* and ECtHR case law is further supported (1)
- Stakeholders in Montenegrin criminal proceedings are treated in accordance with EU standards and legal certainty (2)

Within the definition of human rights factors of both, intermediate outcomes and diversity and gender perspectives have been integrated.

Recommendation on the level of intermediate outcomes 1 and 2:

- Within Intermediate outcome 1, add "GREVIO Report and CEDAW Committee Report" in Sources and means of verification (1)

Recommendations on the level of immediate outcomes 1.1. and 1.2:

⁴¹ The Logframe table with proposals for integration of gender consideration is presented in Annex 1. Proposals are highlighted in red.

Intermediate outcome 1 has 2 immediate outcomes (1.1. and 1.2):

- Alignment of the legal framework for procedural rights with the EU directives and ECtHR case law (1.1)
- Authorities ensure access to free legal aid in view of ensuring equal rights for disadvantaged and marginalised groups (1.2)

Recommendations:

- In Immediate outcome 1.1. add words "diversity and gender equality" within the description of Human Rights factors.
- In Immediate outcome 1.2 add words "and equal access of marginalised and disadvantaged groups" within the description of human rights factors.

Recommendations on the level of outputs within Immediate Outcome 1.1 - Alignment of the legal framework for procedural rights with the EU directives and ECtHR case law:

Immediate outcome 1.1. has 2 outputs:

- Recommendations for an effective transposition of EU Directives on criminal proceedings in the national legislation (1.1.1)
- Skills and knowledge of the judiciary for comprehensive satisfaction of all rights of the victim in criminal proceedings (1.1.2)

Recommendations for outputs 1.1.1. and 1.1.2:

- In Output 1.1.1. within Indicators 3 and 4, add " Diversity and gender equality perspectives are integrated into Assessment. Also add Indicator 6: At least 2 women NGOs and 1 Roma NGO involved in working group on legislative changes and implementation of legislation.
- In Output 1.1.2 within indicator 1, add "Diversity and gender equality perspectives are integrated into needs assessment". Also add Indicator 6: At least 2 women NGOs engaged as trainers for the training module on gender based violence

Immediate outcome 1.2. defines 1 output (1.2.1):

- Access to free legal aid for disadvantaged and marginalised groups

Recommendations for Output 1.2.1:

- Add Indicator 4: Percentage of cases submitted by women and men from vulnerable groups

Recommendations on the level of activities within Outputs 1.1.1, 1.1.2 and 1.2.1:

Output 1.1.1: Recommendations for an effective transposition of the EU Directives on criminal proceedings in the national legislation:

- Activity: Development of the assessment of existing legislative practices in relation to victim's rights (2019)

Recommendations for this activity:

- *Collect and analyse sex-disaggregated data and information on type and numbers of orders for protection issued by court in cases of domestic violence, how many of them were initiated by victims and what their terms are. Collect and analyse data and information on violations, extensions, convictions and sentencing. Also, collect data and information on types of court procedure (misdemeanour or criminal) and the relationship of the victim to the aggressor.⁴²*
- *Recommend Ministry of Justice and the High Court to include misdemeanour proceedings data into the new Judicial Information System, and create and implement specific indicators for criminal and misdemeanour proceedings for monitoring domestic violence cases, especially the position of children⁴³*
- *Organise focus group (or individual interviews) with victims of violence against women and domestic violence to inquire about the extent of their security and safety during the trial procedure and the information they received from law enforcement agencies, prosecution services and the judiciary about the follow-up and outcomes of their case, including timely information on the date of perpetrators' release from prison⁴⁴. Include Roma and Egyptian women in focus groups (or individual interviews).*
- *In focus group (or individual interviews), ask victims how they assess institutional barriers they recognise in the police force, centres for social welfare, medical institutions, prosecutors and courts; also ask victims about access to legal aid, shelter system and economic and financial security during the process (especially if victims are economically dependent on perpetrators). Ask about their own security and security of their children during the process and about payment of alimony and child support.*

⁴² This recommendation is in line with those of GREVIO (Evaluation Report on Montenegro 2018, p. 56: GREVIO urges Montenegrin authorities to make protection orders available for immediate protection to all victims of domestic violence, irrespective of charging decisions by prosecutorial services or the institution of misdemeanor proceedings by victims". Similar recommendation was proposed in monitoring reports of human rights defenders and NGOs, as well as with the recommendation (p. 57): "GREVIO strongly encourages Montenegrin authorities to ensure that more effective use is made of existing victim protection measures and to introduce the obligation of law enforcement agencies, prosecution services and the judiciary to inform victims of the follow-up and outcomes of their case". Similar recommendation was proposed in monitoring reports of human rights defenders and NGOs.

⁴³ This recommendation is directly taken from the Analysis of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro, Council of Europe Programme Office Montenegro, Podgorica, 2018

⁴⁴ This recommendation is in line with those of GREVIO (Evaluation report for Montenegro, p.57): "GREVIO strongly encourages Montenegrin authorities to ensure that more effective use is made of the existing victim protection measures and to introduce the obligation of law enforcement, prosecution services and the judiciary to inform victims of follow-up and outcomes of their case". Similar recommendation was proposed in monitoring reports of human rights defenders and NGOs.

- *Develop recommendations for the establishment of a special fund that will enable financial security of the victim of violence, with and without children, during the court procedure.⁴⁵ with special regard to cases of violence against Roma and Egyptian women⁴⁶*
- *Develop recommendations for the Government to ensure proper long-term funding for women NGOs which run specialist support services for women victims of all forms of violence⁴⁷*
- *Assess the following aspects related to the access to justice for women⁴⁸: Are courts accessible to women in rural areas? Is there any institutional cooperation between local branch offices ("mjesna zajednica") and courts, like mobile legal services and free legal aid? How many interpreters are attached to the court? Do they speak Albanian and Romani languages? Are they trained in the language/specifics of gender-based crimes? What types of cases do women report to the court? Does this vary by court? Does it vary geographically, economically or ethnically? Are there facilities available that allow victims to wait separately from the accused to prevent intimidation (especially in cases of violence)? Are there child care facilities for court appearances? Are there guidelines or procedures that allow older children to attend court hearings or receive an explanation about what is happening to a parent? Do victims, witnesses and the accused have access to their children during and between court appearances? Are there any restrictions on contact? Do they reflect the best interests of the child? Does the judiciary have access to resources for victims/ survivors of gender-based violence (psychological, medical)? Can the court issue protective orders in cases of violence? What forms of protection are available? Does the court have a gender-responsive budget? In cases of violence, can victims testify behind a screen or via remote camera, etc.? Does this violate constitutional provisions that provide the accused with the right of confrontation?*
- Activity: Development of the assessment of existing legislative practices in relation to rights of suspects and accused persons in criminal proceedings (2019)

Recommendations for this activity:

- *Assess the following aspects of treatment of women as suspects and accused persons: sentencing provisions and practice regarding pregnant women, women*

⁴⁵ In line with recommendations of independent human rights defenders and women NGOs.

⁴⁶ In line with CEDAW Concluding Observations on the combined four to six periodic reports of Montenegro, 19. September 2018, where CEDAW recommends to Montenegro to "take measures to prevent domestic violence, investigate and prosecute those responsible and conduct awareness-raising campaigns in partnership with Roma, Askhali and Egyptian communities and organisations on the negative effects of child and forced marriages and on domestic violence.

⁴⁷ In line with GREVIO recommendation to Montenegrin authorities "to ensure appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women's NGOs which run specialist support services for women victims of all forms of violence (paragraph 43)".

⁴⁸ These assessment questions are adapted from the Toolkit "Gender in the Criminal Justice System Assessment Tool", United Nations Office on Drugs and Crime, New York, 2010, available on <https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/E-book.pdf>

who breastfeed or women with young children, pregnant women and women with children who are convicted or imprisoned?

- *Assess the provisions and practice of treatment of men with children (in practice, special considerations are given to mothers of small children in terms of sentencing and it is important to know if similar considerations are given to fathers, especially in case of single parents).*
- *Assess the use of protective measure “treatment of perpetrator” and the institutional conditions for its implementation.*

- Activity: Development of recommendations for the effective transposition of EU Directives and ECtHR standards in relation to victim’s rights in national legislation (2020)

Recommendations for this activity:

- *Recommend to Ministry of Justice and the High Court to strengthen the system of monitoring and evaluation of protection of victim's rights by upgrading the system of data collection in courts. In this context, recommend introduction of the following variables into court statistics: sex, age, education, ethnic origin, national minority, marital and family status, income group, disability and place (municipality, urban/rural), type of violence and type of relationship of the perpetrator with the victim.*
- *Organise exchange of best practices with EU courts (ex. Spain) about effective protection of victims' rights in court procedures.*

- Activity: Development of recommendations for an effective transposition of EU Directives and ECtHR standards in relation to rights of suspects and accused persons in criminal proceedings in national legislation (2020)

Recommendations for this activity:

- *Recommend to Ministry of Justice and the High Court to develop institutional system for the implementation of the protective measure "psycho-sociological treatment of perpetrators" within the Law on Protection from Domestic Violence.*

Output 1.1.2: Skills and knowledge of judiciary for comprehensive satisfaction of all rights of the victim in criminal proceedings:

- Activity: Development of training curriculum for judges, prosecutors, lawyers, police and judicial staff involved in criminal proceedings, referring to procedural rights of accused and sentenced persons in criminal proceedings and rights of victims (2020)

Recommendations for this activity:

- *Include women NGOs and NGOs dealing with rights of Roma women and women with disabilities in the development of training curriculum;*

- *Develop a special module for the understanding of gender-based violence, roots, causes and consequences of violence, different manifestations of violence against women, their detection and the prevention of secondary victimisation. Include case studies from Montenegrin criminal practice and from the practice of ECtHR⁴⁹ in the module.*
- Activity: Training of trainers for the Judicial Training Centre in the newly developed course on procedural rights (2020)

Recommendations for this activity:

- *Organise the exchange of best practices with judicial training centres from EU (ex. Sweden) and use existing CoE training manuals for prosecutors and judges⁵⁰;*
- *Include women NGO representatives as trainers to present cases from their practice;*
- *Use case studies of ECtHR rulings in cases of violence against women, domestic violence, and gender-based discrimination⁵¹*
- Activity: Cascade training on European human rights standards on procedural rights in criminal proceedings for legal practitioners (2020)
- Activity: Cascade training on European human rights standards on procedural rights in criminal proceedings for legal practitioners (2021)

Recommendations for these activities:

- *Include representatives of women NGOs and NGOs representing Roma and women with disabilities as trainers to present case studies from their practice;*

Output 1.2.1: Access to free legal aid for disadvantaged and marginalised groups

- Activity: Assessment of relevant legislation and practices concerning free legal aid mechanisms (2019)

Recommendations for this activity:

⁴⁹ In line with GREVIO recommendations (p.64 of the evaluation Report): " GREVIO urges Montenegrin authorities to ensure that training for all professional groups that come in contact with victims, in particular law enforcement officials, prosecutors, judges, social workers, teachers and health professionals, include: a. systematic and compulsory initial training on the different manifestations of violence against women, their detection and root causes, as well as the prevention of secondary victimisation; b. regular in-service training that is mandatory and based on protocols and guidelines for intervention in cases of all forms of violence against women (paragraph 89).

⁵⁰ For example, the Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice - Partnership for Good Governance, Council of Europe and European Union, 2017, <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁵¹ Practice of European Court for Human Rights, rulings related to violence against women and gender equality - Thematic Factsheets on Violence against Women and Domestic Violence, issued by the press Unit of the European Court of Human Rights, available at: https://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf
https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf
https://www.echr.coe.int/Documents/FS_Gender_Equality_ENG.pdf

- *Develop secondary analysis of the existing data on beneficiaries of legal aid (victims of violence against women and domestic violence, as well as victims of trafficking in human beings). Secondary analysis should contain sex-disaggregated data on the type of court procedure (criminal or misdemeanour).*
 - *Collect sex-disaggregated data and information from NGOs about legal aid delivered to Roma and Egyptians and people with disabilities and collect their recommendations for upgrading legal aid mechanisms. Data should also be disaggregated by casetype (for example, marital and custody cases, labour disputes, and property and inheritance issues, etc.)*
 - *Propose measures to strengthen free legal aid for victims of violence against women and domestic violence in misdemeanour proceedings, given that 9 out of 10 cases are processed through this procedure. Take into consideration that centres for free legal aid are located within basic courts.*
 - *Propose measures for strengthening free legal aid to marginalised people through the introduction of special measures like hiring staff in legal aid centres of Roma and Egyptian origin to provide language-specific services, ensuring accessible services for persons with disabilities and training staff in legal aid centres on how to provide child-friendly legal aid.*
 - *Propose the organisation of mobile free legal aid services for women living in isolated communities (Roma and Egyptian settlements and rural areas). Include women NGOs in delivering mobile services, using best practices of national NGOs⁵².*
 - *Propose changes in the system of financing of free legal aid in terms of introducing NGOs as free legal aid providers.*
 - *Propose development of monitoring mechanisms and gender - sensitive indicators for assessing good quality free legal aid and adjust ex-post reporting to the Council of Europe's reporting rules.*
- Activity: Development of clinical education courses on issues related to human rights for senior law students (including but not limited to Articles 2, 3, 5, 6, 8, 13) (2020)

Recommendations for this activity:

- *Include special module on women's' human rights and gender-based violence to make students aware of the importance of sanctioning and systemic prevention of domestic violence. Consult women NGOs about their practice in protecting the rights of victims in procedures and include their inputs into this segment.*
- Activity: Implementation of the clinical courses for law students on practical knowledge and trial advocacy skills on issues related to human rights (2020 and the same activity in 2021)

Recommendations for this activity:

⁵² NGO SOS Nikšić organizes mobile team visits to rural communities to enable rural women to receive free legal advice.

- *Implement approach "work with live clients" and case-based approach to learning based on practice of ECtHR and depersonalised cases from national court practice.*
 - *Make legal sources of knowledge available to students (ex. ECtHR practice). Analyse cases of provision of free legal aid to victims of violence against women and domestic violence, with special regard to those belonging to Roma and Egyptian communities, as well as women with disabilities and rural women.*
 - *Include NGOs protecting victims of violence and Roma NGOs as trainers in courses to present cases from national practice.*
 - *Include Roma students and students who speak Albanian language in education.*
- Activity: Awareness raising campaign for the general public on the right to access to court under the Article 6 of the ECHR specifically focusing victims of domestic violence (2020):

Recommendations for this activity:

- *Design one special module of awareness raising campaign - field visits to Roma and Egyptian settlements, and meetings with Roma community. Meetings for women should be organised separately. Presentation of free legal aid to be in plain and easy-to-understand format, in Montenegrin, Romani and Albanian languages.*
 - *Include Roma NGOs in the design and implementation phases of the campaign⁵³.*
 - *Include facilitators and Local Action Groups of Roma and Egyptians developed under the CoE/EU Project ROMACTED in the mobilisation of Roma and Egyptian women.*
- Activity: Awareness raising campaign on the availability of free legal aid services through legal clinics (2021 and 2022):

Recommendations for this activity:

- *Design one special module of the awareness raising campaign - field visits to Roma and Egyptian settlements, and meetings with Roma community. Meetings for women should be organised separately. Presentation of free legal aid to be in plain and easy-to-understand format, in Montenegrin, Romani and Albanian languages;*
- *Include female students of the Law Faculty in the campaign;*
- *Include students - Albanian language speakers in the campaign;*
- *Include Roma NGOs and Roma female students in design and implementation of the campaign;*
- *Include facilitators and Local Action Groups of Roma and Egyptians developed under the CoE/EU Project ROMACTED in the mobilisation of Roma and Egyptian women.*

⁵³ In line with CEDAW Concluding Observations on the combined four to six periodic reports of Montenegro, 19. September 2018, where CEDAW recommends to Montenegro to "take measures to prevent domestic violence, investigate and prosecute those responsible and conduct awareness-raising campaigns in partnership with Roma, Ashkali and Egyptian communities and organisations on the negative effects of child and forced marriages and on domestic violence.

Recommendations on the level of outputs within Immediate Outcome 2: Stakeholders in Montenegrin criminal proceedings are treated in accordance with EU standards and legal certainty

Within the immediate outcome 2, two outputs have been defined:

- Skills and knowledge in legal reasoning and interpretation of the ECHR in criminal proceedings (2.1.1)
- Recommendations and capacity-building on penal policies and practices for the cases of violence against women and domestic violence (2.1.2)

Recommendations for outputs 2.1.1. and 2.1.2:

- Within indicator 1 add sentence "Diversity and gender equality integrated into analysis"; and within indicator 2, add sentence "Diversity and gender equality integrated into manual".

Recommendations on the level of activities within Outputs 2.1.1 and 2.1.2:

Output 2.1.1: Skills and knowledge in legal reasoning and interpretation of the ECHR in criminal proceedings

- Activity: Development and publishing of case-law bulletins for the Administrative Court (and other courts, as relevant) (2020)

Recommendations for this activity:

- *Include cases of violence against women and domestic violence into Bulletin.*
- Activity: Development of the (training) manual for legal practitioners on the right to a reasoned decision in conjunction with Article 5 ECHR (2020).

Recommendation for this activity:

- *Include analysis of decisions of ECtHR on cases of domestic violence and trafficking in human beings in conjunction with the Istanbul Convention and ECHR Article 14 and 6⁵⁴.*
- *In cooperation with the Supreme Court, create a rulebook that standardises the process of imposing sanctions and use of aggravating and mitigating circumstances in cases of domestic violence and trafficking in human beings⁵⁵. The rulebook needs to contain clear indicators, circumstances, and conditions that will guide judges in imposing sanctions for domestic violence.*

⁵⁴ Ibid.

⁵⁵ This recommendation is directly taken from the Analyses of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro, Council of Europe Programme Office Montenegro, Podgorica, 2018, with one addition - besides cases of domestic violence, it is recommended that the Rulebook is also developed for cases of trafficking in human beings.

- Activity: Training of trainers for the Judicial Training Centre on the newly developed course on reasoned decisions in relation to Article 6 of ECHR (2020)
- Activity: Cascade training on European standards in reasoned decisions in relation to Article 6 of the ECHR for legal professionals (2021)

Recommendation for these activities:

- *Include women NGO representatives as trainers to present cases from their practice.*

Output 2.1.2: Recommendations and capacity-building on penal policies and practices for the cases of violence against women and domestic violence

Recommendations for all activities within this Output:

- *Introduce the special module on the harm of judicial stereotyping through evidence-based research and case studies, as well as through analysing judicial reasoning for evidence of stereotyping. Include women NGO representatives as trainers.*
- *Introduce the special module on free legal aid through case studies. Pay special attention to the needs of Roma and Egyptian women, women with disabilities and rural women. Include women and Roma NGOs as trainers, as well as NGOs representing the rights of people with disabilities.*
- *Provide legal aid providers with additional compulsory training in certain areas of legislation and social integration policies (family law, protection of persons with disabilities, protection of marginalised groups, like Roma and Egyptians, as well as rural women, domestic violence, trafficking in human beings, cases of discrimination, etc.).*
- *In partnership with the Supreme Court, develop instruction/guidance for the qualification of offences of domestic violence either as criminal or misdemeanour for judges/prosecutors. The Instruction needs to have elaborate directions on the steps to be taken and facts to be taken into account in the qualification of offences of domestic violence⁵⁶*

⁵⁶ This recommendation is taken from the Analysis of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro - Council of Europe, Podgorica, 2018

Conclusions

Despite the *de jure* equality of all citizens and the institutional framework for the implementation of equality standards, including gender equality, Montenegro still has to build its institutions in order to enable the *de facto* equality. Statistics shows that women and men have uneven access to education, employment, property and decision making. Vulnerable groups, including Roma and Egyptians, people with disabilities and people in vulnerable situations, and especially women belonging to the mentioned groups, are additionally deprived in all of the mentioned segments. Women are more educated than men, but the percentage of employed women is lower. Women make a significant minority among land owners, owners of immovable property and owners of business. Participation of women in politics is low and the percentage of women in economic decision making is even lower. Roma and Egyptian women and women with disabilities are not represented in political and economic decision-making.

When it comes to judicial practice and penal policies from the gender perspective, statistics shows that women represent a significant minority among suspects and accused persons and make a vast majority among victims in cases of domestic violence. As underlined in GREVIO and UN CEDAW reports, rights of women are not adequately protected in institutional and court procedures. Reporting rate of violence is still low, especially among vulnerable groups - Roma and Egyptians, women with disabilities and rural women. Gender stereotypes are still present among judicial professionals and women are exposed to additional discrimination during institutional and court procedures. It includes downplaying the violence by prosecutors and judges, delaying of cases and reluctance of judges to issue protection orders. All the above mentioned makes women less trusting of institutions and courts and preferring to remain in a situation of violence. The level of awareness and use of services available under the legal aid system is very low. There is no systemic and permanent support for women from vulnerable groups and they are mostly serviced by NGOs, on temporary bases. GREVIO points at the fact that the rate of recidivism in criminal proceedings in cases of domestic violence is very high and urged Montenegro to consider the relationships between the penal policy and the high rate of recidivism.

The Action "Improving Procedural Safeguards in Judicial Proceedings in Montenegro" is a good opportunity to address the abovementioned challenges and to contribute to the establishment of a more effective protection of women in criminal proceedings. It is a crucial step towards creating a more secure and supportive environment for victims of violence that would encourage them to trust institutions and to find a way out of violence through institutional and court protection. Gender considerations have already been integrated in some of the parts of the Action and recommendations presented within this Analysis are aimed at mainstreaming gender at all levels of the Action.

List of interviewed persons/representatives of stakeholders:

- Ivona Dragutinović, Senior Project Officer "Fighting ill-treatment and impunity and enhancing the application of the ECtHR case-law on national level (FILL)", "Horizontal Facility for Western Balkans and Turkey" funded by the European Union and the Council of Europe - August 31
- Maja Raičević, Director, NGO Center for Women's Rights - September 4
- Branka Žigante-Živković, Judge of the High Misdemeanour Court of Croatia, expert engaged in the process of development of Montenegrin legislative and policy framework for protection from violence against women - interview conducted by the phone - September 4
- Valentina Pavličić, Representative of Montenegro before the European Court of Human Rights - September 5
- Senka Danilović, Judge of the Higher Court, President of the Governing Board of the Center for training of Judges and State Prosecutors - September 6
- Miraš Radović, Judge, Subprime Court of Montenegro, President of the Governing Board of the Project "Improving procedural safeguards in judicial proceedings in Montenegro" - September 9
- Nada Koprivica, Program Coordinator, NGO SOS Nikšić - September 12 (reached by e-mail)
- Aneta Spajić, Dean of the Law Faculty, Biljana Đuričin, Professor at the Law Faculty and Ljiljana Jovanović, Center for Human Rights of the Law Faculty - September 17

Literature:

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- Analysis of Penal Policy in Domestic Violence Criminal and Misdemeanour Proceedings in Montenegro - Council of Europe, Podgorica, 2018
- Implementation of Montenegro's Domestic Violence Legislation - A Human Rights Report - The Advocates for Human Rights Minneapolis, Minnesota USA, SOS Hotline for Women and Children Victims of Violence Nikšić, and Women's Rights Center Podgorica, Montenegro July 2017, <https://rm.coe.int/ngo-1-report-to-grevio/168073c75d>
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- Resolution of the Council of European Union of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings 2009/C 295/01, available on <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009G1204%2801%29>
- Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju (Perceptions of representatives of the judiciary), November 2015, p.18. Research carried out in the framework of the project "Access to Justice for Victims of Domestic Violence", UNDP Office Montenegro in partnership with the Center for Women's Rights and the Ministry of Human and Minority Rights.
- Shazia Choudhry: Women's Access to Justice: A Guide for Legal Practitioners, Council of Europe, Partnership for Good Governance, 2018. Available at <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>
- Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation - OSCE ODIHR, Warsaw, 2017, available at <https://www.osce.org/odihr/327836?download=true>
- Toolkit "Gender in the Criminal Justice System Assessment Tool", United Nations Office on Drugs and Crime, New York, 2010, available on <https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/E-book.pdf>

Annex 1

Logframe table for project "HFII: Improved procedural safeguards in criminal proceedings in Montenegro" (2372), with proposals for integration of gender considerations⁵⁷

Logframe level	Intervention logic	Indicators	Sources and means of verification	Baseline Description	Target Description	Human Rights factors
0 Impact	People affected by criminal proceedings (victims, suspects and accused) enjoy their rights and legal certainty in law and practice in line with European Standards.		EU Progress reports, Recommendations and Resolutions of the monitoring bodies or Committee of Ministers and other relevant reference documents, including reports of CEDAW Committee.	EU Directive 2013/48 on the right of access to a lawyer in criminal proceedings EU Directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings EU Directive 2010/64/EU on interpretation and translation EU Directive 2012/13/EU on the right to information EU Directive 2013/48/EU on minimum standards on the right of access to a lawyer in criminal proceedings EU Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime 2018 EU Country Report on Montenegro (page 43) Siništaj (1451/10) lack of an effective investigation case under the supervision of execution CoE Convention on Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention) UN Convention against all Forms of		The Action will promote human rights based perspective in the context of criminal proceedings within both highest-level decision-makers and end beneficiary institutions. Integration of diversity and gender perspective will also be promoted.

⁵⁷ Proposals are written in red

				Discrimination of Women (CEDAW)		
1 Intermediate Outcome	The alignment of the legal framework on procedural rights (with specific focus on Articles 5 and 6 of the ECHR) with the EU <i>acquis</i> and ECtHR case law is further supported.	Indicator 1: Montenegrin authorities take steps to align the legal framework for procedural rights with the EU directives and ECtHR case law.	Evaluation reports, EU Progress reports, reports by other relevant organisations, GREVIO Report, Report on CEDAW Committee	- 0 - Indicator 1: EU Directives 2010/64/EU, 2012/13/EU, 2013/48/EU already adopted.	0 - Indicator 1: Montenegrin legislation is further aligned with EU Directives on procedural rights.	The Action will mainstream the values that the Organisation represents. A distinct advantage of the Action will be to ensure inclusion of European standards on anti-discrimination and gender equality.
1.1 Immediate Outcome	Alignment of the legal framework for procedural rights with the EU directives and ECtHR case law.	Indicator 1: Confidence of Montenegrin stakeholders in criminal proceedings.	Indicator 1: Evaluation reports and satisfaction surveys.	- 0 - Indicator 1: No relevant date currently available.	0 - Indicator 1: Improved confidence of Montenegrin stakeholders in criminal proceedings.	The Action will emphasise the cross-cutting commitments to human rights diversity and gender equality through inclusive participation and active involvement of beneficiary institutions, stakeholders and target groups. The inclusive decision making process will be ensured with partners and stakeholders. The Action will strengthen meaningful participation of civil society representatives.
1.1.1 Output	Recommendations for effective transposition of the EU Directives on criminal proceedings in the national legislation.	Indicator 1: Quality of assessment of existing legislative practices in relation to right of suspects and accused persons in criminal proceedings. Indicator 2: Quality of recommendations for effective transposition of the EU Directives on criminal proceedings in the national legislation. Indicator 3: Quality of assessment of existing legislative practices in relation	Indicator 1: Action reports, action plan at the national level. Indicator 2: Action reports, action plan at the national level. Indicator 3: Action reports, action plan at the national level. Indicator 4: Action reports, action plan at the national level. Indicator 5: Conclusions of working group	- 0 - Indicator 1: No relevant assessment available. - 0 - Indicator 2: No relevant recommendations available. - 0 - Indicator 3: No relevant recommendations available. - 0 - Indicator 4: No relevant recommendations available. - 0 - Indicator 5: No working group on legislative	- 1 - Indicator 1: Availability of assessment of existing legislative practices in relation to right of suspects and accused persons in criminal proceedings by the end of 2019. - 1 - Indicator 2: Availability of recommendations for effective transposition of the EU Directives on criminal proceedings in the national legislation by May	Relevant stakeholders' role will be analysed in terms of mainstreaming of diversity and gender equality perspectives.

		<p>to victim's rights.</p> <p>Indicator 4: Quality of recommendations for effective transposition of the EU Directives in relation to victim's rights in the national legislation.</p> <p>Indicator 5: Number of political actors and decision-makers involved in working group on legislative changes and implementation of recommendations.</p>	meetings.	changes and implementation of recommendations.	<p>2020.</p> <p>- 1 - Indicator 3: Availability of assessment of existing legislative practices in relation to victim's rights by the end of 2019. Diversity and gender equality perspectives are integrated into Assessment.</p> <p>- 1 - Indicator 4: Availability of recommendations for effective transposition of the EU Directives in relation to victim's rights in the national legislation by May 2020. Diversity and gender equality perspectives are integrated into recommendations</p> <p>- 5 - Indicator 5: At least 5 political actors and decision-makers involved in working group on legislative changes and implementation of recommendations</p> <p>-6- Indicator 6: At least 2 women NGOs and 1 Roma NGO involved in working group on legislative changes and implementation of legislation.</p>	
1.1.2 Output	Skills and knowledge of judiciary for comprehensive satisfaction of all rights of the victim in criminal proceedings.	<p>Indicator 1: Quality of training needs-assessment for the judiciary and judicial staff. Diversity and gender perspectives integrated into needs assessment.</p> <p>Indicator 2: Quality of training manual for judges, prosecutors, lawyers, police and judicial staff involved in criminal</p>	<p>Indicator 1: Action reports, curriculum and data provided by the Judicial Training Center.</p> <p>Indicator 1: Action reports, curriculum and data provided by the Judicial Training Center.</p> <p>Indicator 3: Training pool of the Judicial Training Center.</p>	<p>- 0 - Indicator 1: No relevant training needs-assessment available.</p> <p>- 0 - Indicator 2: No training manual available on ECHR standards for judges, prosecutors, lawyers, police and judicial staff involved in criminal proceedings.</p>	<p>- 1 - Indicator 1: Availability of training needs-assessment for the judiciary and judicial staff by the end of 2019.</p> <p>- 1 - Indicator 2: Availability of training manual for judges, prosecutors, lawyers, police and judicial staff involved in criminal proceedings by 30</p>	Relevant stakeholders' role will be analysed in terms of mainstreaming of diversity and equality perspectives.

		<p>proceedings. Quality of diversity and gender equality perspectives integrated into module of the training manual related to gender-based violence.</p> <p>Indicator 3: Number of available qualified trainers to conduct trainings on procedural rights.</p> <p>Indicator 4: Number of judicial and legal professionals achieved with European Human Rights standards in the criminal proceedings.</p> <p>Indicator 5: Quality of HELP online course on procedural rights in Montenegro.</p>	<p>Indicator 4: Training evaluations, presence sheets.</p> <p>Indicator 5: HELP platform.</p>	<p>- 0 - Indicator 3: No national trainers qualified to conduct trainings on ECHR standards in procedural rights.</p> <p>- 0 - Indicator 4: No legal professionals achieved with relevant information.</p> <p>- 0 - Indicator 5: No HELP online course on procedural rights in Montenegro available.</p>	<p>June 2020.</p> <p>- 8 - Indicator 3: At least 8 national trainers qualified to conduct trainings on procedural rights by September 2020.</p> <p>- 100 - Indicator 4: At least 100 legal professionals achieved with information on European Human Rights standards in the criminal proceedings.</p> <p>- 1 - Indicator 5: Availability of HELP online course on procedural rights in Montenegro by the end of 2020.</p> <p>Indicator 6: At least 2 women NGOs engaged as trainers for the training module on gender based violence</p>	
1.2 Immediate Outcome	Authorities ensure access to free legal aid in view of ensuring equal rights for disadvantaged and marginalised groups.	Indicator 1: Quality and availability of free legal aid system in Montenegro.	Indicator 1: Reports and statistical information provided by the free legal aid representatives. Sex disaggregated statistics and gender information, as well as statistic and information relevant to understanding needs of vulnerable and disadvantaged groups integrated in the Report	- 0 - Indicator 1: No free legal aid services established until now.	- 0 - Indicator 1: Functional, available and sustainable free legal aid system established by the end of the Action. The system integrates diversity and gender perspective.	The implementation will be analysed in terms of equal access to free legal aid of men and women and equal access of marginalized and disadvantaged groups.
1.2.1 Output	Access to free legal aid for disadvantaged and marginalised groups	Indicator 1: Quality of the clinical education course on issues related to human rights. Indicator 2: Quality of free of legal aid services on human rights issues.	Indicator 1: Action reports. Indicator 2: Memorandum of understanding with a law faculty for establishment of a free legal aid office.	- 0 - Indicator 1: No clinical education course on issues related to human rights available. - 0 - Indicator 2: No free of legal aid services on human rights currently	- 1 - Indicator 1: Availability of the clinical education course on issues related to human rights by March 2020. - 0 - Indicator 2: Availability of free of legal aid services on human	Through creation of legal clinics on issues related to human rights the Action will ensure the access to free legal aid for clients coming from vulnerable or indigent

		Indicator 3: Number of case submitted and processed by the client free legal aid office.	Indicator 3: Action reports, data provided by the free legal aid office.	available. - 0 - Indicator 3: No free of legal aid services on human rights currently available.	rights issues by September 2020. - 0 - Indicator 3: All case submitted to the free legal aid office are processed timely and efficiently. -0- Indicator Percentage of cases submitted by women and men from vulnerable groups	groups, including refugees, minorities, women in vulnerable situations and unemployed.
2 Intermediate Outcome	Stakeholders in Montenegrin criminal proceedings are treated in accordance with EU standards and legal certainty.	Indicator 1: Confidence of Montenegrin stakeholders in criminal proceedings.	Indicator 1: Evaluation reports and satisfaction surveys.	- 0 - Indicator 1: No relevant date currently available.	- 0 - Indicator 1: Improved confidence of Montenegrin stakeholders in criminal proceedings.	The Action will mainstream the values that the Organisation represents. A distinct advantage of the Action will be to ensure inclusion of European standards on anti-discrimination and gender equality.
2.1 Immediate Outcome	Legal certainty for citizens through consistent application of legislation and reinforced inter-judicial dialogue in the field of human rights protection is increased	Indicator 1: Quality of practices regarding harmonised implementation of Convention standards with specific focus on the right to a reasoned decision.	Indicator 1: Domestic courts' decisions, feedback provided by the beneficiary institutions, project survey and evaluation reports.	- 0 - Indicator 1: No analysis available on quality of implementation of Convention standards on the right to a reasoned decision.	- 0 - Indicator 1: Analysis and recommendations for harmonised application of the ECHR standards regarding the right to a reasoned decision available by the end of the Action.	The Action will ensure that gender is mainstreamed throughout its implementation. Position of women as victims in the framework of criminal law will be separately analysed and appropriate solutions proposed to provide the foundation for equality in criminal proceedings.
2.1.1 Output	Skills and knowledge in legal reasoning and interpretation of the ECHR in criminal proceedings	Indicator 1: Quality of the analysis on application of the ECHR standards regarding the right to a reasoned decision at the national level. Indicator 2: Quality of the manual for legal practitioners on the right to a reasoned decision in conjunction with Article 5 ECHR.	Indicator 1: Action reports. Indicator 2: Curriculum of the Judicial training Center. Indicator 3: Training pool of the Judicial Training Center. Indicator 4: Training evaluations,	- 0 - Indicator 1: No relevant analysis currently available. - 0 - Indicator 2: No manual for legal practitioners on right to a reasoned decision in conjunction with Article 5 ECHR currently available. - 0 - Indicator 3: No national trainers qualified	1 - Indicator 1: Availability of the analysis on application of the ECHR standards regarding the right to a reasoned decision at the national level by the end of 2019. Diversity and gender equality integrated into analysis. - 1 - Indicator 2:	Equal participation of women and of vulnerable groups, representatives of minorities will be ensured in order to promote equality and diversity in the Action. The capacity building on the right to reasoned decisions will be

		<p>Indicator 3: Number of available qualified trainers to conduct trainings on reasoned decision.</p> <p>Indicator 4: Number of judicial and legal professionals achieved with European standards in reasoned decisions.</p> <p>Indicator 5:</p>	presence sheets.	<p>to conduct trainings on the right to a reasoned decision in conjunction with Article 5 ECHR.</p> <p>- 0 - Indicator 4: No legal professionals achieved with relevant information.</p>	<p>Availability of the manual for legal practitioners on right to a reasoned decision in conjunction with Article 5 ECHR by 30 June 2020. Diversity and gender equality integrated into manual.</p> <p>- 8 - Indicator 3: At least 8 national trainers qualified to conduct trainings on reasoned decisions by the end of 2020.</p> <p>- 100 - Indicator 4: At least 100 legal professionals achieved with information on ECHR standards regarding the right to a reasoned decision.</p>	ensured taking into due account gender equality approach.
2.1.2 Output	Recommendations and capacity-building on penal policies and practices for the cases of violence against women and domestic violence	<p>Indicator 1: Quality of assessment of legal framework for protection of women against violence and its alignment with the Istanbul Convention and ECtHR standards.</p> <p>Indicator 2: Quality of recommendations on harmonisation of penal policies for the cases of violence against women and domestic violence.</p> <p>Indicator 3: Number of political actors and decision-makers involved in working group on harmonisation of penal policies for the cases of violence against women and domestic violence.</p> <p>Indicator 4: Quality of guidelines for police and</p>	<p>Indicator 1: Action reports.</p> <p>Indicator 2: Action reports, action plan at the national level.</p> <p>Indicator 3: Conclusions of the meetings.</p> <p>Indicator 4: Action reports.</p> <p>Indicator 5: Training evaluations, presence sheets.</p>	<p>- 0 - Indicator 1: No relevant assessment available.</p> <p>- 0 - Indicator 2: No relevant recommendations available.</p> <p>- 0 - Indicator 3: No working group Indicator on harmonisation of penal policies for the cases of violence against women and domestic violence.</p> <p>- 0 - Indicator 4: No relevant guidelines available.</p> <p>- 0 - Indicator 5: No enforcement authorities reached so far with relevant information.</p>	<p>1 - Indicator 1: Availability of assessment of legal framework for protection of women against violence and its alignment with the Istanbul Convention and ECtHR standards by May 2020.</p> <p>- 1 - Indicator 2: Availability of recommendations on harmonisation of penal policies for the cases of violence against women and domestic violence by July 2020.</p> <p>- 3 - Indicator 3: At least 3 political actors and decision-makers involved in working group on harmonisation of penal policies for the cases of violence against women and domestic violence.</p>	Through alignment of legal framework for protection of women against violence with European standards, the Action will contribute to strengthening law enforcement response to protection of vulnerable populations.

		<p>prosecutors for intervention in cases of all forms of violence against women</p> <p>Indicator 5: Number of enforcement authorities reached with the information on how to respond in cases of violence against women and domestic violence.</p>			<p>- 1 - Indicator 4: Availability of guidelines for police and prosecutors for intervention in cases of all forms of violence against women by the end of 2020.</p> <p>- 40 - Indicator 5: At least 40 enforcement authorities reached with the information on how to respond in cases of violence against women and domestic violence by the end of the Action.</p>	
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Logframe level	Assumptions
Intermediate Outcome	Political stability in the country. The authorities confirm their commitment to continue making all efforts necessary for alignment of procedural rights with the EU <i>acquis</i> and ECtHR case law.
Immediate Outcome	The authorities confirm their commitment to co-operate with the Council of Europe's as regards the identification of good practices and the provision of expertise and training to ensure alignment of procedural rights with the EU <i>acquis</i> and European Court of Human Rights case law.
Output	Continued commitment of key beneficiaries. Availability and responsiveness by all stakeholders and beneficiaries to participate in and contribute to the Action's activities. Willingness and readiness by all beneficiaries and stakeholders to apply the skills acquired through the Action.

Annex 2:

Connection of Articles 2, 3, 6 and 14 of the ECHR and with Istanbul Convention

- Extracts from Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence⁵⁸ -

Istanbul Convention	ECHR
<p>Article 5 – State obligations and due diligence</p> <p>Under international law a state is responsible for the commission of an internationally wrongful act which is attributable to it, through the conduct of their agents such as the police, immigration officials and prison officers. This principle is set out in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (2001), which are widely accepted as customary international law. Under international human rights law, the state has both negative duties and positive duties: state officials must both respect the law and refrain from the commission of internationally wrongful acts and must protect individuals from their commission by other non-state actors. Article 5, paragraph 1, addresses the state obligation to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women, whereas paragraph 2 sets out Parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors. In both cases, failure to do so will incur state responsibility. A requirement of due diligence has been adopted in a number of international human rights instruments, interpretations, and judgments with respect to violence against women. These include CEDAW Committee General Recommendation No. 19 on violence against women (1992), Article 4 of the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), the Convention on the Prevention of Violence against Women (Convention of Belém do Pará, 1994) adopted by the Organisation of American States as well as the Council of Europe Recommendation Rec(2002)5 of</p>	<p>Content of Article 5 reflects the case-law of the European Court of Human Rights. In its recent case law on domestic violence, the Court has adopted the obligation of due diligence (see the judgment of Opuz v. Turkey, 2009). It has established that the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk.</p>

⁵⁸ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, available on <https://rm.coe.int/16800d383a>

<p>the Committee of Ministers to member states on the protection of women against violence (2002).</p>	
<p>Article 29 – Civil lawsuits and remedies 157. Paragraph 1 of this provision aims at ensuring that victims of any of the forms of violence covered by the scope of this Convention can turn to the national legal system for an adequate civil law remedy against the perpetrator. On the one hand, this includes civil law remedies which allow a civil law court to order a person to stop a particular conduct, refrain from a particular conduct in the future or to compel a person to take a particular action (injunctions). A civil law remedy of this type can be used, for example, to help girls and boys faced with the prospect of being married against their will to have their passport or other important documentation handed to them from anybody withholding it against their will (parents, guardians or any family members). Such injunctions help to provide protection against acts of violence. On the other hand, and depending on the national legal order of the Party, civil law remedies offered under this provision may also include court orders that deal more specifically with acts of violence covered by the scope of this Convention, such as barring orders, restraining orders and non-molestation orders as referred to in Article 53. These are particularly relevant in cases of domestic violence and complement the immediate and often short-term protection offered by emergency protection orders as referred to in Article 52. Moreover, civil law should provide for legal remedies against defamation and libel in the context of stalking and sexual harassment, in case where such acts are not covered by the criminal legislation of the Parties. All civil law orders are issued following an application by the victim or - depending on the legal system - a third party and cannot be issued ex officio. While paragraph 1 aims at providing victims with civil remedies against the perpetrator, paragraph 2 ensures that victims are provided with remedies against state authorities which have failed in their duty to take the necessary preventive or protective measures. It reiterates the principle of liability of state authorities, who, in accordance with Article 5 of this Convention are under the obligation to diligently prevent, investigate and, punish acts of violence covered by the scope of this Convention. Failure to comply with this obligation can result in legal responsibility and civil law needs to offer remedies to address such failure. These remedies include, inter alia, civil law action for damages which need to be available for negligent and grossly negligent behavior. The extent of state authorities' civil liability remains governed by the internal law of</p>	<p>The obligation contained in paragraph 2 is in line with case law of the European Court of Human Rights concerning the failure of public authorities to comply with their positive obligation under Article 2 ECHR (right to life). In the <i>Osman v. the United Kingdom</i> judgment, and again the <i>Opuz v. Turkey</i> judgment, the Court has stated that “where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.” The Court explicitly stated that responsibility for such failure is not limited to gross negligence or wilful disregard of the duty to protect life. 164. In the event of death of the victim, the available remedies shall be accessible to her or his descendants.</p>

<p>the Parties which have the discretion to decide what kind of negligent behavior is actionable.</p>	
<p>Article 28 – Reporting by professionals Under this article Parties to the Convention must ensure that professionals normally bound by rules of professional secrecy (such as, for example, doctors and psychiatrists) have the possibility to report to competent organizations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention has been committed and that further serious acts of such violence are to be expected. These are cumulative requirements for reporting and cover, for example, typical cases of domestic violence where the victim has already been subjected to serious acts of violence and further violence is likely to occur. It is important to note that this provision does not impose an obligation for such professionals to report. It only grants these persons the possibility of doing so without any risk of breach of confidence. While confidentiality rules may be imposed by legislation, issues of confidentiality and breach of such may also be governed by codes of ethics or professional standards for the different professional groups. This provision seeks to ensure that neither type of confidentiality rule would stand in the way of reporting serious acts of violence. The aim of this provision is to protect life and limb of victims rather than the initiation of a criminal investigation. It is therefore important to enable those professionals who, after careful assessment, wish to protect victims of violence. The term “under appropriate conditions” means that Parties may determine the situations or cases to which this provision applies. For instance, Parties may make the obligation contained in Article 28 contingent on the prior consent of the victim, with the exception of some specific cases such as where the victim is a minor or is unable to protect her or himself due to physical or mental disabilities. Moreover, each Party is responsible for determining the categories of professionals to which this provision applies. The term “certain professionals” is intended to cover any number of professionals whose functions involve contact with women, men and children who may be victims of any of the forms of violence covered by the scope of this Convention.</p>	<p>This article does not affect the rights, in conformity with Article 6 ECHR, of those accused of acts to which this Convention applies, whether in civil or criminal proceedings.</p>
<p>Article 49 – General obligations 255. The drafters wanted to prevent that incidents of violence against women and domestic violence are assigned low priority in investigations and judicial proceedings, which contributes significantly to a sense of impunity among perpetrators and has helped to</p>	<p>Any measures taken in implementation of this provision are not prejudicial to the rights of the defense and the requirements of a fair and impartial trial, in conformity with Article 6 ECHR.</p>

<p>perpetuate high levels of acceptance of such violence. In order to achieve this goal, paragraph 1 sets out the obligation to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay. This will help to secure vital evidence, enhance conviction rates and put an end to impunity. It is important to note that while it is essential to ensure swift investigations and proceedings, it is equally important to respect the rights of victims during these stages. Paragraph 1 therefore requires Parties to avoid to the extent possible aggravating any harm experienced by victims during investigations and judicial proceedings and to provide them with assistance during criminal proceedings. 256. Paragraph 2 complements the obligation by establishing the obligation to ensure that the investigation and prosecution of cases of all forms of violence covered by the scope of this Convention are carried out in an effective manner. This means, for example, establishing the relevant facts, interviewing all available witnesses, and conducting forensic examinations, based on a multi-disciplinary approach and using state-of-the-art criminal investigative methodology to ensure a comprehensive analysis of the case. The drafters considered it important to spell out as part of this obligation the need to ensure that all investigations and procedures are carried out in conformity with fundamental principles of human rights and with regard to a gendered understanding of violence.</p>	
<p>Article 4 – Fundamental rights, equality and non-discrimination</p>	<p>The meaning of discrimination is identical to that given to it under Article 14 of the ECHR. The list of non-discrimination grounds draws on that in Article 14 ECHR as well as the list contained in Protocol No. 12 to the ECHR. It is worth pointing out that the European Court of Human Rights has applied Article 14 to discrimination grounds not explicitly mentioned in that provision (see, for example, as concerns the ground of sexual orientation, the judgment of 21 December 1999 in <i>Salgueiro da Silva Mouta v. Portugal</i>). 53. In light of this case law, the drafters wished to add the following non-discrimination grounds which are of great relevance to the subject-matter of the Convention: gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status, meaning that this is an open-ended list. Research into help-seeking behavior of victims of violence against women and domestic violence, but also into the provision of services in Europe shows that discrimination against certain groups of victims is still wide-spread. Women may still experience discrimination at the hands of law enforcement agencies or the judiciary</p>

	<p>when reporting an act of gender-based violence. Similarly, gay, lesbian and bisexual victims of domestic violence are often excluded from support services because of their sexual orientation. Certain groups of individuals may also experience discrimination on the basis of their gender identity, which in simple terms means that the gender they identify with is not in conformity with the sex assigned to them at birth. This includes categories of individuals such as transgender or transsexual persons, cross-dresses, transvestites and other groups of persons that do not correspond to what society has established as belonging to “male” or “female” categories. Furthermore, migrant and refugee women may also be excluded from support services because of their residence status. It is important to point out that women tend to experience multiple forms of discrimination as may be the case of women with disabilities or/and women of ethnic minorities, Roma, or women with HIV/AIDS infection, to name a few. This is no different when they become victims of gender-based violence.</p>
<p>Article 57 – Legal aid In the immediate aftermath of violence many victims of violence against women and domestic violence may be forced to leave all their belongings or jobs behind on a moment's notice. Judicial and administrative procedures are often highly complex and victims need the assistance of legal counsel to be able to assert their rights satisfactorily. In these cases, it might be difficult for victims to effectively access legal remedies because of the high costs which can be involved in seeking justice. For this reason the drafters believed it essential to place an obligation on Parties to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law. This provision is inspired by Article 15, paragraph 2, of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197). Article 57 does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid.</p>	<p>In addition to this provision, Parties must take account of Article 6 ECHR. Even though Article 6 paragraph 3 (c) ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law (<i>Airey v. Ireland</i> judgment, 9 October 1979) also recognizes, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6 paragraph 1 ECHR, interpreted as establishing the right to a court for determination of civil rights and obligations (see <i>Golder v. the United Kingdom</i>, judgment of 21 February 1975). The Court's view is that effective access to a court may necessitate free legal assistance. Its position is that it must be ascertained whether appearance before a court without the assistance of a lawyer would be effective in the sense that the person concerned would be able to present their case properly and satisfactorily. Here the Court has taken into account the complexity of procedures and the emotional character of a situation - which might be scarcely compatible with the degree of objectivity required by advocacy in court - in deciding whether someone was in a position to present her or his own case effectively. If not, he or she must be given free legal assistance. Thus, even in the absence of legislation granting free legal assistance in civil matters, it must be assessed whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.</p>

Article 61 – Non-refoulement. Enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees, the principle of non-refoulement constitutes a pillar of asylum and of international refugee protection and has acquired the status of customary international law. This means that the principle applies to all states, irrespective of whether they are bound or not by the 1951 Convention. The principle of non-refoulement is of particular relevance to asylum-seekers and refugees. According to this principle, subject to certain exceptions and limitations as laid down in the 1951 Convention, states shall not expel or return an asylum seeker or refugee to any country where their life or freedom would be threatened.

Article 3 of the ECHR also prevents a person being returned to a place where they would be at real risk of being subjected to torture or inhuman or degrading treatment or punishment. Expelling or returning a person to persecution contravenes the commitment of the international community to ensure the enjoyment of human rights of all persons. The non-refoulement principle also includes not prohibiting access to the territory of a country to asylum-seekers who have arrived at its borders or who are prevented to access its borders.



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