

Montenegro

1. Discrimination in the family

a) Overarching legal framework for marriage

The law establishes that a marriage is based upon the equality of both parties and mutual dependence upon one another (Family Law of Montenegro, s. 3). The legal regime protects the rights of both spouses and codifies the shared responsibility of property administration and equal division of joint property obtained during the marriage (s. 291).

While the law delineates gender neutral practices, custom and traditional views on marriage still largely dictate the roles of married women and men in the household. These discriminatory, customary practices also appear heightened in rural areas of Montenegro (CEDAW, 2011).

b) Child marriage

While the legal age of marriage is 18 years, a minor aged between 16 and 18 years old may enter into a marriage with court approval. This may be done without the consent of a parent or a guardian, and is practiced irrespective of the gender of the minor petitioner (World Policy Analysis Center). Likewise, a minor may request approval to marry in the exceptional circumstance of pregnancy.

Child marriage is considered illegal under Montenegrin law despite the above exceptions (World Health Organisation (2014)). A number of international organisations have noted serious concerns regarding child marriage of children from the Romani and Balkan Egyptian populations. Specifically, it has been noted by CEDAW (2011) that there is an incidence of arranged marriages of children under 18 in these communities. The committee also addresses the state in recommending more effective investigation and prosecution of individuals aiding forced and early marriages (CEDAW, 2011).

c) Household responsibilities

Spouses have equal duties and responsibilities during the marriage (Family Law of Montenegro, s. 39). Likewise, both spouses are able to determine their joint place of residence (s. 42) and have equal legal responsibilities in providing financial support for the family (Family Law of Montenegro, s. 11, 44). Included in these responsibilities is the guardianship of children, which is shared equally by spouses (s. 4). The law guarantees the same right to mutual support given to married couples. Additionally, any joint-property accumulated during a cohabitation between the two individuals deemed to be in a common-law community is treated as if the couple were married (s. 12).

While the law outlines a series of dispositions assuring legal equality between spouses in relation to household responsibilities, there are still discriminatory practices that delineate stereotypical gender roles for women and girls. The stereotype of the role of women as the mother and wife is frequently perpetuated within Montenegrin society, while men are considered the head of household (CEDAW, 2011).

d) Divorce

Montenegrin family law permits both genders to request divorce proceedings. Grounds for divorce include proof of coercion of one of the parties into the marriage, spousal deception about a significant character trait before entering into marriage or proof of spousal conduct that indicates purposes of the marriage may not be fulfilled (Family Law of Montenegro, s. 50-56). Spouses may also jointly request a divorce by consent (s. 57). Exceptionally, men may not initiate divorce proceedings without the consent of the wife irrespective of the validity of reason if his wife is pregnant or the child is under one year of age (s. 58).

Following the latest reform to the family law in Montenegro, a heterosexual couple may enter into a marriage contract or prenuptial agreement both before and during a marriage. This contract functions to identify the division of property between spouses in the case of divorce (Fondazione Italiana del Notariato). If no marriage contract has been written, assets are divided equally between spouses (Family Law of Montenegro, s. 288). Montenegrin law has developed a disposition, which acts as a mechanism against discriminatory practices regarding joint property: if a spouse only registers his or her immovable property under a single name, the spouse is automatically registered as joint custodian (s. 289). This mechanism aids in preventing particularly women from being unable to claim an equal share of joint property due to biased registration.

e) Inheritance

Under the Inheritance law, both male and female surviving spouses have equal rights to inheritance (World Bank Group). However, spouses that have divorced or annulled a marriage before the death of the testator are not able to claim inheritance rights (Fondazione Italiana del Notariato). Male and female children of the testator also have equal inheritance rights to property under art. 12 and 22 of the Inheritance Law (World Bank Group).

More

Human trafficking in Montenegro has also been a long-term concern of the international community. Particularly, a lack of prosecutions, lenient sentences for perpetrators, as well as an overall inability to identify potential victims of trafficking, including women and children of vulnerable groups of Montenegro, contribute to these concerns (CEDAW, 2011).

Montenegro has amended the Criminal Code in 2010 to specifically target trafficking of human beings. Additionally, the country has been proactively attempting to reduce overall trafficking crimes rates and has adopted a 2017 action plan for the implementation of its 2012-2018 anti-trafficking strategy (*Trafficking in Persons Report, 2017*).

2. Restricted Physical integrity

a) Violence against women

While gender-based violence is briefly mentioned in the Law on Gender Equality, the term “violence against women” has not yet been referenced by the Montenegrin Criminal Code. Likewise, Montenegro has ratified the Istanbul Convention on preventing and combatting violence against

women and domestic violence in 2013, which went into force in 2014; however, the commitment does not seem to yet be transposed in the most recent Montenegrin legal texts (*Country Report on Gender Equality – Montenegro*, p. 45).

Violence against women, including gender-based violence, is a prevalent issue in Montenegro. Despite recent commitments to international guidelines, CEDAW reports indicate a high incidence of sexual and domestic violence targeted against women and girls (CEDAW, 2011).

b) Domestic violence

In addition to the dispositions within the Criminal Code, Montenegro passed the Law on Protection from Domestic Violence, which went into force in 2010. Domestic violence has also been addressed through public policy efforts through the implementation of a 2016-2020 strategy plan (*Montenegro 2016 Report*, p. 64).

Domestic violence is a criminal offense (Criminal Code, s. 220). The article states that an individual who uses gross violence to violate the physical or mental integrity of a family member shall face a fine or a sentence in prison of up to one year. If the above act is committed using a weapon, which inflicts severe harm to the family member, the perpetrator may be charged between three months and three years depending on the severity of the crime. If said crime is committed against a minor family member, the perpetrator faces between one to five years in prison. If under any of the above circumstances, the act resulted in the death of a family member, the perpetrator faces between three to twelve years in prison. Any court-ordered remedial measures, such as restraining orders, that are not respected by the perpetrator shall be punished by a fine or a prison sentence of up to six months.

Despite efforts, CEDAW indicates that sexual and domestic violence targeting specifically women and girls is of high concern within Montenegro. It appears that there is a lack of reporting, which may be correlated to an overall lack in prosecutions and lenient sentences for perpetrators. There is also evidence suggesting a lack of resources for victims of domestic violence, including shelters for women aimed at psycho-social rehabilitation (CEDAW 2011).

c) Rape

Rape is a criminal offense under Article 204 of the Criminal Code, which is defined as any act of sexual nature that is performed using force or the threat of bodily harm. Rape is punishable by a term of two to ten years. If the same act is committed under the threat of blackmail, revealing damaging information to the public, or any other act deemed grave by a Court of law, the individual shall be punished with a prison sentence of one to eight years. If in either of the above cases results in serious bodily harm to the victim, the perpetrator shall incur a prison sentence from three to fifteen years. Likewise, if gang rape is committed in an “especially cruel or degrading manner” or if the rape violates a minor, or where the rape results in a pregnancy, the sentence carries three to fifteen years for the perpetrator. Furthermore, if a victim dies as a result of rape or if the rape involved a child, the sentence carries five to eighteen years.

The guidelines for sentencing perpetrators of rape vary widely. The law provides judges with a large degree of discretion in determining a sentence, and as women are predominantly the victims of rape

and sexual violence, the law would appear to disproportionately affect women's access to legal remedies and justice (Criminal Code of Montenegro, s. 204).

Recent studies suggest that the average sentence is three years. As a result, rape may go unreported due to lack of confidence in the judicial process and in local law officials to protect their interests (2016 *Country Reports on Human Rights Practices - Montenegro*).

Spousal rape is likewise recognized under article 212 of the Civil Code of Montenegro; however, spouses may only pursue remedies through private litigation. Marital rape is not subject to ex officio prosecution. This practice is highly discriminatory towards women who are disproportionately affected by incidences of sexual violence within the family sphere. Nonetheless, domestic violence against family members is included under article 220 of the Criminal Code, which indicates that spousal rape could be charged as a "gross violation of bodily integrity"; however, this crime carries either a fine or a maximum sentence of one year (Criminal Code of Montenegro, s. 220). In practice, however, spousal rape remains of high concern, considering the high incidence of sexual and domestic violence against women and girls in Montenegro according to CEDAW (2011).

d) Sexual harassment

Montenegro defines sexual harassment as any form of physical, verbal, or non-verbal sexual conduct that (Law on Gender Equality in Montenegro, s. 4). Additionally, sexual harassment is equated to a form of discrimination, which is protected under article 8 of Montenegro's Constitution. A violation of freedom of direct or indirect discrimination by a legal person carries a sentence of 6 months to 5 years in prison (Criminal Code of Montenegro, s. 443). This criminal provision may also be applied to cases of discrimination or sexual harassment incurred by human rights activists while working in Montenegro.

Sexual harassment remains a concern within Montenegro (U.S. State Department, 2016). CEDAW (2011) indicates the lack of sex-disaggregated data concerning sexual harassment against women in the labour market.

e) Female genital mutilation

There is no evidence to suggest that the practice of female genital mutilation is a concern in Montenegro (UNICEF, 2016).

f) Abortion

The law on abortion in Montenegro provides for women's legal right to terminate a foetus. During the first ten weeks of pregnancy, women are able to obtain an abortion upon request irrespective of reason. Between 10 and 20 weeks of pregnancy, an abortion may be requested under certain circumstances including medical advice or indications that the child will have serious physical or mental impairment. Likewise, the law provides for abortions during 10 and 20 weeks for those women whose pregnancy is a result of a criminal act or if she faces serious familial consequences as a result of the pregnancy and birth of child. After 20 weeks and up to 32 weeks, an abortion may be performed as a result of either medical advice or indications of serious birth defects of the child with the approval of an Ethics Committee. After 32 weeks, a pregnancy may only be aborted to save the life of a pregnant

woman. If a minor pursues an abortion, the parent or legal guardian must provide his or her written consent before the procedure occurs.

The law on abortion provides several mechanisms to reduce discriminatory practices, particularly related to sex selection of children. The law prohibits women from performing an abortion for the purposes of sex selection. Furthermore, the law prohibits women from performing tests related to sex determination during the first ten weeks of pregnancy except in cases presenting high risk for transmission of hereditary disease to the child (Law on the conditions and procedures for abortion).

While the law provides a number of protections for women, it requires the costs of an abortion performed on request to be paid in full by the pregnant woman.

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The Constitution guarantees the right to own, use make decisions over and use as collateral of property to all citizens irrespective of gender (Constitution of Montenegro, s. 58). The right to own property applies to both unmarried and married women of Montenegro. Spouses who have joint property are given equal ownership rights: joint property is defined by the Montenegrin Family Law as any property accumulated during the marriage as a result of work, as well as any revenue resulting from said property (Family Law of Montenegro, s. 288).

Montenegro also assures equal spousal access to property rights by ensuring that all immovable property registered under one spouse's name is immediately considered as acquired by the unnamed spouse. This mechanism aims in ameliorating women's equal access to joint property during marriage and in divorce proceedings.

b) Secure access to formal financial resources

There is no specific legislation guaranteeing women's right to access formal financial resources; however, article 18 of the Constitution reaffirms the principle that women may not be discriminated against on the basis of sex. There is no evidence to suggest that there are de jure laws that discriminate against women's right to access formal financial resources including access to credit and to open a bank account (World Bank Group).

Notwithstanding, traditional and customary practices often discriminate against a women's right to financial independence in Montenegro (U.S. State Department, 2016).

c) Workplace rights

Unmarried and married women in Montenegro are guaranteed the equal right to pursue a trade or profession in the same way as a man (Constitution of Montenegro, s. 62). Likewise, men and women are guaranteed equal salaries for work of equal value (Labour Law of Montenegro, s. 77). In addition, the Criminal Code as well as the Law on the Prohibition of Discrimination (2010), establishes a general guarantee of equality and protection from workplace discrimination. The Labour Law of Montenegro also codifies the prohibition of indirect and direct discrimination against persons seeking employment

and employed individuals. Among other grounds, this prohibition includes discrimination based upon gender, sexual orientation, and pregnancy (s. 5). Although the Labour code states that employment requirements for a position both during and after the hiring process may not discriminate based upon gender of applicant (s. 7), this standard does not extend to positions, which are considered dangerous or potentially hazardous to the health of a woman (s. 104-105).

Maternity leave is included in the Labour Law of Montenegro. Parental care is also included within the framework concerning workplace rights; however, there is no stipulation on paternity leave. A woman may recommence work after the mandatory period of maternity leave (minimum 28 days before pregnancy until a minimum of 45 days following the birth of child) before the conclusion of her maximum maternity leave. If the female spouse chooses to leave before the end of her paid maternity leave, parental care leave is guaranteed until the expiry of 365 days from the birth of the child (Labour Law of Montenegro, s. 111).

In practice, women appear to be disproportionately affected in the labour market by unemployment. Reports from CEDAW (2011) indicate that women are more likely to be unemployed and are also more likely to accept low-paid positions. When a woman is hired, there is also evidence to indicate that an employer may be more likely to place her on a fixed-term contract in order to circumvent legal obligations to a mother regarding family law, including maternity leave pay. Separately, women from the Roma, Ashkali, and Egyptian populations within Montenegro are largely excluded from the formal labour market (CEDAW, 2011).

4. Restricted Civil liberties

a) Citizenship rights

Both married and unmarried women in Montenegro are able to confer citizenship rights to their children (Law on Montenegrin Citizenship, s. 5, 6, 16). Likewise, a Montenegrin woman may confer citizenship to a non-national man in the same way as a Montenegrin man (Law on Montenegrin Citizenship, s. 11). All citizens are required to have a national identification card upon reaching 18 years of age. This stipulation does not discriminate between sexes or marital status (Identification Card Act, s. 2-3).

There is no evidence from research to suggest the presence of de jure discriminatory practices in relation to citizenship rights against women in Montenegro. However, there are consistent concerns voiced by the international community concerning the registration of Roma, Ashkali, and Egyptian (RAE) women and children within Montenegro. These minorities have a higher incidence of an inability to access personal identification documents (CEDAW, 2011).

b) Voting

Montenegro has universal suffrage, which has been codified as a fundamental political right within the Constitution. Every Montenegrin citizen has the right to participate in the electoral process, provided that she or he has reached 18 years of age having resided in Montenegro for at least two years. All elections are both general and equal, assuring Democracy through the use of secret ballot (Constitution, s. 45).

c) Political voice

All citizens above the age of 18 having completed a minimum 2-year residency requirement may present in general elections in Montenegro (Constitution, s. 45). Montenegro's Law on Election of Councillors and Representatives requires both national and sub-national elections to include legislated candidate quotas. This quota mandates that at minimum 30% of all candidates presented on an electoral party list must represent the least represented gender (*Country Report on Gender Equality – Montenegro*, pg. 16).

Women have largely been and continue to be underrepresented in general elections at both the local and state-levels as a result of cultural barriers and gender norms perpetuated throughout Montenegrin society. It appears that women's participation may be discouraged by politician's and media's use of sex-discriminatory statements and imagery. Of increasing interest are the Roma, Balkan Egyptian, and Ashkali communities within Montenegro, who remain highly underrepresented within parliament (CEDAW, 2011).

d) Access to justice

Article 3 of the Law on Courts of Montenegro establishes equality of all Montenegrin citizens before the Courts of Montenegro as well as the rights to access the Courts for the purpose of exercising his or her rights to legal remedy (Law on Courts of Montenegro, s. 3). Likewise, all citizens are entitled to a fair trial within a reasonable time period as well as the right to an impartial judge (s. 5).

The state of Montenegro also provides a disposition in its Constitution for the fundamental right to legal counsel. Every citizen in Montenegro, irrespective of gender or financial situation, has the right to legal aid by an independent professional (Constitution of Montenegro, s. 21). This disposition assures women equal access to representation, particularly in cases when she does not have sufficient financial independence. The right to free, legal counsel has also been codified in the Law on Free Legal Aid (2013).

Sources

Committee on the Elimination of Discrimination against Women Sixty-seventh session 3-21 July 2017
Item 4 of the provisional agenda Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women,
CEDAW/C/MNE/Q/2,
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMNE%2fQ%2f2&Lang=en, [accessed 5 July 2017].

Constitution of Montenegro (2007),
https://www.constituteproject.org/constitution/Montenegro_2007.pdf?lang=en [last accessed: 7 July 2017].

Criminal Code of the Republic of Montenegro (2003, amended 2011),
<http://www.legislationline.org/documents/section/criminal-codes/country/57> [accessed 5 July 2017].

European Commission, Country Report on Gender Equality – Montenegro,
http://webcache.googleusercontent.com/search?q=cache:EycGywE6AisJ:ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-me-country_report_ge_final.pdf+&cd=8&hl=en&ct=clnk&gl=us&client=safari [7 July 2017].

European Commission, Montenegro 2016 Report, 2016, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf [7 July 2017].

Family Law of Montenegro,
<http://webcache.googleusercontent.com/search?q=cache:F1BDgW0v0mMJ:en.sudovi.me/podaci/en/vrhs/dokumenta/77.pdf+&cd=11&hl=en&ct=clnk&gl=us> [5 July 2017].

Fondazione Italiana del Notariato, “Montenegro’s Report Family and Succession law”,
<http://elibrary.fondazione-notariato.it/articolo.asp?art=39/3949&mn=3> [5 July 2017].

Identification Card Act (1993), <http://www.legislationline.org/documents/id/3933> [7 July 2017].

Labour Law of Montenegro (2012), http://www.mipa.co.me/dcs/LABOUR_LAW_.pdf [7 July 2017].

Law on Courts of Montenegro (26 February 2015),
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2015\)049-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2015)049-e) [7 July 2017].

Law on Free Legal Aid (2013),
http://webcache.googleusercontent.com/search?q=cache:UwniVUO8n1IJ:www.mpa.gov.me/ResourceManager/FileDownload.aspx%3Frid%3D150878%26rType%3D2%26file%3DPravo_Eng.pdf+&cd=2&hl=en&ct=clnk&gl=fr&client=safari [26 August 2017].

Law on Montenegrin Citizenship (2008), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=555218f04> [7 July 2017].

Law on the conditions and procedures for abortion (2009), <https://www.hsph.harvard.edu/population/abortion/MONTENEGRO.abo.htm> [7 July 2017].

UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations of the Committee on the Elimination of Discrimination against Women, 3-21 October 2011, CEDAW/C/MNE/CO/1, <http://www.refworld.org/docid/565312dd4.html> [20 August 2017]

UNDP Montenegro, “Small Arms and Gender-Based Violence in Montenegro”, <http://www.seesac.org/f/docs/Gender-and-Security/SMALL-ARMS-AND-GENDER-BASED-VIOLENCE-IN-MONTENEGRO-EN.pdf>, [7 July 2017].

UNICEF (2016), ‘State of the World's Children Report 2016’, UNICEF (2016), https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf [last accessed: 5 July 2017].

United States Department of State, Trafficking in Persons Report 2017, <https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm> [5 July 2017].

United States Department of State, 2016 Country Reports on Human Rights Practices - Montenegro, 3 March 2017, <https://www.state.gov/documents/organization/265666.pdf> [July 2017].

World Bank Group, Women, Business, and the Law, Creating Economic Opportunity for Women, available at : <https://wbl.worldbank.org/data/exploreconomies/montenegro/2013?topic=using-property#accessing-institutions> [5 July 2017].

World Health Organisation (2014), “Global Status Report on Violence Prevention (Montenegro)”, http://www.who.int/violence_injury_prevention/violence/status_report/2014/coutry_profiles/MONTENEGRO.pdf?ua=1 [7 July 2017].

World Policy Analysis Center (2017), “Montenegro”, <https://www.worldpolicycenter.org/countries/montenegro/policies/marriage> [5 July 2017].