

GENDER EQUALITY IN THE JUDICIARY IN MONTENEGRO



Funded
by the European Union
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented
by the Council of Europe

GENDER EQUALITY IN THE JUDICIARY IN MONTENEGRO

Prepared by:

Ms Nino Janashia,
CoE international consultant on gender
equality and human rights

Ms Sanja Elezovic,
CoE local consultant

with technical support of
Viswanathan Suresh,
Directorate of Information Technology
Council of Europe, Strasbourg

Council of Europe

English edition
Gender Equality in the Judiciary in Montenegro

This publication was produced with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party.

The reproduction of extracts (up to 500 words) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text.

The source text must always be acknowledged as follows "© Council of Europe, 2022". All other requests concerning the reproduction/translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this document should be addressed to the Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards, F-67075 Strasbourg Cedex, France

E-mail: Horizontal.Facility@coe.int

© Council of Europe, June 2022
All rights reserved. Licensed to the European Union under conditions.



MONTENEGRO
SUPREME COURT

The research which results are presented in this study has been conducted with technical support of the Supreme Court of Montenegro.

Table of contents

1. INTRODUCTION	7
2. MAIN GOALS AND OBJECTIVES OF THE STUDY	8
3. METHODOLOGY OF THE STUDY	8
4. MONTENEGRO: COUNTRY CONTEXT	9
1.1 Legal and Institutional Framework for Gender Equality	9
1.2 Organisation of Courts in Montenegro	13
5. INTERNATIONAL LEGAL BASIS OF GENDER EQUALITY IN THE JUDICIARY	14
6. KEY GENDER CHALLENGES IN THE JUDICIARY IN MONTENEGRO	17
6.1 Gender balance in the Judiciary in Montenegro	17
6.1.1 <i>Becoming a judge in Montenegro – key gender barriers</i>	18
6.1.2 <i>Acceding to senior positions in the judiciary – key gender challenges</i>	21
6.2 Capacity on Gender Equality in the Judiciary in Montenegro	23
6.3 Enabling Working Environment in the Judiciary	26
6.3.1 <i>Gender-responsive organization of the work</i>	26
6.3.2 <i>Supportive social networks</i>	28
6.3.3 <i>Gender-sensitive working culture in the judiciary</i>	29
6.3.3 (a) Perceptions about the benefits of gender equality in the judiciary	29
6.3.3 (b) Perceptions about special measures to increase women’s participation in senior position in the judiciary	31
6.3.3 (c) Perceptions about the internal mechanisms dealing with sexual harassment within the judicial system	32
6.4 Strategic Approach to Establish Gender-Responsive Judiciary	33
7. ADDRESSING KEY GENDER CHALLENGES IN THE JUDICIARY IN MONTENEGRO	35
Thematic area 1: Adopt measures supporting substantive gender equality in access to the judicial office in Montenegro	35
Thematic area 2: Adopt measures supporting substantive gender equality in career advancement in the judiciary in Montenegro	37
Thematic area 3: Ensure capacity building and awareness raising on gender equality in the judiciary in Montenegro	38
Thematic area 4: Promote gender-sensitive working culture in the judiciary in Montenegro	39
Thematic area 5: Develop strategic approach and course of action on gender equality in the judiciary in Montenegro	39

List of Abbreviations

CEDAW - Convention on Elimination of all Forms of Discrimination against Women

CoE – Council of Europe

EIGE - European Institute for Gender Equality

FGD - Focus Group Discussions

GII - Gender Inequality Index

GR- General Recommendation

KII - Key Informants Interviews

LGE - Law on Gender Equality

LPD - Law on the Prohibition of Discrimination

OECD - Organisation for Economic Co-operation and Development

SDGs - Sustainable Development Goals

UN – United Nations

1. Introduction

Gender equality is central to the Council of Europe’s mission: safeguarding human rights, upholding democracy and preserving the rule of law.

Effective and independent judiciary is a prerequisite of democratic governance. *Societies in which women are excluded from public life and decision-making cannot be described as democratic.*¹ It is fundamental to the equal justice to represent the society in its whole. Indeed, the composition of the judiciary must reflect the composition of the society in order to be perceived as legitimate and capable of upholding equality before the law. Moreover, increased judicial diversity enriches the ability of judicial reasoning by encompassing and responding to varied social contexts and experiences.²

Two series of arguments have been used to justify women’s equal representation in the judiciary - *difference* and *equality*. Arguments based on *difference* argue that the quality of justice will be improved because women offer something different by their experience, whereas arguments premised on *equality* contend that women must have an equal opportunity to participate in public decision-making and that their absence undermines the democratic legitimacy of these bodies.

Representation of women and men in decision-making bodies is a human right inscribed in all the core human rights instruments and crucial component of good governance. It is also a matter of fairness and equal opportunity and critical for progress on gender equality. Indeed, women’s full and equal participation in the judiciary is *essential not only for their empowerment but also for the advancement of society as a whole.*³

Despite the equal participation of women and men in the judiciary in Montenegro, gender disparities persist in leadership positions. Advancing women’s full participation at all levels of the judiciary also plays a role in promoting gender equality in broader ways: female judicial appointments in high leadership positions can shift gender stereotypes; women’s visibility as judges can pave the way for women’s greater representation in other decision-making positions; higher numbers and greater visibility of women judges can increase the willingness of women to seek justice and enforce their rights through the courts. Gender balance in high senior positions of the judiciary is about ensuring equal opportunities for everyone, therefore, it is essential to find ways to support women judges to reduce barriers to their effective participation and career advancement in the profession.

Gender parity matters but increasing the raw numbers of women should not be the sole objective. Gender justice is best achieved when both women and men understand and respond in a gender-responsive manner to the experiences of women plaintiffs and victims in the courtroom. Courts that operate free of gender bias and other forms of discriminatory practices can be powerful drivers of social change.

1 CEDAW General Recommendation 23, para 14.

2 *Women and the Judiciary*, Geneva Forum Series No.1, Materials relating to the 2013 Geneva Forum of Judges and Lawyers convened by the International Commission of Jurists

3 CEDAW General Recommendation 23, para 17.

2. Main Goals and Objectives of the Study

The study is developed within the Action “Accountability and Professionalism of the Judicial System in Montenegro” which is part of the European Union/Council of Europe’s joint programme “Horizontal Facility for the Western Balkans and Turkey 2019 – 2022”. The Action aims at further enhancing professionalism, accountability and the overall quality of service of the judicial system of Montenegro, building upon the results achieved and on the issues highlighted by the Action “Accountability of the Judicial System”, implemented in the period November 2016 – May 2019.

The Study builds upon the results and recommendations of the Baseline action-specific Gender Analysis that was produced in 2020 to identify key obstacles to gender equality and gender parity in judicial system of Montenegro and outline concrete recommendations and indicators for gender mainstreaming of the Action.⁴

Based on the results of the said Analysis, the overall goal of the study is to identify the challenges to women’s equal and full participation at all levels of the court system in Montenegro, to explore causes and effects of gender disparities and to provide better-informed, gender-responsive solutions to the existing inequalities. The study also aims to analyse how gender perspective is integrating within the judicial system in terms of strategic planning and capacity building.

Specific objectives of the consultancy are as follows:

- ▶ To assess the gender balance at all levels of the judiciary Montenegro.
- ▶ To identify key barriers preventing women’s career development in the court system in Montenegro.
- ▶ To propose mechanisms for improving women’s representation and career development in the court system.
- ▶ To analyse the strategic documents and action plans of the judicial system from the gender perspective and to design the recommendations for gender mainstreaming.
- ▶ To assess the capacity building opportunities in gender equality.

The ultimate objective of the consultancy is to provide relevant recommendations addressing identified gender gaps in the court system in Montenegro.

3. Methodology of the Study

The study uses multiple methods to gather data, including qualitative and quantitative approaches.

Quantitative method consisted in an online survey, which took place in December 2021, **in collaboration with the Supreme Court of Montenegro** and involved 83 representatives of the judiciary, among them:

- ▶ 72% women and 28% men;
- ▶ 60% of judges and 40% Court advisers (out of 266 judges in Montenegro, 50 judges, i.e., 18.7% of the total number participated in the survey)
- ▶ 24% from High Courts and 76% from Lower Courts.

Qualitative approach included Focus Group Discussion (FGDs) and in-depth interviews with key respondents (KII) from December 2021 to February 2022.

15 KII have been conducted with the judges from Supreme Court, Appeal Court, Higher Courts, Basic Courts, Commercial Court, High Misdemeanor Court, members of Judicial Council in Montenegro. Among 15 interviewees 10 were women and 5 – men.

⁴ The Baseline gender study has been developed by Ms Sanja Elezovic, CoE national consultant for gender equality, <https://bit.ly/2Ttul6W>

3FGDs have been conducted with the judges, advisors, and Court associates from Basic and Misdemeanor Courts with 14 participants in total, among them 9 women and 5 men.

Moreover, the study is based on **literature review** for providing legal and situation analysis for gender equality and judiciary in Montenegro, as well as the international legal framework related to gender equality in the judiciary.

4. Montenegro: Country Context

4.1. Legal and Institutional Framework for Gender Equality

Montenegro has made significant progress in building a legislative and institutional framework for ensuring equal treatment for women and men. The State has ratified all major international legal instruments concerning anti-discrimination and gender equality. As a candidate for accession to the European Union (EU), Montenegro is in the process of harmonizing its legal system with European standards related to gender equality and women's empowerment.

According to the *Global Gender Gap Report for 2021*,⁵ Montenegro is ranked 48th out of 156 countries.⁶ The report analysis progress towards gender parity in four dimensions: economic participation and opportunities, scientific achievements, health and political empowerment. The *Gender Development Index* (GDI), measuring gender inequalities in achievement in three basic dimensions of human development - health,⁷ education⁸ and command over economic resources⁹ - was 0.816 in 2022¹⁰ for Montenegro, placing it into Group 2¹¹ comprising the countries with medium and high equality between women and men. According to *Gender Inequality Index* (GII), which reflects gender-based inequalities in three dimensions – reproductive health, empowerment, and economic activity,¹² Montenegro has a GII value of 0.109, ranking it 26 out of 188 countries in the 2019 index.¹³

The *Gender Equality Index*¹⁴ for Montenegro, based on methodology developed by the European Institute for Gender Equality (EIGE) and used to measure inequalities in all EU member states and pre-accession countries, Montenegro scored 55 (out of 100 points), which is lower than the EU average of 67.4. Women in Montenegro are least equal when it comes to *power*, followed sequentially by *time*, *knowledge*, *money* and *work*. Highest equality was observed in the domain of *health*. The greatest differences between the EU countries and Montenegro were recorded in the domains of *money* and *power*.

5 <https://www.weforum.org/reports/global-gender-gap-report-2021>

6 Montenegro Score is 0.732, while 1=parity and 0=imparity.

7 GDI measures Health component by female and male life expectancy at birth

8 GDI measures Education component by female and male expected years of schooling for children and mean years for adults aged 25 years and older.

9 Measured by female and male estimated GNI per capita.

10 <https://worldpopulationreview.com/country-rankings/hdi-by-country>

11 Countries are divided into five groups by absolute deviation from gender parity in HDI values. Group 1 comprises countries with high equality in HDI achievements between women and men (absolute deviation of less than 2.5 percent), group 2 comprises countries with medium to high equality in HDI achievements between women and men (absolute deviation of 2.5–5 percent), group 3 comprises countries with medium equality in HDI achievements between women and men (absolute deviation of 5–7.5 percent), group 4 comprises countries with medium to low equality in HDI achievements between women and men (absolute deviation of 7.5–10 percent) and group 5 comprises countries with low equality in HDI achievements between women and men (absolute deviation from gender parity of more than 10 percent).

12 Reproductive health is measured by maternal mortality and adolescent birth rates; empowerment is measured by the share of parliamentary seats held by women and attainment in secondary and higher education by each gender; and economic activity is measured by the labour market participation rate for women and men.

13 <https://hdr.undp.org/en/content/gender-inequality-index-gii>

14 The Gender Equality Index for Montenegro was developed in 2019 by the State Statistical Office of Montenegro (MONSTAT) in cooperation with the Department for Gender Equality of the Ministry for Human and Minority Rights, the European Institute for Gender Equality (EIGE) and the United Nations Development Programme (UNDP) in Montenegro. It is based on the methodology developed by EIGE, available at: https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_2019_report_final.pdf

► General National Legal Framework on Gender Equality

The Constitution of Montenegro (adopted in 2007 and amended in 2013)¹⁵ guarantees the respect of human rights and freedoms and equality of all citizens¹⁶ and prohibits direct or indirect discrimination on any grounds (Article 8 (1)). The Constitution explicitly guarantees gender equality of women and men through the State obligation to develop the policy of equal opportunities (Article 18).

Montenegro has the general anti-discrimination law, adopted in 2010 (amended in 2011, 2014, 2017) and a specific Law on gender equality, adopted in 2007 (further amended in 2010, 2011, 2015).

Law on the Prohibition of Discrimination¹⁷ (LPD) establishes a comprehensive systemic legal protection from discrimination and is applicable to the public and private spheres. The LPD covers the discriminations on the grounds of race, skin colour, national affiliation, social or ethnic origin, links with a minority people or minority national community, language, religion or belief, political or other opinion, sex, sex change, gender identity, sexual orientation and/or intersexual characteristics, health conditions, disability, age, financial status, marital or family status, belonging to a group or the assumption of such belonging, belonging to a political party or another organisation, as well as other personal characteristics (Article 2(2)).

The Law on Gender Equality¹⁸ (LGE) guarantees equality between women and men in all areas of public and private life, and promotes equal opportunities policy. The Law defines¹⁹ and prohibits²⁰ direct and indirect sex discrimination, as well as discrimination based on pregnancy and maternity.²¹ The Law also includes the definition of gender-based violence.²²

Previous strategic documents implementing Law on Gender Equality included the **Action Plan for Achieving Gender Equality 2017- 2021**,²³ highlighting the following areas: promotion of gender equality and women's human rights; gender-sensitive education; gender equality in the economy; gender-sensitive healthcare; gender-based violence; gender equality in the media, culture and sports; equality in the decision-making process in political and public life; and institutional mechanisms for the implementation of gender equality policies. In each area, specific goals and related activities were defined, as well as duty bearers. According to European Commission's 2021 assessment,²⁴ the evaluation of the 2017 - 2021 action plan revealed *shortcomings in the implementation, lack of awareness and commitment among institutions, poor gender mainstreaming, discrepancies in the application of the legal framework and weak coordination with other national strategies*.

On July 30, 2021, the Government of Montenegro adopted the **National Strategy for Gender Equality 2021–2025**²⁵ with its **Action Plan for 2021- 2022**,²⁶ with the objectives of improving the implementation of the existing normative framework and the application of measures that strengthen the capacity of institutional mechanisms to implement legal provisions for protection against discrimination and establishing more efficient and effective coordination, implementation oversight and reporting.

Law on Protection from Domestic Violence (adopted in 2010 and amended in 2011)²⁷, accompanied by

15 "Official Gazette of Montenegro", No. 01/2007, 38/2013, <http://www.skupstina.me/index.php/en>

16 Preamble of the Constitution

17 "Official Gazette of Montenegro", No. 46/2010, 40/2011, 18/2014, 42/2017, <https://www.paragraf.me/propisi-crnegore/zakon-o-zabrani-diskriminacije.html>

18 "Official Gazette of Montenegro", No. 46/07, 35/15, <https://www.gov.me/dokumenta>

19 'Discrimination on the ground of sex exists if a person or a group of persons of one sex, in the same or similar situation, are put or can be put – by an act, action or omission – in an unequal position in relation to another person or a group of persons of the other sex.' Article 7(5) of LGE

20 Article 4(1) of LGE

21 Article 4(3) of LGE

22 LGE defines gender-based violence as any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as threat of such act that seriously impede a person's ability to enjoy his or her rights and freedoms in both public or private life, including domestic violence, incest, rape and human trafficking.

23 <https://wapi.gov.me/download-preview/77dce535-ea50-438d-8968-25aa4ce62257?version=1.0>

Previous Action Plans for Gender Equality in Montenegro: (i) 2007-2010; (ii) 2011-2016.

24 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy, Montenegro 2021 Report:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0293%2801%29&qid=1643487801656>

25 <https://wapi.gov.me/download/41e3ee6a-757a-4684-9763-9fee5e933afd?version=1.0>

26 <https://wapi.gov.me/download/41e3ee6a-757a-4684-9763-9fee5e933afd?version=1.0>

27 "Official Gazette of Montenegro", No. 46/10, 40/2011, <https://www.gov.me/dokumenta/072eb204-b885-43e2-8d30-3931bda88cef>

the **National Strategy for Protection from Domestic Violence** (2016-2020)²⁸ established the definition of domestic violence,²⁹ prescribes the protection of victims in misdemeanor procedure,³⁰ introduces the right of a victim to free legal aid, provides for restraining orders for perpetrators³¹, mandates reporting of violence for professionals who assist victims and obliges institutions to provide full and coordinated protection to victims through multidisciplinary teams³².

LPD and LGE define and explicitly prohibit **sexual harassment** (Article 7(1) of the LPD; Article 7(7a) of LGE). Harassment at work is prohibited by the **Labour Law** (2019)³³ (Article 10), as well as by the **Law on the Prohibition of Harassment at Work**³⁴ (2012).

Normative framework of Montenegro recognizes and explicitly allows **positive measures**³⁵ (Article 8(2) and (3) of the Constitution; Article 5 LPD; Article 5 LGE) as special measures in order to guarantee equality, including for the elimination or prevention of the unequal treatment of women and men, its consequences, and promoting gender equality. Positive measures to improve the gender balance includes the **Law on the Election of Councillors and MPs**³⁶ requesting at least 30 % women in the electoral lists.

The Law on Civil Servants and State Employees³⁷ (adopted in 2018 and amended in 2019 and 2021) defines normative framework regulating the procedure for establishing a working relationship for civil servants and state employees. The new law includes provisions on the prohibition of discrimination, however, doesn't establish an obligation to adopt measures in order to ensure gender balanced representation in the civil service.

► Institutional Framework on Gender Equality

Within the Parliament of Montenegro, **Parliamentary Committee for Gender Equality**³⁸ is a permanent body having competences of creating and monitoring the implementation of policies in the field of gender equality.

Monitoring the implementation of gender equality policies at the national and local levels is performed by an advisory body - The **National Council for Gender Equality**. Eight committees³⁹ are formed within the Council, which further monitor the implementation and improvement of gender equality policies within their area.

The **Protector of Human Rights and Freedoms**⁴⁰ is an institutional mechanism for protection against all forms of discrimination. The Law on Gender Equality establishes a full competence of the Protector in acting on the bases of complaints against violation of the principle of gender equality. The **Protector of Human Rights and Freedoms** has a mandate to formally decide on complaints (not legally binding decision or recommendation addressed to the parties), also, to initiate or interfere in court proceedings initiated in civil litigation with the consent of the discriminated person.

28 <https://www.csrcg.me/images/Dokumenti/Strateska%20dokumenta/Strategija%20zastite%20od%20nasilja%20u%20porodici%202016-2020.pdf>

29 Domestic violence is defined 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." (Article 2).

30 Article 20

31 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.

32 Article 17.

33 "Official Gazette of Montenegro", No. 74/2019, 8/2021, <https://www.paragraf.me/propisi-crnegore/zakon-o-radu.html>

34 "Official Gazette of Montenegro", No. 30/2012, <https://www.gov.me/dokumenta/ce706491-b0ef-4024-ab66-dce46fbc5d5>

35 Positive measures consist in *actions aimed at favouring access by members of certain categories of people, (ex. women) to rights which they are guaranteed, to the same extent as members of other categories (ex. men)* (Definition of European Institute for Gender Equality)

36 "Official Gazette of the Republic of Montenegro", No. 4/98, 17/98, 14/00, 9/01, 41/02, 46/02, 48/06 and "Official Gazette of Montenegro", No. 46/11, 14/14, 47/14, 12/16, 69/2017, 10/18, 109/2020)

https://www.paragraf.me/propisi-crnegore/zakon_o_izboru_odbornika_i_poslanika.html

37 "Official Gazette of Montenegro", No.2/2018, 34/2019, 8/2021)

https://www.paragraf.me/propisi-crnegore/zakon_o_drzavnim_sluzbenicima_i_namjestenicima.html

38 <https://www.skupstina.me/en/working-bodies/gender-equality-committee>

39 The National Council for Gender Equality is composed by the following committees: (1) Committee for greater presence of women in political participation; (2) Committee on economic empowerment and status of women in the labour market; (3) Committee for protection from domestic violence and violence against women; (4) Committee on healthcare and social protection of women; (5) Committee on science, education, culture and sport; (6) Committee for sustainable and rural development; (7) Committee for international cooperation; (8) Committee for cooperation with local governments.

40 <https://www.ombudsman.co.me/new2/>

The institutional framework also includes the **Department for Gender Equality of the Ministry for Human and Minority Rights**⁴¹ that coordinates activities related to gender equality, conducts gender analysis and participates in drafting action plans at national and local levels, publishes data related to violence, monitors the implementation of international documents and conventions and takes measures for their transposition into the legal system of Montenegro.

The issue of gender equality is also addressed by **gender focal points in the ministries**, who are in charge of monitoring the implementation of gender-related strategies and policy documents, and by **local offices for gender equality in municipalities**, which are implementing local action plans on gender equality and other local policies related to women's rights.

► Overview of key gender challenges in Montenegro

Montenegro's normative framework on gender equality is mostly in compliance with international standards. However, anti-discriminatory provisions are often general, and have not been followed by comprehensive and specific bylaws, therefore the practical implementation of the legal framework on anti-discrimination and gender equality remains problematic.⁴² CEDAW Committee in its concluding observations on the Second periodic report on Montenegro⁴³ notes quasi-absence of complaints for the cases of gender-based discrimination filed with the relevant state bodies, including the judiciary, and explains it by the lack of awareness, from on hand, and by an insufficient level of trust in state institutions among women who are victims of discrimination, from the other hand.

The lack of gender disaggregated data also represents a challenge. As noted by CEDAW Committee,⁴⁴ the methodologies for data collection are not fully aligned across the different sectors and institutions and that proper electronic data collection systems are lacking in various sectors.

Despite the comprehensive legal framework on gender, the position of women in Montenegro is still unsatisfactory. Indeed, the prevalence of gender-based violence is high, women are under-represented in decision-making and managerial positions, women's overall economic power is weak as the unemployment rate among women remains disproportionately high, in particular among women belonging to ethnic minority groups, as well as women with disabilities and transgender women; average earnings of working women are 14% lower than the average earnings of men; persistence and underreporting of discrimination against women in the labour market on the basis of marital status and maternity represents a challenge, as well as the limited availability of affordable childcare facilities of adequate quality, forcing many women to exit the labour force after giving birth, especially when their salary is low in comparison to the cost of childcare.⁴⁵ According to European Commission's 2021 assessment⁴⁶, the COVID-19 outbreak illustrated the need to foster flexible working arrangement policies in order to increase labour market participation of women and youth, enhance overall productivity and decrease costs incurred on paid leave due to inability to attend the office/workplace. Issues such the gender gap in employment and pay, sexual harassment in the workplace, affordable childcare, unpaid work and tax benefit systems, remain unaddressed.

Montenegrin legislation establishes gender quotas for the Parliamentary election⁴⁷, as well as for the sub-national level. Currently, out of 88 seats in the Parliament, only 27% are women.⁴⁸

In Montenegro, 88% of adult women have reached at least a secondary level of education compared to

41 <https://www.gov.me/dokumenta/e8eb8d77-8cda-463f-8840-e8a3778ae5b6>

42 European network of legal experts in gender equality and non-discrimination, Country Report, gender equality, Montenegro, 2020.

43 Committee on the elimination of discrimination against women, Concluding observations on the Second periodic report of Montenegro, 2017,

44 Ibid.

45 Ibid.

46 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy, Montenegro 2021 Report: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0293%2801%29&qid=1643487801656>

47 Parliamentary elections are held according to the proportional representation system with closed-lists, in a single nation-wide constituency. Article 39a of the Law on Election of Councilors and Representatives requires that there shall be no less than 30% of candidates of the less represented gender in the candidate lists. Among each four candidates in the candidate list order (the first four places, the second four places and so on until the end of the list) there shall be at least one candidate who is a member of the underrepresented sex (article 39a:2).

48 <https://www.idea.int/data-tools/data/gender-quotas/country-view/203/35>

98.2% of their male counterparts. For every 100,000 live births, 6.0 women die from pregnancy related causes; and the adolescent birth rate is 9.3 births per 1,000 women of ages 15-19. Female participation in the labour market is 46.5% compared to 62.8% for men.⁴⁹ Among property owners, women make up 4 % of homeowners, 8 % of landowners and 14 % of holiday homeowners; only 9.6 % of the owners of business entities are women.⁵⁰

Patriarchal attitudes and stereotypes regarding the roles, responsibilities and expected behaviours of women and men are deeply rooted in the society and in the family, and undermine women's social status, autonomy, educational opportunities, and professional careers, as well as women's participation in political life.⁵¹

4.2. Organisation of Courts in Montenegro

Court system in Montenegro consists of 15 basic courts⁵² located in 15 municipalities,⁵³ two higher courts in Podgorica and Bijelo Polje,⁵⁴ as well as the Commercial court of Montenegro centralized in Podgorica⁵⁵ and the Administrative Court of Montenegro located in Podgorica. Also, there are three Misdemeanor Courts in Podgorica, Bijelo Polje and Budva and a High Misdemeanor Court in Podgorica; the Appellate Court of Montenegro located in Podgorica and the Supreme Court, which is the highest cassation instance in Montenegro sitting in Podgorica (Article 8 of the Law on Courts of Montenegro⁵⁶). There is also the Constitutional Court of Montenegro, which protects constitutionality and legality.⁵⁷

Three **Misdemeanour Courts** for the whole territory of Montenegro⁵⁸ are deciding over misdemeanour offences. The High Misdemeanour Court decides over appeals to the decisions of the mentioned misdemeanour courts. **Basic courts** have jurisdiction over criminal cases punishable by law by a fine or imprisonment of up to 10 years as principal punishment, civil cases, labour law cases, and other legal matters. Two **higher courts** have a jurisdiction to decide *in first instance* over criminal cases for crimes punishable by law by imprisonment in excess of 10 years as principal punishment, and to decide *in the second instance* over appeals against decisions of basic courts both in criminal and civil cases. There is a **single Commercial court** in the country, which decides in the first instance over disputes between companies, entrepreneurs and other commercial entities, which arise from their commercial-legal relationships and in the disputes arising between commercial entities and other legal persons in the performance of the activity of commercial entities. The **Administrative Court** decides over administrative cases. The **Court of Appeal** decides over appeals to the higher court's decisions in first instance, as well as on appeals to the decisions of the Commercial Court and resolves conflicts of jurisdictions between: basic courts from the territories of the high courts, basic courts and the high courts, and between the high courts. The **Supreme Court** is the court of last resort jurisdiction in Montenegro.

The Judicial Council is an independent and autonomous judicial body established by the Constitution⁵⁹ regulated by *the Law on Judicial Council and Judges*.⁶⁰ It is responsible to: (i) elect and dismiss judges, the president of a court and lay judges, including the President of the Supreme Court; (ii) establish the cessation of judicial duties; (iii) determine the number of judges and lay judges in a court; (iv) deliberate on the activity report of the court, as well as applications and complaints regarding the work of the courts; (v) decide on the immunity of a judge; (vi) propose to the Government the amount of funds for the work of the courts. The Judicial Council is composed of president and nine members: the president of the Supreme Court, four judges (appointed by the Conference of all judges), four eminent jurists (appointed in

49 Montenegro, Human Development Report 2020: <https://hdr.undp.org/sites/default/files/Country-Profiles/MNE.pdf>

50 European network of legal experts in gender equality and non-discrimination, Country Report, gender equality, Montenegro, 2020.

51 Committee on the elimination of discrimination against women, Concluding observations on the second periodic report of Montenegro, 2017, <https://www.ohchr.org/en/countries/montenegro>

52 Articles 14 and 15 of the Law on the Courts

53 Ulcinj, Herceg Novi, Kotor, Plav, Rožaje, Cetinje, Bar, Bijelo Polje, Kolašin, Berane, Nikšić, Žabljak, Pljevlja, Podgorica and Danilovgrad

54 Located in Bijelo Polje (which has jurisdiction in the areas covered by the basic courts of Bijelo Polje, Berane, Žabljak, Kolašin, Plav, Pljevlja and Rožaje) and Podgorica (which has jurisdiction over the areas covered by the basic courts of Podgorica, Bar, Danilovgrad, Kotor, Nikšić, Ulcinj, Herceg Novi and Cetinje).

55 Located in Bijelo Polje and Podgorica.

56 „Official Gazette of Montenegro”, No. 11/2015, 76/2020, <https://me.propisi.net/zakon-o-sudovima/>

57 Constitution of Montenegro, Articles 149 - 154

58 Located in Bijelo Polje, Budva, and Podgorica.

59 Constitution of Montenegro, Articles 126, 127 and 128

60 “Official Gazette of Montenegro”, No. 11/2015, 28/2015, 42/2018, <https://www.gov.me/dokumenta/2ee06e19-2064-4c5d-96ea-c549bcde3ebe>

public call procedure by the Parliament in accordance with the proposal of the relevant parliamentary committee), and the Minister of Justice. President of the Council is appointed from non-judicial members by two-third majority of votes of the Council's members. The Minister of Justice cannot be appointed as the Council's president. President of the Council has a casting vote in case of parity of votes. The four-year mandate of the Council is promulgated by the President of the State.

According to European Commission's 2021 assessment,⁶¹ the legal framework guaranteeing judicial independence is in place, but the judiciary and the prosecution continue to be perceived as vulnerable to political interference. In recent years, the judiciary has made progress - courts have their own websites where they post information about scheduled hearings, court decisions, annual work reports, etc.⁶² However, several challenges remain, as outlined in various reports,⁶³ such as low-level public trust in the judiciary (almost 60% of citizens do not trust judiciary in Montenegro),⁶⁴ insufficient enforcement of ethics codes for judges and of accountability mechanisms. In summary, independent, impartial, accountable, and efficient judicial system remains a challenge. Government *2019-2022 Strategy for the Reform of the Judiciary*⁶⁵ and its *Action Plan for 2021-2022*,⁶⁶ efforts to address these challenges by aiming at incorporating the EU Acquis⁶⁷ with the objectives of ensuring independence, impartiality, accountability, professionalism, and efficiency of the judiciary.

The budget for judiciary for 2021 was EUR 36.5 million (2020: EUR 39.1 million) and remains above the regional per capita average.⁶⁸ With 266 judges in total, Montenegro has 50 judges per 100,000 inhabitants, far above the European average of 21 judges, as well as 2.6 times as many judicial staff per inhabitants as the European average.⁶⁹

5. International Legal Basis of Gender Equality in the Judiciary

International legal instruments establish the obligation for the States to ensure women's equal participation in all public institutions, and to this end, to identify and remove any legal and practical barriers. **CEDAW General Recommendation No 23** notes that "policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organization of society demands the inclusion and participation of all its members. Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both."

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), requires the State Parties to "take all appropriate measures to eliminate discrimination against women in the political and public life of the country." (Article 7). To this end they must ensure women's right "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at the level of government". The political and public life of a country refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers.⁷⁰

CEDAW General Recommendation No 25 calls the States to institute temporary special measures for ensuring women's equal participation in decision-making, including the judiciary, where the gap between

61 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy, Montenegro 2021 Report:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0293%2801%29&qid=1643487801656>

62 https://freedomhouse.org/country/montenegro/nations-transit/2020#footnote1_8l3370q

63 Center for Democratic Transition, Judiciary in the shadow of consecutive mandates, 2020

64 2019 polls conducted by the Center for Democracy and Human Rights (CEDEM), mentioned by Freedom House assessment: https://freedomhouse.org/country/montenegro/nations-transit/2020#footnote1_8l3370q

65 <https://www.gov.me/dokumenta/deb3e3ae-7b6a-4963-9b3e-b5892118c8c8>

66 <https://rm.coe.int/hf6-ap-implementation-judiciary-reform-eng/1680a5523b>

67 Chapter 23 of the EU Acquis on judiciary: <https://www.eu.me/en/poglavlje-23-pravosudje-i-temeljna-prava/>

68 EU Commission Staff Working document, Montenegro 2021 Report

69 EU Commission Staff Working document, Montenegro 2021 Report

70 CEDAW General Recommendation 23, para 5, 15 and 46 (b), <https://www.refworld.org/docid/453882a622.html>

de jure and *de facto* equality remains.⁷¹ Indeed, the adoption of temporary special measures is seen as part of a necessary strategy by State Parties in order to achieve substantive gender equality.⁷² International Commission of Jurists (Geneva forum No.1 on “Women and Judiciary”) considers that these obligations derive from general international standards concerning the independence of the judiciary and from international legal requirements to ensure women’s enjoyment of their human rights on the basis of equality and non-discrimination.⁷³

CEDAW General Recommendation No 33 calls the State parties to “confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial systems, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities.”⁷⁴ Moreover, the General Recommendation No 33 highlights the importance of capacity building in the judiciary and recommends that the States take measures, including awareness-raising and capacity-building programmes for all justice system personnel to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system.⁷⁵

The Beijing Declaration and Platform for Action (1995) reaffirmed the importance of women justice professionals’ equal representation in political and public life, declaring that that States must “ensure that women have the same right as men to be judges, advocates or other officers of the court” and “commit themselves to establishing the goal of gender balance (...) in the judiciary, including, *inter alia*, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of men and women, if necessary, through positive action.”⁷⁶ Moreover, the Beijing Declaration and Platform for Action urges the States to provide gender-sensitive human rights education and training to the judiciary to enable them to better exercise the public responsibilities.⁷⁷

The Commission on the Status of Women, at its forty-first session in 1997, adopted *Agreed Conclusions* (1997/2)⁷⁸ emphasizing the goal of equal participation of men and women in decision-making for strengthening democracy and achieving the goals of sustainable development. The Commission reaffirmed the need to identify and implement measures that would redress the underrepresentation of women in decision-making.

The importance of women’s full and effective participation at all levels of governance has been reaffirmed by **Sustainable Development Goals** (SDGs) 5 (Gender Equality and Women’s Empowerment) and 16 (Peace, Justice and Strong Institutions). The target 5.5 calls the States to ensure women’s full and effective participation and equal leadership opportunities at all decision-making levels in political, economic and public life. The indicator 16.7.1 tracks the “proportion of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service and judiciary) compared to national distributions” demonstrating the importance attached by the global community to representative judiciaries for the strengthening of the rule of law and the achievement of sustainable development.

According to the **Council of Europe’s Recommendation**⁷⁹ on the “*Balanced participation of women and men in political and public decision making*”, it is crucial to have a “critical mass” of the opposite sex in the decision-making bodies in order to have the equal consideration of the interests of women and men. The recommended minimum is 40% meaning that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

71 CEDAW General Recommendation 23, para 16, <https://www.refworld.org/docid/453882a622.html>

72 CEDAW General Recommendation 25, para 2, 18, <https://www.refworld.org/docid/453882a622.html>

There is an important difference between formal gender equality – that implies legal recognition of principles of equality of women and men including the enjoyment and exercise of all human rights and fundamental freedoms, as well as measures providing for equal treatment of women and men in the political, economic, social, cultural, civil, or any other field - and substantive gender equality. The latter is a combination of formal gender equality with equality of outcome, meaning that equality in law, equal opportunities and equal treatment of women and men are complemented by equality in impact, outcome and result.

73 International Covenant on Civil and Political Rights (ICCPR), articles 2 and 3; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly articles 1 and 2; International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 2 and 3.

74 CEDAW GR No 33, para 15, <https://bit.ly/2Xw43bF>

75 CEDAW GR No 33, para 29.

76 Beijing Declaration and Platform for Action, para. 232, <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>

77 Beijing Declaration and Platform for Action, para. 232 (i), <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>

78 Forty-first session of the Commission on the Status of Women, 1997

79 Recommendation of the Committee of the Ministers of the Council of Europe, 2003: “Balanced participation of women and men in political and public decision making”, <https://rm.coe.int/1680519084>

The 2015 OECD Recommendation on Gender Equality on Public Life is an essential tool that provides a range of options to enable equal access to leadership opportunities, including in the judiciary. It encompasses measures to strengthen institutional capacities for effective governance and mainstream gender equality across all policy areas. OECD recommends to “consider measures to achieve gender-balanced representations in decision-making positions in public life by considering greater participation of women in government at all levels”, including judiciary by considering “comprehensive regulatory measures to promote diversity, enabling equal access to opportunities in senior public services and judicial appointments, mainstreaming work-life balance and family-friendly work practices at the top-level public institutions and promoting gender-sensitive working conditions; facilitating capacity and leadership development opportunities, mentoring, networking and other training programmes in public institutions, promoting female role models in public life and encouraging active engagement of men in promoting gender equality.”

OECD also recommends systematic monitoring of gender balance in public institutions, including in leadership positions. The OECD Recommendation has the goals of (i) mainstream gender equality in the design, development, implementation and evaluation of relevant public policies and budgets; (ii) strengthening accountability and oversight mechanisms for gender equality and mainstreaming initiatives across and within government bodies; (iii) achieving gender-balanced representation in decision making positions in public life by encouraging greater participation of women in government at all levels, as well as in parliaments, judiciaries and other public institutions, (iv) taking adequate measures to improve the gender equality in public employment, (v) strengthening international co-operation through continuously sharing knowledge, lessons learned and good practices on gender equality and mainstreaming initiatives in public institutions.

Equal access of women to justice⁸⁰, as well as balanced participation of women and men in public decision-making,⁸¹ are among the strategic objectives of the **Council of Europe’s Gender Equality Strategy for 2018-2023**.⁸² Supporting member States in achieving balanced participation of women and men in political and public decision-making, including through the implementation of gender mainstreaming strategies and policies, is among the Council of Europe’s priorities via promoting gender quotas, combatting gender stereotypes and improving the gender-sensitiveness of decision-making environments.⁸³

2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels⁸⁴ recognizes that “the independence of the judicial system, together with its impartiality and integrity, is an essential prerequisite for upholding the rule of law and ensuring that there is no discrimination in the administration of justice.” The Declaration also “recognizes the importance of ensuring that women, on the basis of the equality of men and women, fully enjoy the benefits of the rule of law, and commit to using law to uphold their equal rights and ensure their full and equal participation, including in institutions of governance and the judicial system”.

2011 Report on Gender and Administration of Justice of the **Special Rapporteur on the Independence of Judges and Lawyers**⁸⁵ considers that “gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realization of human rights for all, and the achievement of gender equality on the ground.” For developing gender sensitive judicial system, *the Special Rapporteur* recommends to “evaluate the structure and composition of the judiciary to ensure adequate representation of women and create the conditions necessary for the realization of gender equality within the judiciary and for the judiciary to advance the goal of gender equality.” *The Special Rapporteur* calls the States see women as “key actors of the administration of justice” and to ensure adequate representation of women in the judiciary, also to mainstream gender in the judiciary implying that “the multiple roles of women and men are taken into consideration in the conduct of business within the judiciary, including in the day-to-day operations and the overall planning of the judicial sector.”

⁸⁰ Council of Europe’s Gender Equality Strategy for 2018-2023, Strategic Objective 3.

⁸¹ Council of Europe’s Gender Equality Strategy for 2018-2023, Strategic Objective 4.

⁸² <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

⁸³ Council of Europe’s Gender Equality Strategy for 2018-2023, Strategic Objective 4.

⁸⁴ Resolution of the General Assembly A/RES/67/1 of 30/11/2012

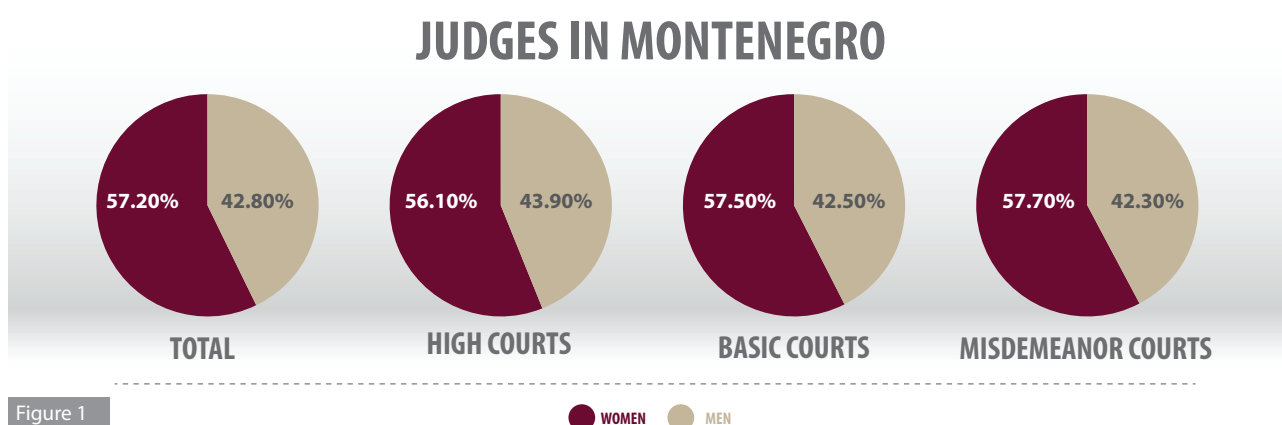
⁸⁵ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30

6. Key Gender challenges in the Judiciary in Montenegro

6.1. Gender Balance in the Judiciary in Montenegro⁸⁶

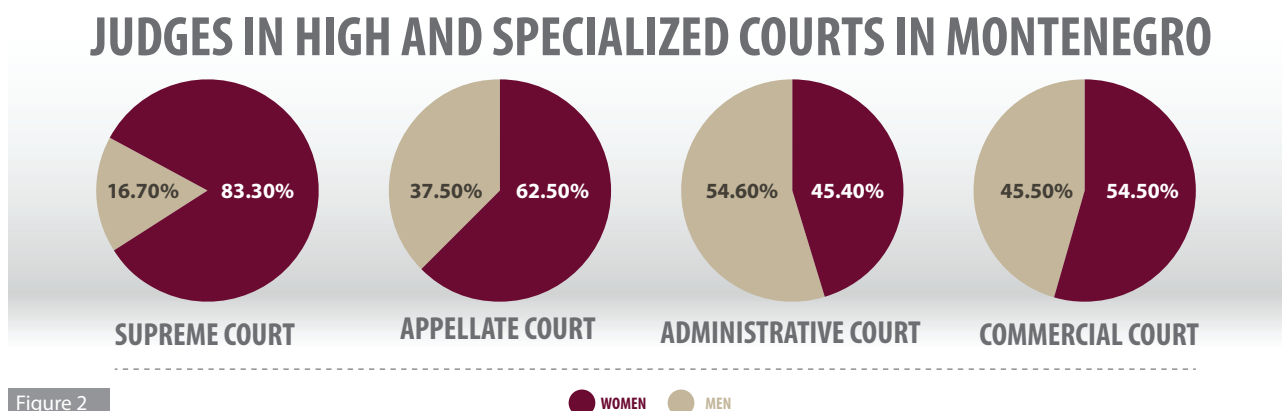
In total, there are 266 judges in Montenegro,⁸⁷ among them 57.2% (152) are women and 42.8% (114) - men.

- ▶ Among 82 judges of the High Courts⁸⁸ 56.1% (46) are women and 43.9% (36) are men;
- ▶ Among 132 judges of the Basic Courts⁸⁹ 57.5% (76) are women and 42.5% (56) – men;
- ▶ Among 52 judges of the Misdemeanor Courts, 57.7% (30) are women and 42.3% (22) are men.



Women judges represent the majority within practically all the courts, including High Courts and Specialized Courts. In the courts where women do not represent the majority, they are well-represented:

- ▶ Within the Supreme Court - 83.3% judges are women;
- ▶ Within the Appellate Court - 62.5% are women;
- ▶ Within the courts of specific jurisdiction, such as Administrative and Commercial Court, there are respectively 45.4% and 54.5% of female judges.



As figures demonstrate, there is a gender balance within the Basic and High Courts, however, among the 25 Presidents of the Courts, only 7 (28%) are women.

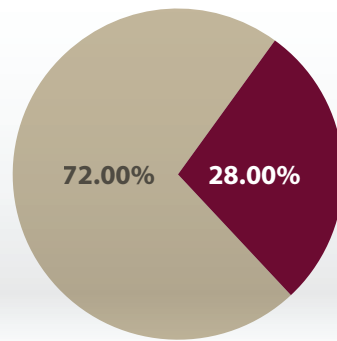
⁸⁶ Data derived from the Annual Report of the Judicial Council for 2021, as well as from the High Misdemeanor Court, during interviews.

⁸⁷ Excluding Constitutional Court's judges.

⁸⁸ High Courts include: Supreme Court; Appellate Court; two Higher Courts: Administrative Court and a Commercial Court.

⁸⁹ Includes 15 Basic Courts.

PRESIDENTS OF THE COURTS



BASIC AND HIGHER COURTS

Figure 3

● WOMEN ● MEN

As for the age structure of female and male judges, there are no notable differences, as women and men of different age groups are practically equally represented within High and Basic Courts.

Regarding the Judicial Council, normally it should have 10 members, however as of April 2022 the Council only has 6 active members, among them 3 women and 3 men.

As for the Constitutional Court of Montenegro, according to the Constitution, it has to have 7 members, however, currently, the Constitutional Court has only 4 active members, among them 1 woman and 3 men.

Gender composition of the judiciary has been discussed during KIs and FGDs where some of the participants stressed out job stability as one of the most important factors for women's high representation in the sector. Indeed, the office of the judge, as a permanent office, provides security of employment, which appears to be more important for women than for men, because of the fact the labour market in Montenegro is perceived by the participants as more insecure for women.

6.1.1. Becoming a judge in Montenegro – key gender barriers

As identified in a report by the *UN Special Rapporteur on the Independence of Judges and Lawyers*,⁹⁰ persistent gender stereotypes existing within the system or in a wider society lead to discriminatory treatment of women in the justice system. Even where direct legal and policy barriers or restrictions on women's full and equal participation in the judiciary no longer exist, serious deficits of gender diversity persist.

Moreover, the entry of women in the judiciary is not irreversible and the risk of backlash remains relevant, particularly for women to reach higher and more influential positions in the justice sector.

As demonstrated by gender-disaggregated statistics, women and men are equally represented in the High, as well as in the Basic Courts of specific jurisdictions in Montenegro, except the level of the Courts' Presidents. Despite a fair gender balance in the judiciary, access to the office of judge has been discussed during the FGDs and KIs, in order to identify potential gender barriers that women need to overcome to become a judge in Montenegro.

The question on this issue has been also asked to survey participants. Only 27.7% of survey respondents consider that becoming a judge in Montenegro is more difficult for women, 31.3% consider that it is equally difficult for women and men, and 37.3% think that is equally accessible for women and men.

⁹⁰ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30.

BECOMING A JUDGE IN MONTENEGRO:

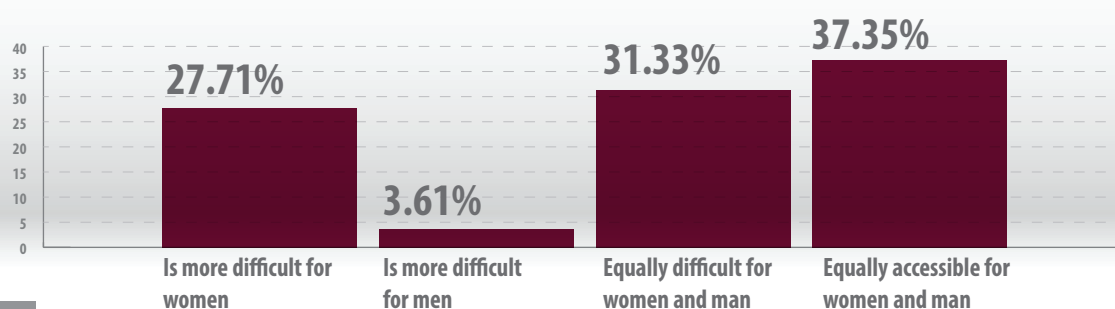


Figure 4

Among the respondents considering that becoming a judge is more difficult for women, the absolute majority (86.9%) are women, what indicates a low awareness among men about the barriers faced by women to accede to the judicial office. In addition, 81.9% of survey respondents agree or strongly agree with the statement that to become judge, women need more than men to be supported by the family.

Unlike survey participants, FGDs' participants, as well as the respondents of in-depth interviews, agree that becoming a judge in Montenegro is much harder for women, and one of the reasons is the **rules related to the appointment of judges**. For being appointed as a judge, different court requires different working experience, as an example (i) 4 years for Misdemeanor Court, of which at least two years after passing the bar exam; (ii) for Basic Courts – two years after bar exam as an adviser in court or public prosecution office, as an attorney, notary or Professor of Law, or at least four years on other legal matters. (iii) for the Commercial Court – three years after passing the bar exam as an adviser in court or public prosecution office, or at least three years as an attorney, notary or Professor of Law, or at least four years on other legal matters, etc. (Article 38 of the Law on Judicial Council and Judges⁹¹). According to the FGDs participants, **gaining the necessary experience requires flexibility on mobility, as they are expected to serve in different courts in Montenegro, which implies moving from one city to another.**

” The statements by the women judges support such a thesis:
 „The criteria for election of judges are the same for women and men. However, it takes more time for women to advance from a court trainee to a judge position, if she has children and uses the maternity leave.“ - a women judge

Another issue discussed by the FGDs' participants and the interviewees is **the modalities of initial training requested** by the *Law on Judicial Council and Judges* for candidates for judges. Indeed, according to the Article 54 of the said law, candidates for judge shall be required to complete the initial training consisting of theoretical and practical part and lasting 18 months. The theoretical part of the initial training shall be conducted by the legal entity for the training of judges (i.e., Judicial Training Center located in Podgorica), and the practical part of the initial training shall be conducted in the Basic Court in Podgorica. Therefore, candidates living outside of Podgorica, have to move to the capital city for the training period or to travel every day to the capital city.

According to the said regulations (Article 38 of the Law on Judicial Council and Judges), a certain amount of experience is required for different Courts in order to be appointed as a judge. For example, 2 to 4 years' experience (depending on the workplace) for the Basic Courts, 4 years for Misdemeanor Court, 3 to 4 years for the Commercial Court, 8 years for the Administrative Courts, etc. FGDs' participants highlighted that, while the Employment Law of Montenegro establishes the compulsory maternity leave of 98 days (Article 126), and stipulates that both **pregnancy and maternity leave are taken into account as time spent at work, the fact that the permanent voluntary transfer of judges is conditioned with the previous professional appraisal of the judge for the period of three years may significantly disadvantage when applying for a higher position in court, due to the fact that a judge who has used this kind of leave**

⁹¹ <https://www.paragraf.me/propisi-crnegore/zakon-o-sudskom-savjetu-i-sudijama.html>

cannot undertake the appraisal for the leave period.⁹²

Moreover, after passing the final exam, only the candidates with the highest scores can choose in which court they will serve, while all **other candidates are distributed as necessary in different courts, regardless of their place of residence.** The employment of a candidate for judge who refuses assignment is terminated. (Article 55, paragraph 5 of the Law on Judicial Council and Judges). The contract can also be terminated if the judge does not accept the decision of being transferred in another Court, such decision is made by the Judicial Council without judge's consent in case of reorganization of the courts which reduces or abolishes the number of positions for judges (Article 85 of the Law on Judicial Council and Judges).

Participants of the FGDs and interviewees consider the above-mentioned conditions as highly unfavorable and inconvenient, especially for women, because mostly women are placed in a position to have to choose between a career in the judiciary and family, as women have much heavier burden of family-care, including childcare and elderly care, compared to men. FGD participants and interviewees confirm that the **society still sees the primary role of women in family-care before any professional responsibilities,** although the right to parental leave can be used by both parents in accordance with the Labor Law. This trend is also confirmed by survey participants. Indeed, 86.7% of survey respondents agree (57.8%) or strongly agree (28.9%) with the statement that in Montenegrin society the main responsibility for taking care of children/family and household chores is imposed on women, and women serving as judges are no exception to that as 75.9% of survey respondent said that women judges have more responsibility than men judges for children/family care and household chores. Even though the majority of survey respondents - 73.4% - recognize the fact that the society in Montenegro expects men to succeed more in professional career than women, they admit that the society doesn't see the judiciary office as „man's job“ only – indeed, 54.1% recognize that in Montenegro, the profession of a judge is perceived as equally suitable for women and men.

Existence of gender stereotypes in Montenegro is reported in various assessments. For example, *CEDAW Committee in its Concluding Observations on the Second Periodic Report on Montenegro* note that women are frequently assigned to traditional family roles and discouraged from engaging in formal employment and that fathers are considered as the head of the family.

According to UN Special Rapporteur on the Independence of Judges and Lawyers,⁹³ even where direct legal and policy barriers or restrictions on women's full and equal participation in the judiciary no longer exist, gender stereotypes and attitudinal barriers influence greatly women's full participation in the judiciary. Participants of the first Geneva forum Women and the Judiciary⁹⁴ confirmed that prevailing gender stereotypes, norms and roles often play a significant role in preventing women's full and equal participation in the judiciary.

FGDs and in-depth interviews revealed that, as a result of new rules related to the appointment of judges, and taking into consideration domestic care burden of women, many women who are married, having or planning to have children, work as court associates/advisors for an extended period of time or even permanently, and make a decision not to apply for the positions of a judge, otherwise, if they are assigned to a location where they cannot relocate, their contract risk to be terminated.

According to the regulations existing before 2015, while applying for the position of judge, the candidates had the possibility to choose the court.⁹⁵ The FGDs' participants unanimously considered previous regulations as more favorable, especially for women, and expressed the fair that **new regulations can generate gender differences in the coming years in the judiciary in Montenegro.** *“The criteria for election of judges are the same for women and men. However, it takes more time for women to advance from a court trainee to a judge position, if she has children”* – said one female judge during the FGDs. Indeed, most of FGDs' participants stressed that many highly-qualified professionals among women Court associates/advisors, who represent valuable human capital for Montenegrin judiciary, are prevented from reaching their full potential as judges. Several women judges noted that it would be necessary to take into account candidates' family and care responsibilities, by introducing family-friendly policies with support mechanisms for relo-

⁹² The appraisal of the work of the judge will not be carried out if the judge, in the period for which the appraisal is carried out from paragraph 1 of this article, was absent for at least one year (Article 87, para 5 of the Law on Judicial Council and Judges).

⁹³ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaut on the independence of judges and lawyers, A/HRC/17/30

⁹⁴ “Women and Judiciary” 2013 Geneva Forum no.1 of Judges and Lawyers convened by the International Commission of Jurists.

⁹⁵ Law on Judicial Council (“Official Gazette of Montenegro, No. 3/08, 39/11, 31/12), Article 42, paragraph 1: **A judge shall perform the judicial function in the court in which he/she is elected.**

ation, such as employment support for husband/wife of appointed judge or covering travelling allowance and cost of housing rent - if the judge resides and works in different locations.

It should be noted that the procedure of appointment of judges (ex. for Basic Court Judges article 45 of the Law on Judicial Council and Judges), includes the evaluation of the candidate via interview by the Judicial Council. The Law on Judicial Council and Judges provide that in the nomination and appointment of members of the Judicial Council, national and gender-balanced representation shall be considered (Article 3 of the Law on Judicial Council and Judges). Gender balance in the evaluation commission is an important component for ensuring women's equal participation in the judiciary, but it is also essential to **adopt gender-responsive recruitment practices and interviewing guidelines**, which, as revealed by the qualitative study, are not in place for the judicial recruitment in Montenegro.⁹⁶

6.1.2. Accessing to senior positions in the judiciary – key gender challenges

Balanced participation of women and men in public decision-making⁹⁷ is among the key strategic objectives of the Council of Europe's Gender Equality Strategy for 2018 - 2023.⁹⁸

It is acknowledged that the greater number of women in the judiciary overall does not correlate to increased levels of women in senior and leadership positions. Practically everywhere, an important gap exists between women's representation in lower courts, comparing to upper courts and management positions.

As gender disaggregated statistics show, there is a fair gender balance in the judiciary in Montenegro with in practically all the Courts. However, there is no same gender parity in the positions of the Presidents of the Courts. Indeed, among 25 Presidents of the Courts only 7, i.e., 28% are women.

The low representation of women in positions of power in the judiciary, despite dominance in lower-level courts, suggests that there are several factors at play that inhibit the rise of women in the sector. The barriers faced by women in the judiciary are similar to those encountered in other areas of public life: balancing work-life commitments, persisting gender stereotypes, lack of development opportunities and gender bias in promotions.

39,7% of survey participants consider that occupying senior position in the judiciary is more difficult for women, but the majority - **56,6%** - think that it is equally difficult or equally accessible for women and men.

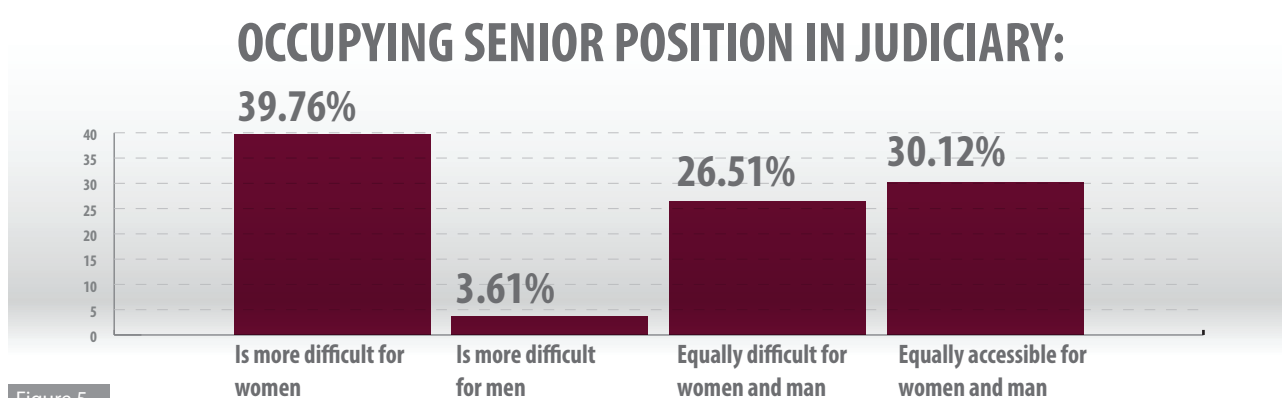


Figure 5

Among the respondents who think that occupying senior position in the judiciary is more difficult for women the absolute majority - 96,6% - is women, what indicates that men are not always aware of the existing invisible barriers that women face for advancing in the judiciary in Montenegro. Also, among

⁹⁶ When designing such a gender-responsive approach, one should keep in mind Article 25 of the Labor Law, which stipulates that when establishing an employment relationship, it is forbidden to request information about family or marital status and family planning, as well as the submission of documents and other evidence that are not of immediate importance for performance of work for which he establishes an employment relationship.

⁹⁷ Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 4.

⁹⁸ <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>

those who think that women's advancement in the judiciary is more difficult for women, the majority (76%) are the judges of Basic Courts.

Survey respondents identify several factors for career advancement in the judiciary, such as **network support** and **support from the family**. Indeed, **65%** of them consider that in order to occupy a senior position in the judiciary it is important/very important to be **supported by the social network in the system**. **Family support** is another condition; however, the majority of survey participants (78.3%) think that family support for career advancement in the judiciary **is more important for women than for men**. At the same time, 55.4% of survey respondents, among them the absolute majority of women (84.7%), consider that being President of the Court is an additional burden more for women judges than for men judges, because of the burden of care and domestic work in which women are much more involved than men.

” Quotation: „Besides a great support from my family, I was also supported by my colleagues to run for a position of a court president. My colleagues recognised my energy and have had full confidence in me and my ability to run the court in the best way possible” - a women court president

Regarding the **access to the support networks in the system, survey participants (78,3%) don't think that men judges have more access to them than female judges**. Moreover, the absolute majority of the respondents - **89%** - **think that women judges are not less ambitious than men judges to take high-ranking positions in the judiciary**, and **only 38.5%, among them mostly women, consider that senior positions in the judiciary are less appealing for women because of the family responsibilities**. The absolute majority of the respondents (95.1%) does not attribute any particular management skills to men and do not agree with the statement that in the judiciary, men are proven to be better managers than women. It should also be noted that the majority of the respondents who disagree with this statement are women (74.6%).

The same issues have been discussed during in-depths interviews and FGDs, and its findings sometimes contradict survey results. Indeed, participants of the qualitative study agree that **career advancement in the judiciary is more difficult for women because of family responsibilities**, therefore, women usually do not apply for managerial positions, such as Court Presidents, as long as they have under-age children, while the age of children does not seem to be an obstacle for men for applying to such positions. Almost all women respondents agree that they always prioritize their families over career advancement, and they would apply for leadership positions only when their children grow up in order to fully dedicate their time to additional responsibilities. Despite the fact that practically all respondents, regardless of their sex/gender, agree that objective criteria, as defined by law, are the main factors to become Court President, women judges stressed that family support was also necessary.

The procedure of appointments to the senior positions in the judiciary is mostly seen by the respondents of in-depth interviews and FGDs as transparent and based on the objective criteria. Some of the participants consider that the appointments don't depend on social networks, while some others stressed the importance of peer support for becoming Court President. At the same time, discussion and interviews revealed that the **male judges have more developed social networks**, which also reflects the patterns of the Society in Montenegro, considered as patriarchal by the respondents.

Via the qualitative study we also wanted to understand **attitudes in the judiciary towards women's leadership** and we have asked the participants if the senior positions in the judiciary were more suited for men than for women. Some of women participants said that they never had an ambition to become Court President. Many participants stressed out that men are more eager to apply for the position of court presidents, because they have more self-confidence and consider that the position suits them naturally.

” Quotation: Although there were more men court presidents in Montenegro than women presidents, plus a woman president of the Judicial Council, three of those nine women occupied key positions in the judiciary – president of the Judicial Council, acting president of the Supreme Court, as well as the president of the Podgorica Basic Court, a man judge.

The discussions showed that the gender disbalance at the leadership positions in the judiciary is not seen as an issue by the representatives of the judicial system, as they consider that women and men have equal opportunities and chances to become Court's President. Therefore, it is possible to conclude that the obstacles faced by women, conditioned by time poverty due to the disproportionate burden of care and domestic work, are not sufficiently acknowledged by the judiciary. Participants of the qualitative study refer to few examples of women's leadership in the judiciary as a demonstration of the fact that career advancement is equally achievable for everyone.

According to the participants of the qualitative study, the lack of interest in the Court's President's office is often due to the **burden of managerial and organisational tasks**, less attractive professionally and unrelated to the profession of judge, and dedicating time to these tasks is seen by many as a professional disadvantage.

On this issue, some of the Court's Presidents are of the opinion that it is suitable to have Court Managers, together with the Courts' Presidents, who will be in charge of organizational and human resource related affairs, while the court president would be in charge of issues related to the judicial profession.

6.2. Capacity on Gender Equality in the Judiciary in Montenegro

The survey revealed that only 12% of judges and assistants to judges regularly attend the capacity building trainings in gender equality, while 40.9% of judges and assistants to judges never attended it during their career in the judiciary.

DID YOU ATTEND THE CAPACITY BUILDING TRAININGS ON GENDER EQUALITY?

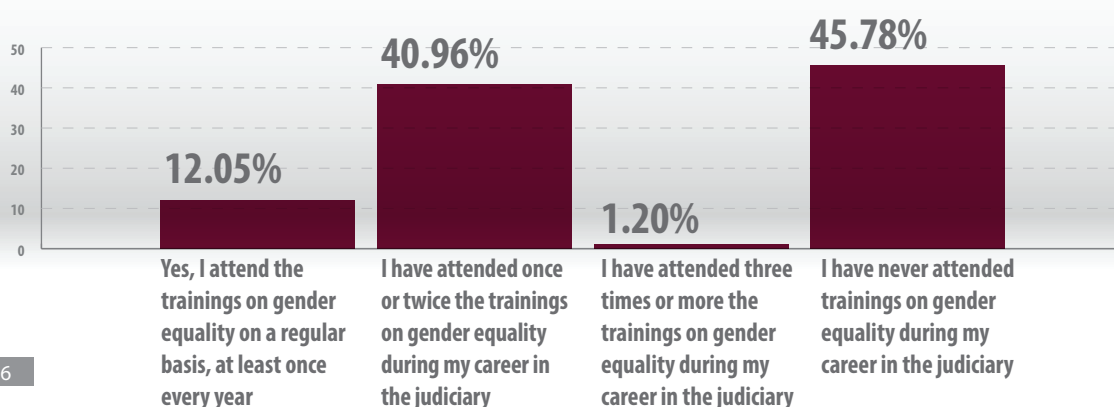


Figure 6

Only 39.7% consider that trainings on gender equality should be mandatory for judges and assistants to judges, while 50.6% of survey respondents consider that they should be voluntary.

TRAINING ON GENDER EQUALITY SHOULD BE:

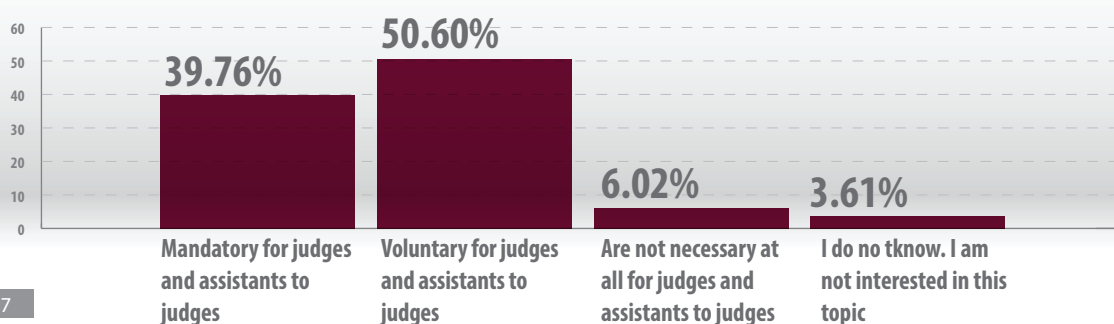
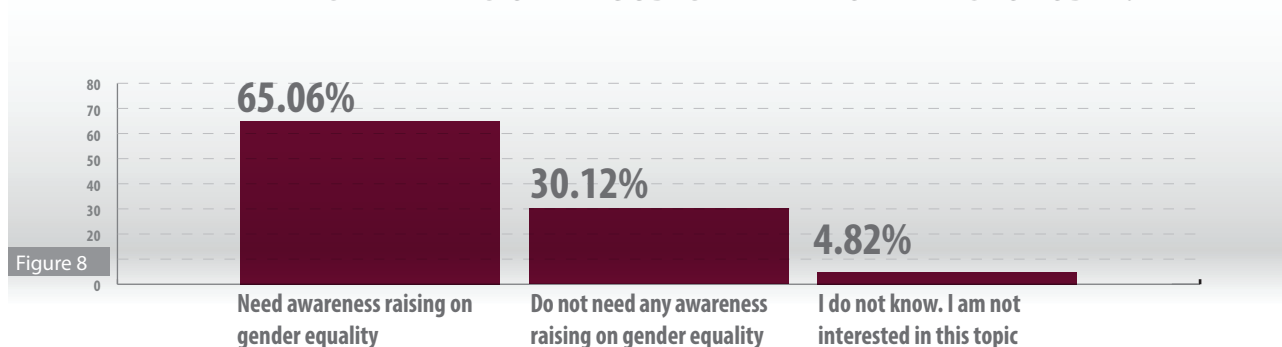


Figure 7

At the same time, 65% of survey respondents consider that the representatives of the Montenegrin judiciary need awareness raising on gender equality.

THE REPRESENTATIVES OF THE JUDICIARY IN MONTENEGRO TODAY:



During the qualitative study, different opinions have been voiced by the participants: some of the respondents agree that **gender equality training is important for interns, assistants and candidates to the judiciary office, however they don't need to be provided on a regular basis**, some other participants are of the opinion that **regular trainings for the judiciary staff, including the judges should be ensured**. Many respondents consider that it is important for judges to be gender sensitive, therefore **gender equality training should be provided not only from the legal perspective, but also for ensuring awareness raising of judges on various gender issues** in order to enable them to easily recognize gender-based discriminations, and overall, to adopt a gender-responsive approaches while working on legal cases or interacting with colleagues. Respondents emphasized **the need of more practical trainings and case-based workshops in gender equality in which women and men judges will be equally involved**.

Interviews and focus group discussions also revealed that **not everybody seems to be equally open to gender equality trainings within the judiciary**; indeed, according to some respondents there are judges, mostly of the older generation, who are not ready to integrate the new knowledge, and at the same time, there are some others always open for new learnings.

Many respondents agree that, overall, **awareness on gender equality is not very high in the judiciary in Montenegro**. A women judge explained: *"we are not aware of not being equal until we hear about how things are in other countries and then realize that we really have a problem"*. Several men and women judges consider that it is necessary to **analyse gaps in gender equality knowledge within the judiciary** and based on its results, **adopt a strategy for awareness raising and capacity building**.

” “We are not aware of the existence of inequalities. until we hear how they do it in other countries. Then we realize that we have a problem „- the judge, participant in the interview

The need for increased capacity of the judiciary in Montenegro on gender equality issues has also been formulated by CEDAW Committee in its *Concluding Observations on the Second Periodic Report on Montenegro* in 2017.⁹⁹ Indeed, the Committee noted a low level of gender sensitivity and insufficient capacities on gender equality within the judiciary, which has expressed in various ways, such as the lenient sentences for perpetrators of gender-based violence against women, gender stereotypes perpetuated by judges when treating the cases of gender-based violence¹⁰⁰, etc. Therefore, in 2017 the Committee called Montenegro (i) to promote capacity- building programmes for judges on CEDAW Convention to enable them to directly apply or invoke its provisions in judicial or administrative proceedings and to interpret domestic legislation accordingly; (ii) to ensure that the judiciary receive adequate mandatory training on violence against women in order to adequately punish it and prevent its recurrence; (iii) to raise awareness to dismantle sexist

⁹⁹ Committee on the elimination of discrimination against women, Concluding observations on the second periodic report of Montenegro, 2017.

¹⁰⁰ CEDAW Committee notes with concern that judges rarely take gender-based violence against the mother in the domestic sphere into account when deciding child custody cases, judges reportedly expressed concern that a woman may fabricate allegations of domestic violence to influence decisions on child custody and visitation rights, as well as the increase in society of defamatory attitudes undermining the credibility of women victims of gender-based violence by portraying them as manipulative and dishonest.

stereotypes among the judiciary and (iv) ensure that judges who express such views receive appropriate disciplinary sanctions.

In Montenegro, trainings for judicial bodies are provided the *Centre for Training in Judiciary and State Prosecution*; trainings are organized and implemented in the form of **initial** and **continuing** trainings. Initial trainings are organized for candidates for judges in misdemeanour courts, basic courts, the Commercial Court and the Administrative Court of Montenegro. Continuous trainings are organized for the purpose of professional development of judges and state prosecutors. The Centre conducts **special trainings** for other legal professionals, including advisors and interns in courts. The trainings are conducted by trainers while the practical part of the initial training is conducted by mentors.

According to the *Law on Centre for Training in Judiciary and State Prosecution Service* (2015)¹⁰¹ the training Centre adopts **Annual Training Programme**, based on which **training programmes** are adopted every year for **initial, in-service and specialized trainings** (Article 35) by the Programming Council (Articles 21 and 22) which is an expert body (Article 10). The said law also defines that all judges must spare two work-days a year to attend trainings at the Centre for the purpose of their professional development. Pursuant to Article 45, paragraph 2 of the aforementioned Law, judges have the right and obligation to attend the trainings for which they apply according to their own interest, at least two working days a year. If there are justified reasons for this, judges are not obliged to attend the mandatory continuous annual training for which they applied (Article 45.), but they are obliged to inform the Centre in a timely manner about the impossibility of attending a certain training.

In the period from January 1, 2017 to July 23, 2021, *the Centre for Training in Judiciary and State Prosecution Service conducted 10 in-service trainings* for the continuous education of judges in various thematic topics of gender equality, such as¹⁰²: United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its practical application; protection of children from domestic violence; international instruments and case law related to domestic violence, with special emphasis on the Istanbul Convention; treatment, prevention and protection from domestic violence in Montenegro, with an emphasis on the police response; implementation of the Law on Protection from Domestic Violence, etc.

The survey among judges indicated a need to expanding the trainings to candidates for judges as well:

„It is very important to have this type of training, especially for trainees, advisors/assistants and candidates. Just to illustrate - I am a mentor for a group of candidates for judges. When I spoke to them the other day, few of them mentioned that some of their peers kept showing stereotypical approaches during the training on Istanbul Convention.„ - a man judge

Over the period of 5 years in total 87 judges have participated in 10 in-service trainings (in 2017 – 21 judges; in 2018 – 6 judges; in 2019- 23 judges; in 2020 - 23 judges and in 2021- 14 judges). The statistics show that **each year only 2.2% to 8.6% of judges take part in in-service trainings on gender equality**. Regarding initial trainings, 8 trainings on gender equality (among them 2 integrated within a larger criminal law training module) took place over the period of 5 years (2017 – 2021) with a total number of 34 participants - candidates to the office of judges.¹⁰³

Together with the trainings, **awareness raising activities on gender equality** have been organized, such as seminars, conferences and virtual study tour (1 conference in 2017- *Domestic Violence and Risks to Children – Towards a Comprehensive Solution*; 1 seminar in 2018 - *Protection from domestic violence with emphasis on the Istanbul Convention*; 1 online seminar in 2021 - *European Law on Gender Equality*; and 1 virtual study visit - *Moving Forward; Falling Behind: Achieving Full Empowerment of Women During a Global Pandemic*) with a total participants of 40 judges over the five years. (Which makes **on average 3% of the total number of judges annually**).¹⁰⁴

¹⁰¹ „Official Gazette of Montenegro“, No. 58/2015, <https://cosdt.me/zakoni-i-drugi-propisi/>

¹⁰² The information about the trainings and capacity building activities for the period of 2017-2021 is based on the Third Periodic Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), submitted by Montenegro in 2021

¹⁰³ The Third periodic report on the implementation of the Convention on the Elimination of all Forms of Violence against Women, submitted in line with article 18 of the Convention on the Elimination of all Forms of Violence against Women. Podgorica, September 2021

¹⁰⁴ *ibid.*

Moreover, it should be noted a number of trainings and awareness raising activities are organized by international organizations, NGOs and embassies and part of them – by the Centre for Training in Judiciary and State Prosecution Service in cooperation with various NGO partners and international organizations.¹⁰⁵ Namely, gender equality trainings have been part of in-service training programmes for years, having been mainly organized by international organisations and domestic NGOs, but since 2021, the Centre for Training in Judiciary and State Prosecution Service has been organising such training courses autonomously.

The *Strategy of Montenegro for the Reform of the Judiciary 2019-2022*¹⁰⁶ identifies the need to improve the capacities of judges and employees in the judiciary in implementation of EU acquis via general and specific training programs. Regarding the Centre for Training in Judiciary and State Prosecution, the strategy establishes that there is a need to improve the professional capacities of the Centre's bodies in terms of the assessment for training needs and the program planning, with the aim of harmonization of the training methodologies and applying new training methods, evaluating the work of trainers, and improving the process of training evaluation.

The *Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2021-2022*¹⁰⁷ sets the objectives of strengthening the professional and personal capacities of courts for the application of EU acquis through trainings, however, doesn't mention specific objectives in increasing the capacity of the judiciary in gender equality. Moreover, the Action Plan sets an objective of organizational development and strengthening of the Centre for Training in Judiciary and State Prosecution via enhancing the processes of needs assessment, planning, as well as improving training programs and methods. The Action Plan does not include, in its organizational development component, any objectives related to gender equality. However, with support of the European Union/Council of Europe under the action "Accountability and Professionalism of the Judicial System in Montenegro", in 2021 the Centre has developed and applied gender-sensitive Training Needs Assessment Methodology which resulted in new inputs for gender mainstreaming of the judicial training framework.

6.3. Enabling Working Environment in the Judiciary

The 2015 OECD Recommendation on Gender Equality on Public Life¹⁰⁸ recommends to take adequate measures to improve gender equality in public employment. *OECD Toolkit for Mainstreaming and Implementing Gender Equality*¹⁰⁹, designed for the effective implementation of 2015 Recommendation provides guidelines for gender sensitive judiciary, among them guidelines for fostering enabling working environment for women. For this purpose, OECD recommends to mainstream work-life balance and family-friendly work practices and to promote gender-sensitive working conditions, for example: developing schemes to support the reconciliation of family and professional obligations; reconsidering traditional working hours; providing incentives to men to take available care leave and flexible work entitlements; facilitating networking and mentoring in public institutions; promoting female role models in public life; encouraging active engagement of men in promoting gender equality.

In order to understand if the judiciary in Montenegro provides enabling working environment equally to women and men, we explored, via qualitative and quantitative study, issues related to gender-responsive organization of the work, social networks, as well as the regulations and practices within the judiciary related to gender-sensitive standards of conducts and gender-disaggregated statistics.

6.3.1 Gender-responsive organization of the work

The Council of Europe, in its Recommendation on Reconciling Work and Family Life¹¹⁰ affirms that the reconciliation of work and family life is a precondition for a meaningful quality of life and for the full exercise of fundamental human rights in the economic and social sphere. The CoE recognizes that it is women who most

¹⁰⁵ *ibid.*

¹⁰⁶ <https://www.gov.me/dokumenta/deb3e3ae-7b6a-4963-9b3e-b5892118c8c8>

¹⁰⁷ <https://rm.coe.int/hf6-ap-implementation-judiciary-reform-eng/1680a5523b>

¹⁰⁸ <https://www.oecd.org/gov/2015-oecd-recommendation-of-the-council-on-gender-equality-in-public-life-9789264252820-en.htm>

¹⁰⁹ <https://www.oecd.org/gender/governance/toolkit/>

¹¹⁰ Recommendation No. R(96) of the Committee of Ministers to Member States on Reconciling Work and Family Life. <https://cutt.ly/ekuQyfD>

often continue to bear the principal burden of family responsibilities and that the numerous obstacles, especially social and cultural, stand in the way of a more equal sharing between women and men of their family responsibilities. The CoE considers that labour market actors continue to take insufficient account of the family responsibilities of women and men and therefore recommends to member States to take action, enabling women and men, without discrimination, to better reconcile their working and family lives.

Men's and women's ability to work as legal professionals is not equally affected by their family obligation. As discussed above, women in the judiciary in Montenegro face more difficulties with balancing work and private life, that can impede women, from entering the judiciary, and also, advancing to senior positions. The judiciary places high demands on the hours that judges work, and office hours are not flexible. This affects more judges and judiciary staff with family responsibilities, and as observed above, they are mostly women.

Survey respondents consider that child and family-friendly policies can be beneficial for both women and men, such as children-friendly spaces within working premises; moreover, 44.5% of survey respondents consider that **increasing maternity leave** can support women judges in their work and career advancement.

Issues related to work-life balance have also been discussed within FGDs and in-depth interviews. Respondents agree that there is no any specific policy supporting family and care responsibilities of judges, however, the arrangements seem possible case by case.

” „There is no policy, it all depends on a Court president and it is important to have a president who understands complexity of daily life of mothers and is flexible enough to allow mothers to arrive late at work, if they need to take their children to school, to the doctor, etc.” - a women judge said.

Several supporting mechanisms have been proposed by the participants of FGDs and in-depth interviews in order to promote work-life balance, such as **promoting of paternity leave within the judiciary**, providing options for **distance working**, and fostering the implementation of Article 130 of the Labor Law, which stipulates that the employer can, taking into account the needs of the employee stated in his/her written request, enable a change in working hours or the schedule of working hours after the expiration of parental leave, if the work process at that employer allow for that.

It should be noted that the Labour Code of Montenegro establishes a compulsory maternity leave of 98 days, of which 70 days from the birth of a child (Article 126).¹¹¹ Maternity leave of 70 days from the date of birth of a child, can be used by both parents at the same time, if two or more children are born (Article 126, paragraph 3). Father is entitled to use the said leave from the date of birth of a child if the mother died in childbirth or is seriously ill, has abandoned the child or if she is deprived of parental rights or serving a prison sentence (Article 126, paragraph 4). During the leave the parent shall be entitled to wage compensation in the amount of the salary he/she would earn while being unable to work due to maintaining pregnancy. The Labour Code also establishes the right of each parent to parental leave (Art 127) lasting up to 365 days from the day of the child's birth, which can be used after the expiration of 70 days from the birth of a child.

The judiciary in Montenegro applies the above provisions of the Labour Code, however, the absence of the statistical data doesn't allow to understand the proportions of practical use of maternity and parental leave. To apprehend the practical applications of the said provisions, it will be important to understand if women judges and judicial staff qualifying for the maternity leave use them at the full extent and at what extent the parental leave is used by the fathers, given that this is an individual right which, as a rule, can be used in equal parts by both parents. Discussions at this topic seem to reveal the general trends, that judicial system does not always create an enabling environment and does not promote actively the use of parental leave by fathers. Discussions reveal that, as other judges' workload increases because of the maternity/parental leave of a colleague, judges do not always have a positive attitude towards maternity/parental leave. Even if they are not explicitly expressed, adverse attitudes may discourage female judges entitled to maternity leave to fully benefit from it. Even though the legislation allows for it, it can also discourage male judges from taking parental leave.

¹¹¹ If the child was born before the day of the expected birth, the obligatory maternity leave referred to in paragraph 1 of this Article shall be extended by the number of days for which the child was born earlier (Article 126, paragraph 5).

Moreover, other measures for ensuring gender-responsive organization of the work, such as flexible working hours or distance-working, are not formalized. Participants of the qualitative study admit that the possibility of flexible working hours exist in many Courts in practice, as many Courts' Presidents allow it for mothers with young children, however it remains the discretion of Court's President. Respondents consider that the formalization of flexible working hours will be an important step forward for balancing professional and family obligations.

” Quotation: „It is necessary to establish a support system for women, to help them strengthen their organisational capabilities and communication skills, which would enable them to have more confidence in themselves and in their capabilities and make easier for them to decide to apply for the position of court president! - a women judge

6.3.2 Supportive social networks

Research in different countries shows that women often lack the legal and political networks and connections that facilitate advancement for male judges in the judiciary.¹¹² *UN Special Rapporteur on the Independence of Judges and Lawyers* draws attention to the **vital role of women's associations, which contribute to the exercise of women's right of association, and are instrumental actors in gender mainstreaming**, capacity-building efforts and know-how exchange. Special Rapporteur considers that such associations play an important role in know-how exchange among women judges and lawyers from a diversity of legal and judicial systems.¹¹³

Survey participants were asked about what they consider necessary to occupy a senior position in the judiciary. 65% consider that it is very important/important to be supported by the social network within the system. As for gender-segregation of this response, the majority (75.3%) is women. Regarding the access to social networks, only 21.6 % consider that male judges have more access than female judges to such networks.

Survey participants have been asked about the benefits of having the Association of Women Judges. 36.1%, (among them women and men almost equally, respectively – 60% and 40%) do not see any need for such Association, while 19.2% consider that its existence will not change anything. However, the majority of respondents – **65% see positive impact of the Association of Women's Judges**, such as better integration of gender equality principles in the judiciary (32.5%), and improvement of gender balance at the senior position (32.5%)

CREATING THE ASSOCIATION OF WOMEN JUDGES: (MULTIPLE CHOICES ARE POSSIBLE)

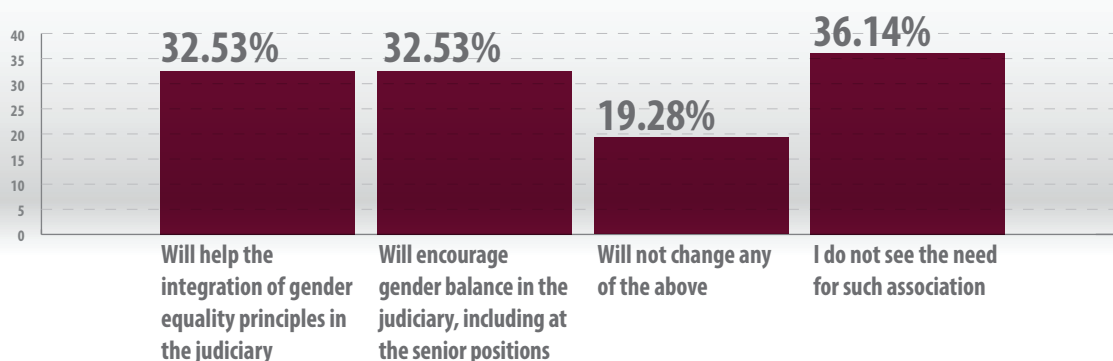


Figure 9

112 Virtue Foundation, "Senior Roundtable on Women and the Judiciary", pp. 17–18.

113 Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. <https://undocs.org/A/HRC/17/30>

Opinions regarding the establishment of the Association of Women Judges were different during in-depth interviews and FGDs. For the majority of the participants, mostly men, the need of such association is not clear. According to them, women and men can freely express any issue within the existing Association of Judges. At the same time, many participants pointed out the organizational and financial difficulties related to already existing Association of Judges of Montenegro. The discussions revealed that the said Association is financed through membership fees, as well as donations, which don't cover all the expenses, such as salaries for administration staff, membership in European and International Associations, costs of various activities, etc. Moreover, the active engagement of judges in already existing association is also problematic, as it requires additional time and efforts from its members. Therefore, according to the respondents, a separate Association will raise additional financial and administrative issues.

Other participants were in favour of establishing a separate association, most of them were aware of the work of Women Judges Associations in different countries and admitted that such associations allowed to find efficient solutions to gender issues. Participants acknowledge positive impact of such Association, specifically: learning from the experience and best practices of already existing Associations of Women Judges in Council of Europe countries and worldwide; initiating a consultative process with the Consultative Council of European Judges¹¹⁴; opening the participation not only to judges, but more widely to Courts' advisers and other judicial staff, as well as to retired judges and other legal professionals, so it can be the Association of Women in the Judiciary.

Participants in favour of the establishment of the Association of Women in the Judiciary recognize the meaningful role of such association and see the positive impact of a separate forum for discussing and dealing with professional problems in an organized way. Respondents think that such association can deal better with the problems related to gender-based discrimination in the judiciary, harassment at the workplace, participation and career advancement of women in the judicial system, organization of working hours, etc. Moreover, participants consider that the Association of Women in the Judiciary can raise awareness on gender equality within the system, contribute to the public dialogue about gender equality in Montenegro together with other organizations and groups, like civil society organizations, as well as with Parliamentary network of women politicians.

6.3.3. Gender-sensitive working culture within the judiciary

*OECD Toolkit for Mainstreaming and Implementing Gender Equality*¹¹⁵, designed for the effective implementation of the *2015 OECD Recommendation on Gender Equality in Public Life*¹¹⁶ provides guidelines for establishing gender-sensitive working culture within the judiciary, by assessing if the judicial workplace provides a respectful and empowering environment for women and men, and if there are preventive processes and sound complaint mechanisms to deal with sexual harassment cases? According to OECD, one of the indicators of gender-sensitive judiciary is the existence of sound processes dealing with sexual harassment at the workplace.

During the quantitative and qualitative study, together with the possibility of introducing **mechanisms dealing with sexual harassment** at the workplace, the attitudes and perceptions of the representatives of the judiciary have been explored about the **role and added value of gender-equal judiciary**, as well as about different measures for fostering gender equality and gender-sensitive working culture within the system.

6.3.3. (a) Perceptions about the benefits of gender equality in the judiciary

The survey revealed that the role of more **gender-equal management structures in the judiciary is not recognized as important by the majority of survey participants**. Indeed, only 45.8% of respondents consider that increasing the number of women at the senior positions in the judiciary is an important step forward towards more gender equality in the system. The majority of the respondents (54.2%) does not

¹¹⁴ <https://www.coe.int/en/web/ccje>

¹¹⁵ <https://www.oecd.org/gender/governance/toolkit/>

¹¹⁶ <https://www.oecd.org/gov/2015-oecd-recommendation-of-the-council-on-gender-equality-in-public-life-9789264252820-en.htm>

consider gender disbalance at the senior positions in the judicial system as an issue or doesn't see any added value of gender parity at the senior positions.

INCREASING THE NUMBER OF WOMEN AT THE SENIOR POSITIONS OF THE JUDICIARY: (MULTIPLE CHOICES ARE POSSIBLE)

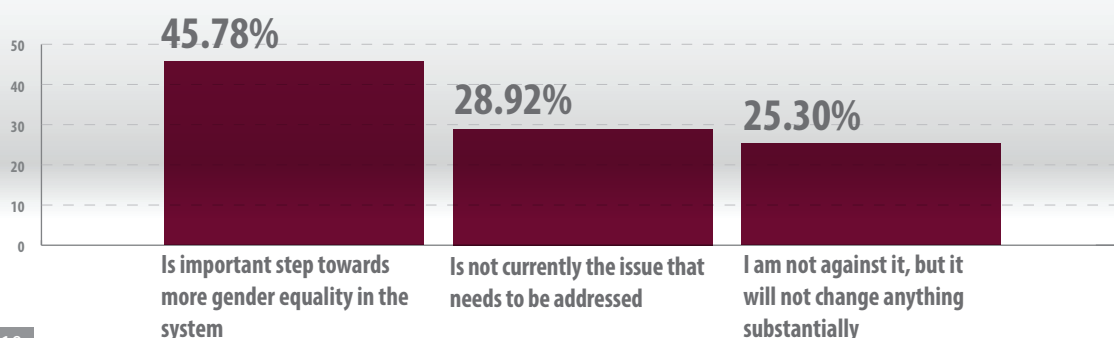


Figure 10

Among those who consider that increasing the number of women at the senior positions of the judiciary, the absolute majority (87%) are women. Interestingly, among the respondents who don't see gender imbalance as an issue, the majority (60%) are also women.

According to the survey results, **participants see the positive effects of more women in the judiciary, including at the senior positions**, and only 25.3% consider that it will not change anything. Among them who do not see any added value of more gender parity at the senior positions in the judicial system, the majority (62%) are men.

MORE WOMEN IN THE JUDICIARY, INCLUDING AT THE SENIOR POSITIONS: (MULTIPLE CHOICES ARE POSSIBLE)

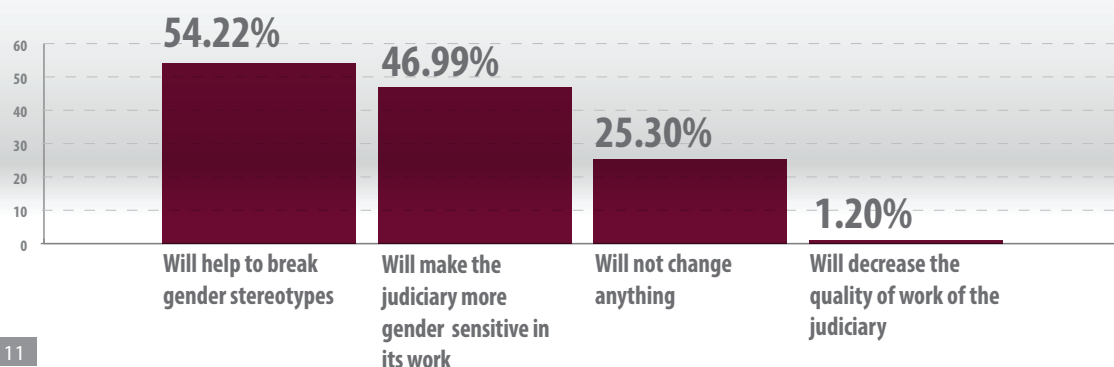


Figure 11

The issue has also been explored during the qualitative study, namely the participants of FGDs and in-depth interviews have been asked about the **benefits of more gender-equal judiciary**. The majority of respondents agreed that it will be beneficial to have more gender-equal judiciary, however many of them couldn't provide further explanations about its concrete benefits.

One female judge noted that high level of awareness in gender equality is important for the judiciary in order to **avoid gender bias in judicial decision-making**, especially in the cases of violence against women and domestic violence. According to her observations, judicial decisions in such cases, based on gender stereotypes, have been already made several times by judges in Montenegro. Moreover, the same respondent noted that during trainings, such as the training on Istanbul Convention, she witnessed that the perceptions of several judges have been influenced by gender stereotypes.

Another benefit of gender-equal judiciary mentioned by several participants is the **gender sensitive organization of the work** within the judicial system. Indeed, several respondents consider that more gender equality in the judiciary can bring more gender-responsive approaches by taking into consideration the specific needs of women and men working within the system.

Some respondents noted that the mere gender parity will not be a driver for positive changes towards more gender equality in the judiciary.

” „It’s not only about numbers of women judges. It is important for both men and women judges to be gender aware and gender sensitive. “ - noted one female participant.

A question has also been asked about the role of the judiciary to strengthen gender equality in the country and how the judiciary in Montenegro accomplishes this role. The answers to this question were very general, without providing clear indications of concrete benefits. For example, one participant noted:

” „If there was gender equality in the judiciary, there would be more justice and more progress in society, in terms of gender equality.”

Many participants also stated that gender equality in the judiciary could affect positively the entire society.

The topic of an early retirement of female judges has been mentioned in particular in this context. One of the respondents - a female judge - stressed out that in 2021 a decision has been brought by the Judicial Council on the termination of office and the retirement of a certain number of judges, based on the amendments to the Pension and Disability Insurance Act that came into force in August 2020. Namely, according to the Pension and Disability Insurance Act in force, women acquire the right to an old-age pension at the age of 64, and men at the age of 66, while the provisions of the Labor Law prescribe the general condition for termination of employment at the age of 67. The Constitution of Montenegro (Article 121) states that, „A judge’s mandate is terminated at their own request, once they meet the requirement for age retirement and if they are sentenced to a non-conditional prison sentence”. Based on the aforementioned decision of the Judicial Council, in August 2021, the mandate of 23 judges was terminated, of which 11 judges initiated proceedings before the Constitutional Court and the Administrative Court, challenging the aforementioned decision of the Judicial Council as discriminatory.

Bearing in mind that the mentioned proceedings are ongoing before the competent institutions in Montenegro, the consultants of the Council of Europe cannot issue a legal opinion on this matter at this stage. However, it should be noted that the Council of Europe member states have different age limits regarding the retirement of judges, given that there are no concrete international standards on this topic.

6.3.3 (b) Perceptions about special measures to increase women’s participation in senior position in the judiciary

Montenegrin legislation, without establishing the mechanisms of specific gender quotas for the judiciary, introduced a requirement for the Judicial Council to respect national and gender-balanced representation. (Law on Judicial Council and Judges, Article 3). The similar requirement is not defined for any other jurisdiction in the country, including courts and state prosecution service.

57.8% of survey respondents, among them absolute majority of women, consider that gender quotas can be an effective mechanism to increase the share of women in the senior positions of the judiciary, while 42.2% (women and men almost equally) disagree or strongly disagree with this approach.

GENDER QUOTA CAN BE AN EFFECTIVE MECHANISM TO INCREASE THE SHARE OF WOMEN IN THE JUDICIARY, INCLUDING THE SENIOR POSITIONS

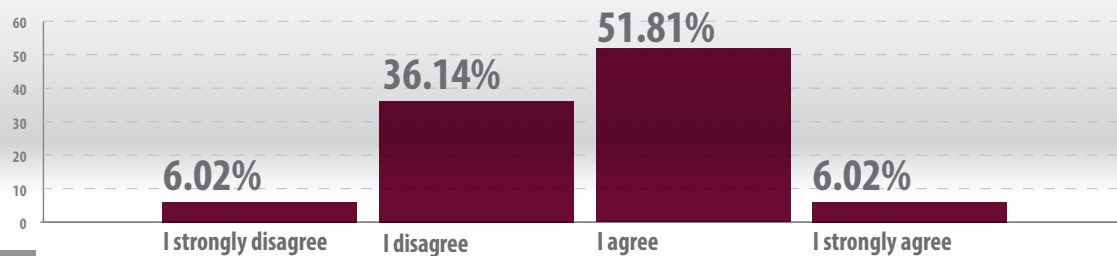


Figure 12

Unlike the survey respondents, participants of FGDs and in-depth interviews consider gender quotas in the judiciary as unnecessary. Several arguments against quotas have been provided by the participants: many think that gender quotas can have as an effect election of judges who are not sufficiently qualified for the office, as it would lead to the elections of the candidates just to meet quota requirement at the price of disregarding professional qualifications; many respondents consider that the conditions are equal for women and men in the judiciary in Montenegro, therefore, there is no need to create preferential conditions for any group; some participants think that instead of introducing gender quotas, it would be preferable to provide the same opportunities and chances to women and men; some others think that more effective mechanism could be strengthening capacity and awareness on gender in the judicial system in Montenegro. „I don't see quotas as an effective instrument. Let's work on upgrading the understanding about gender equality among judges instead“ - a women judge stated.

Qualitative study shows that the awareness about gender quotas is low and they are considered as discriminatory and unnecessary. However, *Geneva forum on Women and the Judiciary*¹¹⁷ noted that gendered assumptions as to women's roles in society have affected how they are treated by male colleagues and authority figures. For example, some participants of Geneva discussion noted how women's appointment or promotion within the judiciary is often discussed in terms of assumptions that women are children's primary caregivers and will stop working or reduce work levels if and when they become mothers. A number of Forum's participants expressed the view that the implementation of quotas may be a necessary measure to advance women judges' recruitment and advancement. At the same time, Geneva discussion emphasized that quota systems must operate to ensure that judicial appointments are based on qualifications and skills.

Moreover, according to *CEDAW Committee*¹¹⁸, it may not be possible to effectively overcome considerable deficits in women's representation and participation without the establishment of quota systems. Thus, quotas as temporary special measures are recommended to ensure in practice women's equal enjoyment of the right to hold judicial office.¹¹⁹ Indeed, (i) CEDAW's Article 4 calls the State parties to the "adoption of temporary special measures aimed at accelerating de facto equality between men and women."¹²⁰ (ii) *CEDAW's General Recommendation No 23* calls the States to institute temporary special measures for ensuring women's equal participation in decision-making, including the judiciary.¹²¹ (iii) *CEDAW Committee* in its *General Recommendation No 25* also calls the State parties to adopt temporary special measures aimed at accelerating the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women.¹²² (iv) *CEDAW General Recommendation No 33* calls the State parties to "confront and remove barriers to women's participation as professionals within all bodies and levels of judicial systems, and take steps, including temporary special measures, to ensure that women are equally represented in the judiciary".¹²³

117 "Women and Judiciary" 2013 Geneva Forum no.1 of Judges and Lawyers convened by the International Commission of Jurists

118 CEDAW General Recommendation 23, paragraph 15

119 CEDAW General Recommendation 23, paras 15 and 43; Beijing Declaration and Platform for Action, para 190(a); Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30

120 These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

121 CEDAW GR 23, para. 15.

122 CEDAW GR No 25, para. 15 <https://bit.ly/39lQAsw>

123 CEDAW GR No 33, para 15. <https://bit.ly/2Xw43bF>

Gender quotas are the measures recommended by Council of Europe to improve gender-sensitiveness of decision-making environments.¹²⁴ Council of Europe's Recommendation¹²⁵ on the *Balanced participation of women and men in political and public decision-making* highlights the importance of "critical mass" of 40% of the opposite sex in any decision-making body. Indeed, it is acknowledged that every woman and man have different experiences in life that lead to different perspectives, which can enrich the decision-making process.

6.3.3 (c) Perceptions about the internal mechanisms dealing with sexual harassment within the judicial system

Sexual harassment is experienced by women and men worldwide, but women are more vulnerable to harassment by men because of unequal power relations. While unequal power relationships exist in many sectors of society, they tend to appear the most in the workplace, where hierarchies are common. Sexual harassment creates a hostile working environment and thus, can endanger the continued employment of the harassed person by negatively affecting work performance, undermining a sense of personal dignity, and in some cases causing physical and emotional illness.

Sexual harassment in the workplace could take several forms: explicitly sexual verbal and nonverbal behaviours; insulting verbal and nonverbal behaviours that are not sexual but drawing on gender-based beliefs, including sexist hostility; sexist humour or jokes; unwanted sexual attention; sexual coercion (requests or threats for sexual cooperation in return for job security or benefits).

OECD Toolkit for Mainstreaming and Implementing Gender Equality, implementing 2015 *OECD Recommendation on Gender Equality in Public Life*,¹²⁶ recommends the establishment of preventive processes and sound complaint mechanisms to deal with sexual harassment cases in order to foster a gender-sensitive working culture in the judiciary.

Participants of the qualitative study discussed the need for internal complaint mechanism on sexual harassment within the judiciary. The majority of the respondents are not aware about any internal complaint mechanism within the system. They noted, that in case of problem, it is possible to discuss the issue directly with the President of the Court who will find a solution.

Few participants revealed stereotypical approaches towards the issue of sexual harassment. Indeed, some of the judges expressed the concern about the fact that such internal complaint mechanism could be abused and could undermine the reputation of men judges. „*It is important to be sure that woman is really a victim, before we start this procedure. Otherwise, it can bring harm to some men who are allegedly sexually harassing women*” - noted one judge.

However, the majority of FGDs participants and interviewees admit the need and usefulness of internal confidential mechanisms dealing with sexual harassment within the judicial system. Participants noted that sexual harassment was definitely an issue in the judiciary, but many women restrain to discuss it openly, because of fear of dismissal or stigma.

Moreover, most respondents see the need of not only internal complaint mechanism for dealing with the cases of sexual harassment, but also the need of establishing a special unit for providing support to the victims.

In Montenegro, **Labour Law** prohibits harassment and sexual harassment (Article 10) in relation to work regarding all aspects of employment, i.e., recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. The law also defines sexual harassment as *any unwanted verbal, non-verbal or physical conduct of a sexual nature intended to or actually undermining the dignity of a person seeking employment, as well as an employed person, particularly when such behaviour causes fear or creates a hostile, humiliating, intimidating, degrading or offensive environment*.

¹²⁴ Council of Europe's Gender Equality Strategy for 2018-2023, Strategic Objective 4

¹²⁵ See *supra*, note 13

¹²⁶ <https://bit.ly/39E33Ys>

Moreover, the **Law on Prohibition of Harassment at Work** defines workplace harassment as mobbing and establishes employees and employers' rights and responsibilities in terms of prevention of harassment and protection from it at work. Mobbing is defined by the said Law as any *active or passive conduct at work or related to work against an employee or group of employees, which recurs, and which is intended to or actually undermines the dignity, reputation, personal and professional integrity of the employee and which causes fear or creates an intimidating, humiliating or offensive environment, aggravates working conditions or leads to the isolation of the employee or leads the employee to terminate contract of employment or another type of contract upon his own initiative.*

Moreover, sexual harassment is defined by Istanbul Convention as *any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.*¹²⁷ Sexual harassment is sex-based and sexual behaviour that is unwelcome, unreasonable and offensive to its recipient.¹²⁸

Council of Europe Recommendation on preventing and combating sexism¹²⁹ notes that sexism¹³⁰ constitutes a barrier to the empowerment of women and girls, who are disproportionately affected by sexist behaviour, and notes that gender stereotypes and inherent biases shape the norms, behaviour and expectations of men and boys, and therefore lead to sexist acts. The recommendation acknowledges that sexism and sexist behaviour are perpetrated at the individual, institutional and structural levels, and experienced with detrimental effect at all three levels, and that measures to prevent and combat sexism should therefore be taken at all levels. Council of Europe recommends member states to take measures to prevent and combat sexism and its manifestations in public and private spheres, and encourage relevant stakeholders to implement appropriate legislation, policies and programmes.

6.4. Strategic Approach to Establish Gender-Responsive Judiciary

Government of Montenegro has developed *2019-2022 Strategy for the Reform of the Judiciary*¹³¹ and its *Action Plan for 2021-2022*¹³² aiming at strengthening the independence, impartiality, accountability, professionalism, and efficiency of the judiciary in the country. It should be noted that the said Strategy and Action Plan do not include any gender-specific objectives.

The judiciary in Montenegro does not have any sector-specific gender equality strategy and action plan. During the qualitative study, the opinions of the representatives of the judicial system have been explored regarding the possible need for such a strategy and action plan. The majority of respondents noted that it would be suitable to have such strategic and action documents, as they would strengthen gender responsiveness of the judiciary.

Participants consider that gender equality strategy and action plan should deal with the issues related to capacity building in gender equality in the judicial system, career advancement and gender-balance at the decision-making level in the judiciary, access to judicial professions (specifically regulations related to the training requirement of the candidates), gender-responsive organization of work, sexual harassment, strengthening the communication and awareness on gender equality via conferences, public debates, etc. Moreover, participants consider that gender equality strategy and action plan should include measures directed not only to judges, but also to all the employees of the judicial system.

Another issue discussed during the FGDs and in-depth interviews is the need of gender-segregated statis-

¹²⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 40. <https://rm.coe.int/168008482e>

¹²⁸ ILO, general Observation 2003. <https://bit.ly/38N3yAp>

¹²⁹ Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism. <https://rm.coe.int/168093b26a>

¹³⁰ The Recommendation defines sexism as any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex, which occurs in the public or private sphere, whether online or offline, with the purpose or effect of: violating the inherent dignity or rights of a person or a group of persons; or resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or creating an intimidating, hostile, degrading, humiliating or offensive environment; or constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or maintaining and reinforcing gender stereotypes.

¹³¹ <https://www.gov.me/dokumenta/deb3e3ae-7b6a-4963-9b3e-b5892118c8c8>

¹³² <https://rm.coe.int/hf6-ap-implementation-judiciary-reform-eng/1680a5523b>

tics. Participants of FGDs and in-depth interviews are aware of the fact that the Judicial Council publishes in its annual report gender and age structure of the Courts in Montenegro, including gender structure of the Presidents of Courts.¹³³ However, respondents do not know if the information about any other gender statistics is needed.

The *Law on Judicial Council and Judges* establishes the obligation for the Judicial Council of Montenegro to keep records on data of judges and courts presidents (Article 27 (4)). Moreover, *law on Gender Equality of Montenegro* requires that all statistical data and information collected, registered and processed by the organs, business companies and other legal persons as well as entrepreneurs must be gender disaggregated (Article 14). Thus, Judicial Council of Montenegro reports annually gender and age disaggregated data of judges and courts presidents. Montenegrin legal framework does not establish other requirement for the judiciary to gather and analyse any other gender disaggregated data.

UN Special Rapporteur on the independence of judges and lawyers highlights the need to mainstreaming gender within the judiciary which implies that the multiple roles of women and men are taken into consideration in the conduct of business within the judiciary, including in the day-to-day operations and the overall planning of the judicial sector. For the efficient gender mainstreaming, the *Special Rapporteur* urges States to adopt sectorial strategies and also collect sex-disaggregated data.¹³⁴

According to the *OECD Toolkit for Mainstreaming and Implementing Gender Equality*, implementing the **2015 OECD Recommendation on Gender Equality in Public Life**¹³⁵ justice sector has to develop a strategic course of action for gender equality. Indeed, the judiciary needs to identify gender gaps and to set gender equality and mainstreaming objectives across the justice sector. Also, roles and responsibilities have to be defined to achieve the objectives and to oversee their implementation. The OECD recommends involving a broad range of stakeholders within the justice and legal sector to elaborate a strategic plan for gender equality.

Moreover, the **Council of Europe** in its **Recommendation on gender mainstreaming**¹³⁶ considers that one of the main strategies to achieve effective equality between women and men is gender mainstreaming, which will also result in improved decision-making and enhance the functioning of democracy.

¹³³ https://sudovi.me/static/sdsv/doc/annual_report_2020_PDF.pdf

¹³⁴ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. Para 53. <https://undocs.org/A/HRC/17/30>

¹³⁵ <https://bit.ly/39E33Ys>

¹³⁶ Recommendation No. R (98) 14 of the Committee of Ministers to Member States on gender Mainstreaming. <https://cutt.ly/lkuTtXY>

7. Addressing Key Gender Challenges in the Judiciary in Montenegro – Recommendations for Further Actions

Independent, impartial, transparent and reliable judiciary and legal profession must be aligned with the international legal and policy framework on women's human rights and gender equality so that it can truly strive for the application of international human rights obligations and effectively advance women's rights.¹³⁷

According to the *UN Special Rapporteur on the independence of judges and lawyers*, developing a gender-sensitive judiciary within the broader context of the administration of justice should be a priority for the State. States should endeavor to evaluate the judiciary's structure and composition to ensure adequate representation of women and create the conditions necessary for the realization of gender equality within the judiciary and for the judiciary to advance the goal of gender equality.¹³⁸

In order to address gender gaps in the judiciary in Montenegro further steps have to be made. Twenty-two recommendations developed below seek to respond to the challenges identified via the quantitative and qualitative study, also are based on several international instruments, such as CEDAW Convention and General Recommendations of CEDAW Committee, CoE's strategic documents and recommendations, Rapport of the Special Rapporteur Gabriela Knaul on the Independence of Judges and Lawyers, OECD Recommendation on Gender Equality on Public Life, OECD Toolkit for Mainstreaming and Implementing Gender Equality; various reports and Assessments of country context of gender equality and judiciary in Montenegro.

Thematic area 1: Adopt measures supporting substantive gender equality in access to the judicial office in Montenegro

Women's participation in the judiciary in Montenegro is high as they represent 57.2% of total number of judges in the country. However, the entry of women in the judiciary is not irreversible and the risk of backlash remains relevant. Indeed, as analyzed above, several measures conditioning access to the office of a judge are not sufficiently favorable for women. In order to effectively address gender barriers faced by women, it is recommended to improve the regulatory framework.

► Make modalities of initial training more adapted to specific gender needs

According to the existing regulations, initial training for judges needs to take place in the Capital city of Podgorica only. Indeed, the theoretical part of the initial training shall be conducted by Judicial Training Center located in Podgorica, and the practical part of the initial training shall be conducted in the Basic Court in Podgorica, lasting in total 18 months.

As identified by the qualitative research (FGDs and KIIs), moving to the capital city is especially difficult for women with family responsibilities as they are the primary caregivers, and often the family is not able to follow them in the capital city.

Considering the specific gender needs, it is recommended to:

Recommendation 1:

Support the introduction of legal provision providing the possibility to the candidates for judges

¹³⁷ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30. Para.47. <https://undocs.org/A/HRC/17/30>

¹³⁸ *Ibid*, para. 83.

to **choose for the practical part of the initial training among at least three different Courts** ensuring a **fair geographical distribution** within the country.

Recommendation 2:

Support the introduction of legal provision introducing the **online learning option for theoretical part of the initial training** and **support Judicial Training Center in the effective implementation of such measure.**

► **Adapt the rules of judges' distribution to family situation of candidates**

Newly appointed judges are distributed in different courts, regardless of their place of residence (except few with the highest scores who have the possibility to choose the Court in which they will serve, as per Article 55, paragraph 2 of the Law on Judicial Council and Judges). The employment of a candidate for judge who refuses assignment or a transfer is to be terminated. As revealed by FGDs and KIs, relocating to a new location is particularly challenging for women.

Therefore, it is recommended to adopt more gender-responsive approaches by:

Recommendation 3:

Supporting the introduction of legal provisions **removing the refusal of the assignment and relocation from the grounds of the employment termination for judges**, in place of which it is recommended to introduce an option of „**waiting list**“ with a reasonable duration for the Courts selected by the judge.

Recommendation 4:

Strengthen support mechanisms for the relocation of judges, among them allowance for covering travelling fees from the place of residence or allowance covering the cost of housing if the judge resides and works in different locations; supporting measures for spouses, children (employment support, schooling support, etc.)

► **Adopt gender-responsive recruitment practices and interviewing guidelines**

The Judicial Council, within its competences, evaluates judges via interview before their appointment to the judicial office. According to the existing regulations, national and gender-balanced representation shall be considered for the composition of the Judicial Council, however, the legislation does not establish any minimum requirement for ensuring gender balance.

Therefore, it is recommended to:

Recommendation 5:

Support the introduction of legal provision requiring the **“critical mass” of 40% of the opposite sex in the Judicial Council.**

Recommendation 6:

Develop **gender-responsive approach to the appointment of judges, based on guidelines for interviewing that should be developed, taking into account the Article 25, paragraph 2 of the Labor Law**, and provide **capacity building in gender-responsive recruitment practices** to the members of the Judicial Council in order to mitigate potential implicit gender bias within selection and appointment procedures.

Thematic area 2: Adopt measures supporting substantive gender equality in career advancement in the judiciary in Montenegro

OECD Recommendation on Gender Equality Public Life acknowledges that it is paramount to mainstreaming work-life balance and family-friendly work practices in public institutions and to promote gender-sensitive working conditions, for example, by: reconsidering traditional working hours; developing schemes to support the reconciliation of family and professional obligations; providing incentives to men to take available care leave and flexible work entitlements; facilitating mentoring and networking opportunities; and encouraging active engagement of men in promoting gender equality.

2.1 Support the institutionalization of work-life balance systems in the judiciary

The quantitative and qualitative studies revealed that women bear more responsibilities than men of family care and domestic work, and therefore face more difficulties with balancing work and family life. One of the barriers for women's career advancement and their full participation in the leadership positions in the judiciary in Montenegro is time poverty; therefore women usually do not apply for managerial positions, such as Court President, as long as they have under-age children, as this position requires additional time due to the managerial and organizational tasks. Creating enabling working environment adapted to gender needs is crucial in order to provide equal opportunities of career advancement to women and men in the judiciary.

Taking into consideration the identified gender challenges, it is recommended to:

Recommendation 7:

Support the introduction of legal provisions **establishing the position of administrative auxiliary to the Court's President**, which will be in charge of organizational and human resources management related tasks.

Recommendation 8:

Ensure the introduction of **formal mechanisms supporting work-life balance**, such as flexible working hours and the options of distance working.

Recommendation 9:

Encourage judges and other judiciary staff to **benefit fully from maternity and paternity leave** policies and provide incentives for men to make use of available paternity leave.

Recommendation 10:

Ensure that work-life balance initiatives remain relevant by **regularly reviewing the needs** of staff and the courts to reflect necessary changes.

Recommendation 11:

Promote the benefits of work-life balance mechanisms by collecting and disseminating data on how improved work-life arrangements increase job satisfaction and productivity, and **disseminate information** about the range of work-life balance options that make staff aware of what is available.

Thematic area 3: Ensure capacity building and awareness raising on gender equality in the judiciary in Montenegro

CEDAW Committee in its *Concluding Observations on the Second Periodic Report on Montenegro* in 2017 calls the State to increase capacity of the judiciary on gender equality issues. According to CEDAW Committee,

gender sensitivity in the judiciary in Montenegro, as well as the capacity on gender equality is low, and the judges often perpetuate gender stereotypes when treating cases of gender-based violence.

CEDAW General Recommendation No.33 underlines the importance of capacity building in the justice sector to overcome stereotyping and gender bias, which have far-reaching consequences for women's full enjoyment of their human rights, impeding women's access to justice in all areas of law, affecting the credibility of women's voices, arguments and testimony as parties and witnesses, causing judges to misinterpret or misapply laws.

UN Special Rapporteur on the Independence of Judges and Lawyers stresses on the importance of mainstreaming gender in the judiciary by raising awareness among judges and court officials on women's human rights and the prohibition of discrimination. Special Rapporteur considers that judges and all judicial staff should be adequately trained and sensitized on gender equality and women's human rights and on strategies to avoid gender stereotyping.

Participants of the qualitative and quantitative study agreed on the need of capacity building and awareness raising on gender equality in the judiciary in Montenegro.

Therefore, it is recommended to:

Recommendation 12:

Support the implementation and improvement of the mandatory module for gender equality for candidates for judges, which is integrated into the theoretical part of the initial training program for all groups of participants¹³⁹, and integrate this module as mandatory into the continuous training programme for judges. Module should include an exhaustive overview of gender equality and women's rights, encompassing inter alia capacity-building programme on CEDAW Convention to enable judges, future judges and judiciary staff to directly apply or invoke its provisions in judicial or administrative proceedings and to interpret domestic legislation accordingly, as well as trainings promoting gender-sensitive working culture within courtrooms.

Regulations related to the capacity building should prohibit any exemption allowing the judges not to attend the mandatory training.

Recommendation 13:

Support the integration of **mandatory** training on violence against women **in initial, continuing and special training** in order to adequately punish it and prevent its recurrence.

Recommendation 14:

Ensure **capacity building and awareness raising on gender equality** of the staff of *Centre for Training in Judiciary and State Prosecution* members of **Programming Council**.

Recommendation 15:

Continue to provide **expert support to the Centre for Training in Judiciary and State Prosecution** aiming at enhancing the processes of needs assessment on gender equality knowledge within the judiciary, planning, as well as improving training programs and methods on gender equality.

Recommendation 16:

Plan and implement **awareness raising campaigns** to dismantle sexist stereotypes among the judiciary and to promote a dialogue on the negative impact of stereotyping and gender bias in the justice system.

¹³⁹ The duration of the module is adapted to the number of days of the theoretical part of the initial training.

Thematic area 4: Promote gender-sensitive working culture in the judiciary in Montenegro

According to *OECD Recommendation on Gender Equality in Public Life*, one of the recommended measures to ensure gender-sensitive working culture within the judiciary is to establish preventive processes and sound complaint mechanisms to deal with discrimination and sexual harassment cases.

Gender-sensitive working culture also implies removing stereotypes and providing a respectful and empowering environment for women and men, incorporating gender considerations in the day-to-day operations, using gender-sensitive language, and removing sexist behaviour. Council of Europe Recommendation on preventing and combating sexism recommends taking measures to prevent and combat sexism and its manifestations in public and private spheres.

Moreover, *UN Special Rapporteur on the Independence of Judges and Lawyers* draws attention to the vital role of women's associations for promoting gender equality and strengthening gender-sensitivity within the judiciary.

Therefore, in order to ensure gender-sensitive working culture in the judiciary in Montenegro, it is recommended to:

Recommendation 17:

Establish **preventive processes and internal complaint mechanisms** within the judiciary for **sexual harassment and discrimination** cases.

Recommendation 18:

Ensure that **Code of Ethics of the judiciary includes references to gender-sensitive conduct and disciplinary sanctions** for the judges expressing sexist and discriminatory views.

Recommendation 19:

Support the **establishment of Association of Women in the Judiciary in Montenegro** with appropriate administrative and budgetary resources to advance women's common interests within the judicial system, to promote the opportunities of networking, mutual support and discussions about gender needs, to advocate for strengthening gender equality within the judicial system.

Thematic area 5: Develop strategic approach and course of action on gender equality in the judiciary in Montenegro

UN Special Rapporteur on the independence of judges and lawyers urges the judiciary to adopt sectorial gender strategy and also collect sex-disaggregated data in order to effectively mainstream gender in the judicial system. The same recommendation is issued by *the OECD Toolkit for Mainstreaming and Implementing Gender Equality*, implementing the *2015 OECD Recommendation on Gender Equality in Public Life*.

The judiciary needs to identify gender gaps and to set gender equality objectives across the justice sector. Also, roles and responsibilities have to be defined to achieve the objectives and to oversee their implementation. The OECD recommends involving a broad range of stakeholders within the justice and legal sector to elaborate a strategic plan for gender equality.

Therefore, it is recommended to:

Recommendation 20:

Further strengthen the **leadership role of the Supreme Court of Montenegro and the Judicial Council in promoting gender-sensitive judicial policies and practices and proactively raising awareness** on the role and importance of gender equality in the context of judicial reform in Montenegro.

Recommendation 21:

Develop and adopt **Gender Equality Strategy and Action Plan** for the Judiciary in Montenegro

with clear objectives, and concrete activities and indicators to achieve these objectives. Ensure that necessary financial, material and human resources are available for the implementation of Gender Equality Strategy and Action Plan, and necessary guidance is provided to relevant actors for the effective implementation of Gender Equality Action Plan.

Recommendation 22:

Raise awareness and widely **disseminate** Gender Equality Strategy and Action Plan within the judiciary.

Recommendation 23:

Support the introduction of legal requirement to regularly collect, publicize and analyze **gender-segregated data** on women's participation in the justice sector related to their entrance into profession, retention and promotion rates, also on major issues affecting women as users, victims and witnesses in the civil and criminal jurisdictions particularly in cases of gender-based discrimination, sexual and gender-based violence; and as offenders.

Bibliography

International Legal Instruments

- ▶ International Covenant on Civil and Political Rights (ICCPR), adopted by United Nations General Assembly on 16 December 1966 (Resolution 2200A (XXI))
- ▶ United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted United Nations by General Assembly on 18 December 1979 (Resolution 34/180)
- ▶ CEDAW General Recommendation 23, Women in Political and Public Life, adopted by CEDAW Committee on the sixteenth session, 1997
- ▶ CEDAW General Recommendation 25, Temporary Special Measures, adopted by CEDAW Committee on the thirtieth session, 2004
- ▶ CEDAW General Recommendation 33, Women's Access to Justice, adopted by CEDAW Committee on the sixty-first session, 2015
- ▶ Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted on 11 May, 2011
- ▶ Beijing Declaration and Platform for Action, adopted on the Fourth World Conference on Women, 1995
- ▶ United Nations Sustainable Development Goals, adopted by United Nations General Assembly on 25 September 2015 (Resolution A/RES/70/1)
- ▶ Resolution of the General Assembly A/RES/67/1 of 30/11/2012, 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels
- ▶ Council of Europe's Gender Equality Strategy for 2018-2023
- ▶ CoE, 7th Council of Europe Conference of Ministers Responsible for Equality Between Women and Men, Resolution MEG 7 (2010), Bridging the Gap Between De Jure and De Factor Equality to Achieve Real Gender Equality
- ▶ Recommendation 2003 (3) of the Committee of the Ministers of the Council of Europe, "Balanced participation of women and men in political and public decision making"
- ▶ Recommendation CM/Rec (2019)1 of the Committee of Ministers to member States on preventing and combating sexism.
- ▶ Recommendation No.R(96) of the Committee of Ministers to Member States on Reconciling Work and Family Life.
- ▶ Recommendation No.R (98) 14 of the Committee of Ministers to Member States on gender Mainstreaming
- ▶ OECD Recommendation of the Council on Gender Equality in Public Life, 2015
- ▶ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution of the General Assembly A/RES/67/1 of 30/11/2012.
- ▶ Final Report of the forty-first session of the Commission on the Status of Women, 1997.

Montenegrin National Legal Instruments

- ▶ The Constitution of Montenegro (2007, 2013)
- ▶ Law on Gender Equality (2007,2010, 2011, 2015)
- ▶ Law on Judicial Council and Judges (2015, 2018)
- ▶ Law on Courts (2015, 2020)
- ▶ Law on Centre for Training in Judiciary and State Prosecution Service (2015)
- ▶ Law on the Prohibition of Discrimination (2010, 2011, 2014, 2017)
- ▶ Law on Protection from Domestic Violence (2010, 2011)
- ▶ Law on the Prohibition of Harassment at Work
- ▶ Labour Law (2019/2021)
- ▶ Law on the Election of Councillors and MPs (2011, 2014, 2016, 2017, 2018, 2020)
- ▶ Law on Civil Servants and State Employees (2018, 2019, 2020)

- ▶ National Strategy for Gender Equality 2021–2025
- ▶ Action Plan of Montenegro for Achieving Gender Equality 2017- 2021
- ▶ Action Plan for Gender Equality 2021- 2022
- ▶ National Strategy for Protection from Domestic Violence
- ▶ Strategy of Montenegro for the Reform of the Judiciary 2019-2022
- ▶ Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2021-2022

Reports and Studies

- ▶ Global Gender Gap Report, 2021
- ▶ Human Development Report 2022
- ▶ EIGE, Gender Equality Index Montenegro, 2019
- ▶ Committee on the elimination of discrimination against women, Concluding observations on the second periodic report of Montenegro, 2017
- ▶ Third Periodic Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), submitted by Montenegro in 2021
- ▶ Report of Montenegro on the Implementation of Beijing Declaration and Platform for Action (BPfA) and 2030 Agenda for Sustainable Development (2030 Agenda), 2019
- ▶ NGO Shadow Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 2017
- ▶ European network of legal experts in gender equality and non-discrimination, Country Report, Gender Equality, Montenegro, 2020
- ▶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Communication on EU Enlargement Policy, Montenegro 2021 Report
- ▶ European Commission Staff Working document, Montenegro 2021 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 Communication on EU Enlargement Policy
- ▶ Center for Democratic Transition, Judiciary in the shadow of consecutive mandates, 2020
- ▶ Freedom House, Nations in Transit, Montenegro, 2020
- ▶ Rapport of 29 April 2011 of Special rapporteur Gabriela Knaul on the independence of judges and lawyers, A/HRC/17/30
- ▶ Annual Report on the work of the judicial council and total balance in the judiciary for 2020
- ▶ Geneva Forum Series, *Women and the Judiciary*, no.1, Materials relating to the 2013 Geneva Forum of Judges and Lawyers convened by the International Commission of Jurists
- ▶ OECD Toolkit for Mainstreaming and Implementing Gender Equality, Implementing the 2015 OECD Recommendation on Gender Equality in Public Life
- ▶ IDLO, The Judiciary Gender Audit, 2019



MONTENEGRO
SUPREME COURT

This publication was produced with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party.

ENG

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

www.coe.int

The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

www.europa.eu

Funded
by the European Union
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented
by the Council of Europe