

PREVENT AND RESPOND

Regional Handbook

on Preventing and Responding
to Gender-Based Discrimination,
Sexual Harassment and Abuse

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on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment and Abuse

Sarajevo, Podgorica, Skopje, Belgrade, 2021



GENDER
EQUALITY
IN THE
MILITARY

AUTHORS

Note: To enable a better understanding of the abstract concepts related to certain manifestations of discrimination, the Handbook provides numerous examples of gender-based discrimination, sexual harassment, and abuse. These examples are fictitious and any possible resemblance to actual cases of discrimination is accidental and unintentional. Good practice examples describe the achievements and success stories of the Ministries of Defence of the partner countries in the regional project "Strengthening of Regional Cooperation on Gender Mainstreaming in Security Sector Reform in the Western Balkans" in establishing and developing mechanisms and practices aimed at preventing gender-based discrimination. The overview of regulations, examples of good practice, the organization and manner of the work of state administration bodies, and statistical data refer to the period ending in November 2020. All information was provided by the members of the regional Working group, appointed by the MoDs.

The Regional Handbook on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment and Abuse was prepared by the members of the Regional Working Group nominated by the Ministries of Defence of Bosnia and Herzegovina, Montenegro, Republic of North Macedonia and Republic of Serbia, with support of the SEESAC team.

SEESAC would like to express gratitude to the members of the Regional Working Group, as follows:

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Prof. Nevena Petrušić, PhD provided expert support in developing the Handbook.

The publication of Regional Handbook on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment and Abuse was developed with financial support of governments of Norway and the Slovak Republic in support of Strengthening of Regional Cooperation on Gender Mainstreaming in Security Sector Reform in the Western Balkans project.

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The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) is a joint initiative of the United Nations Development Programme (UNDP) and the Regional Cooperation Council (RCC) aimed at strengthening national and regional capacities to control and reduce the proliferation and misuse of small arms and light weapons, thus contributing to enhanced stability, security and development in South Eastern and Eastern Europe.

www.seesac.org

Translation: Dušan Miljković
Proofreading: Andrew Wiesike
Design and layout: Ivan Čulafić
Printed by: Cicero, Belgrade
Circulation: 100 copies

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The names and materials used in this publication do not necessarily reflect the views of the United Nations Development Programme on the legal status of any state, territory or region.

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PREFACE

Since 2002, the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) of the United Nations Development Programme (UNDP) and the Regional Cooperation Council (RCC) have been supporting efforts to strengthen the capacities of national and regional stakeholders to control and reduce the proliferation and misuse of small arms and light weapons (SALW) in order to increase stability, security, and development in Eastern and South Eastern Europe. An important segment of this work is strengthening the regional cooperation in the field of gender mainstreaming in the security sector and strengthening the capacities of the Ministries of Defence and the Armed Forces to implement gender-responsive policies. This goal is being achieved through the cooperation of UNDP SEESAC with the Ministries of Defence of the Western Balkans countries: Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia, and the Republic of Serbia, with the financial support of the Ministry of Foreign Affairs of the Kingdom of Norway and the Ministry of Foreign and European Affairs of the Slovak Republic.

One of the landmarks of regional cooperation aimed at gender mainstreaming the policies and practices of defence systems is the development of the Handbook on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment, and Abuse in the Ministries of Defence and the Armed Forces of the Western Balkans countries (hereinafter – the Handbook). The Handbook is the result of the coordinated efforts of the regional Working Group, composed of appointed representatives of the Ministries of Defence of Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia, and the Republic of Serbia, with expert and administrative support from the UNDPSEESAC team. The Handbook is designed as a joint resource and represents the commitment of the Ministries of Defence to be proactive in ensuring adherence to principles of gender equality, equal opportunities, and non-discrimination.

It is our hope that the Handbook will contribute to increasing the visibility of gender discrimination, sexual harassment, and abuse and enhance the effectiveness of the fight against discrimination. Another aim of the Handbook is to raise gender awareness and improve gender competencies of all employees in the defence systems, which is a basic prerequisite for efficiently responding to and combating gender-based discrimination, as well as for creating a safe and friendly work environment where human dignity and integrity are respected as the highest common values.

Authors

ACRONYMS

AP Action Plan	GAD Gender and Development	NGO Non-governmental organization	UN United Nations
ACIMSI Association of Centres for Interdisciplinary and Multidisciplinary Studies and Research	GAP Gender Action Plan – Bosnia and Herzegovina	OSCE Organization for Security and Cooperation in Europe	UNDP SEESAC United Nations Devel- opment Programme / South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
BHMAC Bosnia and Herzegovina Mine Action Centre	GS General Staff	AF Armed Forces	CC Constitutional Court
CEDAW Convention on the Elimination of All Forms of Discrimina- tion against Women	GENAD Gender Adviser	BiH AF Armed Forces of Bosnia and Herzegovina	AFoM Armed Forces of Montenegro
CP Civilian personnel	CfEO Committee for Equal Opportunities	APAGE Action Plan for Achieving Gender Equality in Montenegro	Serbian AF Serbian Armed Forces
CM/Rec Committee of Ministers Recommendation	PSDP Peace, security and defence policy	PMP Professional military personnel	LEO Law on Equal Opportunities
DCAF Geneva Centre for Security Sector Governance	MoD Ministry of Defence	UNSCR United Nations Security Council Resolution	LPD Law on Protection against Discrimination
EC European Commission	NAP National Action Plan	CoE Council of Europe	LPPD Law on the Prevention of and Protection against Discrimination – Rep. of North Macedonia
EU European Union	NATO North Atlantic Treaty Organization	SHAPE Supreme Headquarters Allied Powers Europe	WAD Women and Development
EIGE European Institute for Gender Equality	NCGM Nordic Centre for Gender in Military Operations	SIPA State Investigation and Protection Agency – Bosnia and Herzegovina	WID Women in Development
ECHR European Court of Human Rights	CoGS Chief of General Staff	GES Gender Equality Strategy – Republic of North Macedonia	WPS Women, Peace and Security

GLOSSARY

DISCRIMINATION – any unjustified differentiation or unequal treatment, or omission of action, in relation to individuals or groups, as well as their family members or individuals close to them, in an open or covert manner, which is based on their personal characteristics.

GENDER MAINSTREAMING – a term denoting the strategy of introducing gender equality in the planning, development, implementation, monitoring, and evaluation of policies, laws, programmes, and measures; policies are designed to reflect the needs, priorities, and specific position of women and men, including women and men from vulnerable social groups, and the effects, and consideration of the effects, of such policies on the position of women and men, with equal participation of women and men in these processes. The introduction of gender equality into policies aims to achieve gender equality in all areas of social and private life. The “gender mainstreaming” strategy has been translated in various ways (in the languages of the Western Balkans countries): “systemic introduction of the gender perspective,” “introduction of gender equality into the mainstream,” “gender-aware policy,” “gendering of public policies,” “gendering,” “gender integration,” “integration of the gender perspective,” etc.

LGBT, LGBT+ – acronym derived from the words lesbian, gay, bisexual, and transgender persons. The acronym denotes persons of various sexual orientations and gender identities, including persons who do not accept that there are only two sexes, i.e., only two genders. LGBT+ signifies the increasing number of gender identities and orientations that also represent a departure from the traditional binary division into two sexes, male and female.

PERSONAL CHARACTERISTICS – personal attributes of an individual that determine one’s physical, psychological, spiritual, economic, or social identity. Personal characteristics include a variety of attributes that distinguish people, such as race, nationality, citizenship, language, sex, gender identity, disability, religious or political beliefs, sexual orientation, health status, marital and family status, and many other personal characteristics. In the context of discrimination, personal characteristics represent the grounds of discrimination. It is prohibited to discriminate against an individual or group of individuals on the grounds of any of their personal characteristics, both real and assumed.

MARGINALIZATION – the exclusion of members of certain groups from society, i.e., “pushing” them to the margins of society, which makes it difficult for them to access goods and services and exercise their rights.

MOBBING – harassment at work involving active or passive behaviour towards an employee or a group of employees that is repeated and aimed at violating human dignity, reputation, and/or personal and professional integrity, thus causing fear and creating a demeaning and offensive work environment. Mobbing is a form of psychological and/or physical violence that leads to an individual being isolated and often leaving work due to systematic and continuous pressure. Mobbing can be carried out by the employer as a natural person or as a legal person/entity, as well as by an employee or a group of employees. Unlike discrimination, which is always related to personal characteristics, mobbing can be based on personal intolerance or on professional goals to be achieved at any cost. Mobbing may or may not be related to gender-based discrimination and/or sexual harassment.

NEGATIVE PREJUDICES – persistently maintained negative attitudes about members of a certain social group, which are not based on knowledge and serious consideration, but rather represent unfounded and unsubstantiated opinions.

IMMEDIATE DISCRIMINATION – putting individuals or groups of individuals at a disadvantage due to their personal characteristics, by an act, action, or omission, in relation to other individuals in the same or similar situation.

SEX – a word denoting the biological differences between men and women; women are carriers of the XX chromosome pair and men of the XY chromosome pair and have different roles in the reproduction process; these differences between men and women, which are universal, obvious and, as a rule, immutable, exist at all times and in all societies, regardless of living conditions, social status, or ethnic or racial background.

SPECIAL (AFFIRMATIVE) MEASURES – legal and other measures taken for the benefit of social groups that are, in practice, in an unequal position compared to other citizens, so as to enable them to achieve full (substantive) equality. Special measures, which are of a temporary nature, are used to remedy the consequences of long-term systemic discrimination and accelerate the process of achieving substantive equality. For this reason, special measures do not constitute discrimination.

VULNERABLE GROUPS – social groups that, due to their specific differences in relation to the general population, require additional support in order for their members to be equally included in the life of the community; due to their social position, vulnerable groups are at greater risk of discrimination (for example: children, people with disabilities, the elderly, LGBT+, etc.).

GENDER – means the socially determined roles, behaviours, activities, and characteristics which a given society considers suitable for, and associates with, women and men. The attitudes and behaviours that one society prescribes to women and men are learned and can change. The term “gender” is often erroneously equated with the term “sex.” It should be noted that the two terms are not synonyms as sex is biologically conditioned and, as a rule, immutable, whereas gender comprises a wide range of variations within and between cultures and is changeable.

GENDER ANALYSIS – the process of identifying and considering differences in the conditions, needs, representation, access to resources, control of resources, decision-making power, etc., between women and men based on the gender roles assigned to them.

GENDER IDENTITY – refers to a personal understanding of one’s own gender, which may or may not coincide with one’s innate, biological sex or a sex-assigned gender role; gender identity is a person’s experience of their own body, which includes the possibility to correct and change the body with hormones or surgery and to express one’s gender determination through behaviour, clothing, speech, gestures, etc. Most persons determine their gender in accordance with their biological sex, perceiving themselves as a man or a woman, but the gender identity of some persons differs from their sex assigned at birth and may go beyond the binary gender division.

GENDER EXPRESSION – the way in which an individual expresses their gender identity through clothing, behaviour, appearance, speech, non-verbal communication, etc. Every individual uses some form of gender expression, because it is an inseparable part of every individual’s identity.

GENDER EQUITY – the equitable treatment of women and men, in accordance with their needs and following the principle of equality of all people. For treatment to be equal, it is necessary that the circumstances that have led to any discrepancies in the treatment of women and men be taken into account. Gender equality is the goal to be achieved through gender equity.

GENDER PERSPECTIVE – taking into account gender differences in the planning, development, and implementation of public policies.

GENDER EQUALITY – equal participation of both sexes in all areas of social and private life, as well as their equal position, equal opportunities for exercising rights, and equal benefit from the achieved results; gender equality is the opposite of gender inequality, not of gender differences; as a legal principle, gender equality promotes the full participation of women and men in society.

GENDER ROLES – a set of characteristics, behaviours, attitudes, activities, norms, duties, and assumptions that a certain society or culture assigns to and expects and often demands from individuals with regard to their assigned sex. Gender roles are adopted in the process of socialization, primarily within the family, and are transmitted and maintained through education, media, social customs, religion, culture, art, etc. This learned behaviour constitutes gender identity and determines gender roles.

SEXISM – a belief that one of the sexes is inferior, less capable, and less valuable than the other (e.g., expressing the view that women are incapable of working in politics). It comes from the English word sex in its meaning of biological sex. This term also comprises misogyny – hatred towards women, as well as misandry – hatred towards men.

SEXUAL ORIENTATION – emotional and sexual attraction to persons of a particular sex. With regard to sexual orientation, there are people attracted to the opposite sex (heterosexual people), people attracted to the same sex (lesbians and gays), and people attracted to both sexes (bisexual people).

STEREOTYPES – widely accepted simplified ideas about specific groups; beliefs, generalized attitudes, preconceived negative opinions about a certain group, whereby all members of the group are attributed with the same characteristics and their individual characteristics are denied. Gender stereotypes are a common cause of an unequal position of women and men in the family and society.

TRANSSEXUAL PEOPLE – people whose experience of their gender identity is different from their sex assigned at birth. Transsexual people typically seek to physically modify their body (through hormone therapy and/or surgery) to bring it into harmony with their gender identity.

TRANSGENDER PEOPLE (trans people) – a common name for all persons whose gender identity differs from their sex assigned at birth; they can have various gender identities, expressions, and behaviours, which are not related to their sex and/or the traditional understanding of gender roles in society; transgender people may have a need to physically modify their body, although there are those who do not feel this need; transgender people sometimes go beyond the division into male and female gender by their non-binary identities. Trans men – people who are assigned as female at birth, but who have a male gender identity. Trans men most commonly live permanently as men and can, but do not have to, go through the process of sex reassignment through hormone therapy and/or sex adjustment surgery. Trans women – people who are assigned as male at birth, but who have a female gender identity. Trans women most commonly live permanently as women and can, but do not have to, go through the process of sex reassignment through hormone therapy and/or sex adjustment surgery.

INDIRECT DISCRIMINATION – putting individuals or groups of individuals at a disadvantage due to their personal characteristics through an act, action, or omission which is ostensibly based on the principle of equality and non-discrimination, unless justified by a legitimate aim, with the means to achieve this being appropriate and necessary.

INTRODUCTION

The Regional Handbook on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment and Abuse (Handbook) was written with the aim of increasing the capacities of internal mechanisms for the implementation of gender equality and equal opportunities policy and, above all, to serve as a collection of practical tools for identifying, preventing, and combating all forms of gender-based discrimination. The Handbook is primarily intended for persons in the Ministries of Defence and the Armed Forces directly engaged in and responsible for resolving cases of gender-based discrimination, sexual harassment, and abuse. The Handbook is also intended to be useful for everyone involved in the creation and implementation of gender-responsive policies in the defence sector, yet also for those interested in learning more about the manifestations of gender-based discrimination, sexual harassment, and abuse, so that they are enabled to identify and adequately respond to them.

The Handbook integrates gender-relevant knowledge and experience from four Western Balkans countries, i.e., four defence systems. It is the result of the collaboration of members of the Working Group consisting of eight appointed representatives of four Ministries of Defence. The Working Group combined and utilized its members' knowledge and experience in workshops and small group work in the period from September 2019 to September 2020 to devise the concept of, prepare contributions for, and shape the final text of the Handbook. This participatory process provided members of the Working Group with an opportunity to exchange ideas and share experiences and examples of good practice while enhancing the cooperation between, and capacities of, the Ministries of Defence and the Armed Forces of the Western Balkans countries for strengthening the mechanisms for combating and protecting against gender-based discrimination.

The process has also contributed to, and should continue to contribute to, more effective gender mainstreaming in security system reform processes. **The Handbook is divided into five thematic chapters. Chapter One** presents the concepts of equity and gender equality and explains the essence of discrimination as a social and legal phenomenon, as well as various forms and manifestations of gender-based discrimination, sexual harassment, and abuse. **Chapter Two** is dedicated to international standards and the legal, strategic, and institutional frameworks for gender equality and equal opportunities policy in each of the countries. **Chapter Three** gives an overview of measures and examples of good practice in the prevention of gender-based discrimination, sexual harassment, and abuse in the armed forces and in the promotion of the principle of equality and non-discrimination as an essential principle in defence sector reform. **Chapter Four** provides an overview of mechanisms for protecting against gender-based discrimination, sexual harassment, and abuse. It presents protection mechanisms at the international, regional, and national levels. The special focus is on the internal mechanisms of protecting against gender-based discrimination, sexual harassment, and abuse in the defence system. It presents informal procedures based on the principles of restorative justice, as well as formal procedures carried out to determine discrimination, sexual harassment, and abuse and to impose appropriate measures. This chapter also explains the implementation of the discrimination test, a complex process that requires specific knowledge and skills and appropriate value judgements. Various forms of assistance and support provided to victims of discrimination during and after the procedure are also presented. The final chapter, **Chapter Five**, presents various models for collecting relevant data that have been developed in the armed forces for the purpose of permanently monitoring and analysing the situation in terms of achieving gender equality and non-discrimination.



1. EQUALITY AND NON-DISCRIMINATION – BASIC CONCEPTS

1.1. General remarks

In modern society, equality of people represents a key moral and legal principle. This principle means that all people are equally worthy of respect and equal in dignity and rights. Although the struggle for equality dates back to ancient times, as late as the 19th century it was generally accepted that people were not naturally equal. The idea of the general equality of all people was finally accepted and proclaimed only after World War II in the Universal Declaration of Human Rights from 1948. Today, the principle of equality is woven into the foundations of modern law and is at the core of the entire concept of human rights. In this sense, the right to equality is recognised as an “underlying right,” because it is a precondition for the enjoyment of all other human rights, yet it is, in and of itself, a special human right – a right that binds everyone and which is provided independent protection. Its essential purpose is to create the preconditions that enable everyone to enjoy all guaranteed rights on an equal basis with others; in some cases, this requires respecting, and in some cases ignoring, differences between people in order to achieve equality.

1.2. Equality – models, concepts, and terms

The content and scope of the principle of equality may vary¹. In general, this principle appears in three forms: formal equality, substantive equality², and inclusive equality.

Formal equality (*de iure* equality) means that everyone is equal before the law, that we are all “equal in rights,” i.e., that we have the same rights and the same freedoms. It follows that everyone should be guaranteed the same rights and freedoms and everyone should be treated the same (equally). Formal equality does not consider and take into account differences between people. Its focus is on the requirement that individuals in the same or similar situation be treated in the same way, i.e., that their treatment is the same, regardless of the differences between them.

The negative side of this model of equality is reflected in its very modest scope. Contrarily, formal equality frequently maintains and even deepens real inequality in society, because it does not take into account the differences and unequal social positions of the members of certain social groups. Therefore, the equal treatment of people in unequal positions leads in practice to even greater inequalities. Thus, for example, a rule requiring a high level of formal education as a precondition for employment, although applied equally to all, results in the exclusion of many who have been confronted with barriers to education, such as people with disabilities, who are often faced with physical barriers in education (such as in the case of wheelchair users being denied access to physical facilities without appropriate conditions provided), as well as many other people exposed to other types of physical and social barriers.

Substantive equality (*de facto* equality) is broader than formal equality and means that people can truly enjoy guaranteed rights and have equal access to all the resources at society’s disposal. Substantive equality takes into account that certain groups of people, due to some of their personal characteristics, have been unfairly

¹ The concept of equality will be elaborated upon here, while the further text will explain the relationship between the concepts of equality and equity and the reasons why equal treatment in some cases can lead to inequality. The concept of gender equality is explained in detail in Chapter 2.3 of this Handbook.

² [McCadden, C. The New Concept of Equality, 2003; The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality, Equal Rights Trust, London, 2007;](#) Stefan Gosepath, The Principles and the Pre-sumption of Equality, in: Carina Fourie, Fabian Schuppert and Ivo Wallimann-Helmer (eds), *Social Equality: On What It Means to Be Equals*, Oxford University Press, New York, 2015; Marinković, T. *Pravna i suštinska jednakost – konceptualna razgraničenja*, in: *Sudska građanskopravna zaštita od diskriminacije*, (Nevena Petrušić ur.), Beograd: Poverenik za zaštitu ravnopravnosti, Pravosudna akademija, 2012.

denied their rights for centuries, which makes their position in the community unfavourable compared to other members of the community. As a result, their ability to access rights and public resources is not evenly distributed within the community. This situation calls for favourable treatment of those in such an unequal position, to the extent of their inequality. This difference in treatment does not violate the principle of equality; on the contrary, it is the necessary means of its realization.

EXAMPLE: The history of civilization is marked by gender inequality and the subordination of women to men. For much of recorded history, and even into recent history, in the military and in society in general, many rights, positions, and resources have not been available to women. Due to the traditional perspective that the military is a "male space" and that women have no place in the military ranks, women have mostly been engaged in the military only as civilians in medical and administrative jobs. This situation is gradually changing through appropriate special measures to ensure that in all areas, including in the military, women not only have equal rights, but also equal opportunities to access rights, social positions, and resources.

Inclusive equality is a relatively new model of equality, which requires the remedying of existing socio-economic inequalities and the removal of obstacles to full social inclusion to ensure that everyone enjoys all rights and uses all community resources on an equal basis with others. The concept of inclusive equality is based on the position that differences between people, which stem from their personal characteristics, are a matter of human dignity and are an expression of the diversity of the human species. This concept focuses on equalizing the conditions for the enjoyment of all rights, which means ignoring differences between people in certain situations, while in others taking differences into account, to achieve substantial equality (Figure 1).

Different models of equality are related to different contents of equality: the concept of equal rights, the concept of equal outcomes, and the concept of equal opportunities.

The concept of equal rights is limited to equality of rights and its legal expression is equality before the law.

The concept of equal outcomes means that the general living conditions of all people in one society are approximately equal, i.e., that each individual and family is provided with appropriate minimum living conditions. Achieving this type of equality generally requires the transfer of income or wealth from the rich to the poor and the adoption of special measures to reduce and eliminate existing inequalities. The concept of equal outcomes goes beyond equality before the law and encompasses equal benefit from the law.

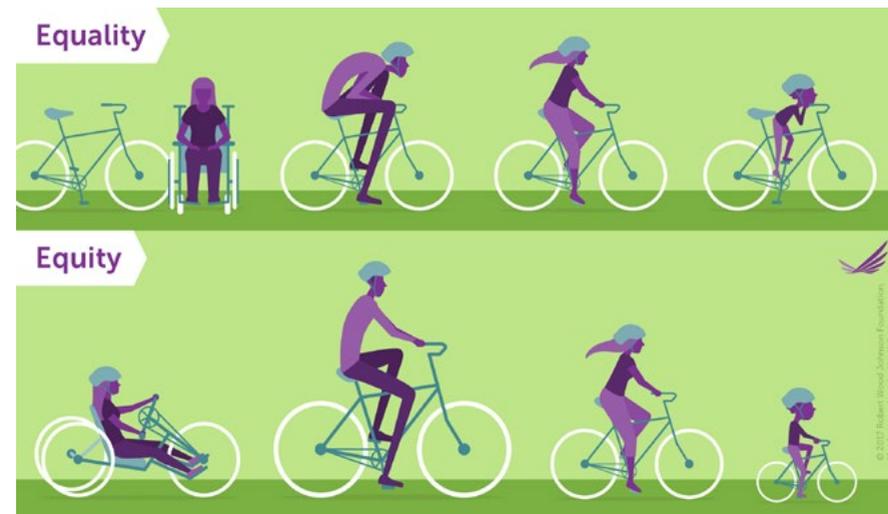


Figure 1: Equality vs Equity (author: Robert Wood Johnson Foundation)

The concept of equal opportunities is a kind of a compromise between the concept of equal rights and the concept of equal outcomes. This concept does not eliminate inequalities between the unequal, but is based on the idea of equalizing the starting positions in order to eliminate the consequences from the past and from structural discrimination to which certain social groups have been and are exposed. For example, the Roma have been exposed to structural discrimination in all spheres of life for centuries, so appropriate measures need to be taken to remove barriers and ensure equal opportunities for access to social resources (for more information on structural discrimination, see Chapter 2.5.2). The creation of equal opportunities should contribute to building an equitable society, one in which each person has the opportunity to develop to their full potential and make a full contribution to the development of society, participating equally with others in the economic, social, political, and cultural life of the community. Applying the principle of equal opportunities to women and men means creating conditions for the equal enjoyment of the rights of women and men through their equal participation in political, economic, cultural, and all other spheres of life and equal enjoyment of the benefits from the community's progress.

The legal expression of equal opportunities is not only equality before the law, but also equality according to the law, and the legal instrument for creating equal opportunities are special measures, which aim to accelerate the road to substantive equality of groups with historically unfavourable treatment.

1.3. Gender equality

1.3.1. Definition of the concept

Gender equality stems from the general principle of equality and non-discrimination and implies equal rights, responsibilities, and opportunities for women and men, girls and boys, and for individuals of different gender identities³. Many laws still refer to equality of the sexes, which is a narrower term than gender equality. The term “gender equality” indicates that its goal is not for women and men to become the same, but to be equal. This involves the affirmation of the principles of legal and actual equality, while respecting the differences between men and women, but also changing the environment where women are in a subordinate position, which ensures equal position and equal opportunities for all.

Gender equality is a situation in which women and men, as well as individuals whose gender identity goes beyond this binary division, are equally visible, participate equally in all spheres of public and private life, and have equal access to all social resources and equal benefits from the community’s progress.

Gender equality means that gender differences are equally respected, valued, and supported, while taking into account the context in which they occur. This means that opportunities to enjoy rights should not be limited by sex/gender and that people should have the freedom to make choices without being restricted by stereotypical gender roles.

³ The gender identity of some people is non-binary, i.e., it goes beyond the traditional gender identities of women and men. Chapter 1.7.4 – Gender-based discrimination deals with this in greater detail.

Gender equality entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility, and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men – the definition of the Council of Europe.

– Source: [Council of Europe Gender Equality Strategy 2018-2023](#), Council of Europe, Strasbourg, 2018.

Equality between women and men (gender equality) refers to the equal rights, responsibilities, and opportunities of women and men and girls and boys. Equality does not mean that women and men shall become the same, but that the rights, re-

1.3.2. Importance of gender equality for individuals and society

There are two main reasons for promoting gender equality. First, the equality between women and men, equal rights, opportunities, and responsibilities is a matter of human rights and social justice. In this sense, gender equality is a fundamental human right which ensures that everyone can develop their personal potentials and make choices without the restrictions imposed by strict gender roles. Second, gender equality is a prerequisite for sustainable people-centred development, which demands that the perceptions, interests, needs, and priorities of women and men be taken into account because they are necessary for the realization and enrichment of essential development processes.

In the modern world, gender equality is seen as the foundation of a peaceful, prosperous, and sustainable world. It is generally accepted globally that the empowerment of women and girls and the achievement of gender equality are key to economic and social progress and one of the main preconditions for inclusive, democratic, and sustainable development. This is why the UN 2030 Agenda for Sustainable Development envisages the empowerment of women and girls and the achievement of gender equality as Goal 5 out of a total of 17 Sustainable Development Goals set out in this agenda. The expected results of achieving SDG 5 are: the elimination of all forms of discrimination and violence against women, including intimate partner violence, sexual violence, and harmful practices, such as child, early, and forced marriage and female genital mutilation, etc.; creating conditions for women to have better access to paid employment, sexual and reproductive health care, and reproductive rights; and real decision-making power in the public and private spheres, which will further ensure that development is fair

responsibilities, and opportunities of women and men shall not depend on whether they were born as male or female. Gender equality means that the interests, needs, and priorities of both women and men are taken into account, while recognizing the differences between certain groups of women and men. Gender equality is not a “women’s issue,” but should concern and fully engage both men and women. Equality between women and men is a human rights issue and a precondition and indicator of sustainable people-centred development.

– Source: [Gender Mainstreaming: Strategy for Promoting Gender Equality](#), UN, Office of the Special Advisor on Gender Issues and Advancement of Women, 2001.

and sustainable. The equal participation of men and women in all areas and at all levels of decision-making is a precondition for the successful implementation of gender equality policy.

Gender equality is in the interest not only of women, but also of men, because achieving gender equality contributes to the well-being and improvement of the quality of life of both women and men. The entire society benefits from the equal participation of women and men in all spheres, because the creativity, abilities, and talents of all people are used for social development. Experience shows that there is a strong link between gender inequality and poverty. The gender perspective is key to understanding poverty since the routes into and out of poverty are gender-specific (Poverty, gender and intersecting inequalities in the EU, EIGE, Vilnius, 2016, 11). Implementing gender equality policy and improving the position of vulnerable groups of women and men contributes to reducing inequalities in society and to achieving social justice. The ultimate goal of gender equality is to live in a happier and more prosperous society, where both women and men have equal access to resources and equal benefits from the achieved results. This is why investing in gender equality, in the long run, is not only ethically sound, but also cost-effective. Gender equality represents a fundamental human right, a basic principle of democracy, and a precondition for social development. For gender equality to be achieved, it must not only be legally proclaimed, but also successfully implemented, which requires the active and equal participation of women and men in decision-making, creating, and implementing gender-responsive policies in all spheres of political, economic, social, and cultural life.

1.3.3. Importance of gender equality in the armed forces

In the armed forces, just as in other agencies and entities in the security sector, respecting the different needs and priorities of women and men and utilizing their diverse knowledge, skills, and competencies is crucial for the efficient and successful mission and role of modern armed forces, which are increasingly focused on crisis management, achieving and maintaining peace, and humanitarian operations.⁴

Meeting the various security needs of women and men and different segments of the population means examining security threats and risks from the gender perspective, which requires understanding the different positions and social roles of women and men and certain groups of women and men in a given society.

Experience and data prove that conflicts and humanitarian crises affect men, women, girls, and boys differently. Military operations conducted in areas with different cultures and gender roles have made it clear that the gender perspective must be an integral part of a comprehensive approach to civil-military crises.⁵ Introducing the concept of human security and taking into account the gender perspective in military operations increases their effectiveness, as the planning and implementation of activities take into account how various security and defence aspects affect men and women, and boys and girls, thus creating conditions for activities to be both safety-oriented and developed and implemented for the well-being of the entire population. This way, the gender perspective becomes a means of improving the military's ability to identify various security needs arising from different social roles, to evaluate threats such as sexual violence and human trafficking, and to evaluate and respond to various situations of humanitarian crises caused by the actions of human beings or by extreme natural disasters.

Concurrently, the complementary knowledge, skills, and competencies of women and men are necessary for the efficient performance of the contemporary nature and duties of the armed forces in a complex security environment.⁶ Research shows that promoting gender equality is one of the most important components in conflict prevention because a higher level of gender equality is associated with sustainable

⁴ [NATO Committee on Gender Perspectives, Handbook for Delegates, Version 2010, 7; CWINF Guidance for NATO Gender Mainstreaming,](#)

⁵ Ibid.

⁶ [NATO Committee on Gender Perspectives, Handbook for Delegates, Version 2010, 10; CWINF Guidance for NATO Gender Mainstreaming, 10.](#)

development and a lower level of violence in interpersonal relationships, thus reducing the likelihood of conflict.⁷ This is why the participation of women at all levels and in all areas is crucial for the success of processes and efforts invested in building and maintaining peace. The participation of women in military operations contributes to a positive change in the perception of the armed forces, as an institution that can consider the gender dimensions of all security challenges, risks, and threats to human security and adequately respond to them. To achieve these goals, it is necessary to increase the representation of women in the defence system and their equal participation in decision-making processes and in creating and implementing policies, with the knowledge and experiences of women and men complementing and enriching each other through their differences.⁸

Gender mainstreaming is an integral part of the security sector reform process across the world, regardless of significant differences between countries in the content, form, goals, and scopes of security sector reform.⁹

In recent years, awareness of gender issues has significantly increased and positive changes have been made in recognizing the potential and contribution of women in improving the efficiency of the armed forces. Thanks to numerous activities aimed at motivating and attracting women to the military operational composition, significant results have been achieved in increasing the share of women in the armed forces, thus alleviating gender imbalances in the institutions of the system. The United Nations Security Council Resolution (UNSCR) 1325 has also contributed to the acceleration of this process, pointing to the inextricable link between international peace and security, gender equality, and women's leadership.¹⁰ This process has been further strengthened by the UN Sustainable Development Agenda 2030, which identifies the empowerment of women and the promotion of gender equality as one of the essential goals of global development. At the same time, efforts are being made to establish effective internal mechanisms for preventing and protecting against gender-based discrimination, sexual harassment, and abuse, as well as other gender-based behaviours, both licit and illicit, in order to ensure a safe and friendly working environment for defence personnel.

⁷ PfPC SSRWG and EDWG, *Teaching Gender in the Military – A Handbook*, Geneva: DCAF and PfPC, 2016, [Teaching Gender in the Military, Geneva: DCAF and PfPC, 2016.](#)

⁸ *The Position of Women in the Armed Forces in the Western Balkans* (ed. Bojana Baton), Belgrade: SEE-SAC, 2014.

⁹ *Ibid.*

¹⁰ *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325*, New York: UN Women; Georgetown Institute for Women, Peace and Security and Peace Research Institute Oslo, 2017.

The reform of the security sector in the Western Balkans, as one of the key aspects of the process of democratization and modernization of the societies therein, is based on respect for human rights, democratic control and public oversight, transparency, and the rule of law. One of the key challenges in this process is to build modern armed forces in line with their own strategic priorities and financial capabilities. The reform of the security sector should contribute to a better understanding of security needs, and therefore increase the security of the entire population, both male and female, regardless of age. Gender mainstreaming is one of the critical preconditions for the efficiency of institutions in the security sector. To ensure that they are protecting the safety of the entire population, all security actors need to have an understanding of the gender perspective when analysing, planning, and carrying out activities aimed at preserving human security.

Despite the results achieved in gender mainstreaming, men still dominate the security sector across the world. Negative attitudes towards women in the military are still widespread in many armed forces systems, reflecting traditional and deep-rooted gender stereotypes and prejudices in these societies. This is one of the reasons for the under-representation of women in certain defence sectors and for their unequal position regarding access to certain levels in the military. This situation is present nearly everywhere in the world, including in the defence systems of the Western Balkans countries.¹¹ Overcoming these constraints requires systematic gender mainstreaming in the Ministries of Defence (MoD) and the Armed Forces (AF) and further work to promote gender equality and effectively prevent all forms of gender-based discrimination and violence.

¹¹ Given that military education has only recently become available to women, they are represented primarily in the lowest positions in the hierarchy, particularly in the so-called other services in the armed forces, which include: civilian personnel, medical personnel, administrative personnel, military police, full-time or part-time reservists, etc. Women make up between 4.46% and 9.54% of all officers in the armed forces of the Western Balkans countries. The share of women among non-commissioned officers ranges between 2.03% to 11%, while their share among professional soldiers ranges from 5% to 15.68%. Compared to 2012, there has been an increase documented in the number of young women interested in studying at military academies; out of the total number of cadets who received their first officer ranks in the 2012/2013 school year, young women accounted for 26.94% in the Republic of Serbia and 23.8% in the Republic of North Macedonia, while in the 2019/2020 school year, this percentage had increased to 37% in the Republic of Serbia and to 32% in the Republic of North Macedonia. The Position of Women in the Armed Forces in the Western Balkans, Belgrade: UNDP SEESAC (study in preparation, data collected during 2020).

1.4. Equality and non-discrimination

Equality and non-discrimination have the characteristics of both principles and rights; they are interconnected and represent “two sides of the same coin.” Discrimination is a violation of the principle of equality, and the exercise of the principle of equality implies the absence of discrimination.

1.5. Discrimination as a social phenomenon

The term “discrimination” comes from the Latin verb *discriminare*, which means to separate, to differentiate. Although it has neither a negative nor a positive meaning, this term has gained a negative connotation over time and it is used today as a synonym for unjustified differentiation of people.

The history of civilization shows that some forms of discrimination, such as racism and sexism, have been alarmingly common and widely socially accepted. Biological differences between people have been abused in many periods and places of human society in order to justify labelling certain races or people as “inferior” and “superior.” Such discriminatory practices were used to justify the caste system in India, the racial order in the colonies, the Nazi regime in Europe, the apartheid in South Africa, and the genocide in Rwanda, among numerous other instances.¹² The ideology of sexism has been widely accepted and implemented throughout history. In ancient Greece and Rome, the position of women was only slightly better than that of slaves, and the entire Middle Ages of Europe were marked by the disempowerment of women.¹³ At the beginning of the 20th century, women were finally granted the right to vote in only a few countries, while even today there are countries where women are still denied the right to vote.¹⁴ In many countries, women are still under-represented in political and public life, which is confirmed by data on the number of women in legislative and executive bodies.

12 Janjić, D. *Rasizam*, Enciklopedija političke kulture, Beograd, 1993; Benedek, W. *Gidens*, E. *Sociology*, Podgorica, CID, 1997; Huntington, S. *Clash of Civilizations*, CID, Podgorica, 1998; Arendt, H. *The Origins of Totalitarianism*, Belgrade: Feministička izdavačka kuća, 1999; Nikolova, M. *Understanding Human Rights*, Manual on Human Rights Education, ERC, NWV Neuer Wissenschaftlicher Verlag, Wien – Graz 2012.

13 Jovanović, M. *Avgustovo bračno zakonodavstvo*, Beograd, Pravni fakultet, 1994; Jovanović, M. *Komentar starog rimskog ius civile*, knjiga prva *Leges regiae*, Niš: Centar za publikacije Pravnog fakulteta u Nišu, 2002; Huseinspahić, A. *Tutela mulierum i pravni položaj žene u starom vijeku*, *Anali Pravnog fakulteta Univerziteta u Zenici*, 4/2008.

14 Obrenić, D. *Pravo glasa žena*, Dodatak 1 i 2, u: *Neko je rekao feminizam*, (pr. Adrijana Zaharijević), Sarajevo, Sarajevski otvoreni centar, 2012.

The world is changing, and people are changing with it, so what was a socially acceptable way of treating other people and different people a hundred years ago, no longer is today. Over time, discrimination has become morally unacceptable and explicitly prohibited by law, while equality of people has become a crucial moral and legal imperative. It is the foundation for building just and inclusive societies, where every individual, regardless of their sex, nationality, religion, sexual orientation, or any other personal characteristics is able to enjoy equal rights and to develop their potentials under equal conditions, using all the resources of society and thus contributing to the development of society in a fair and full manner.

As a social phenomenon, discrimination has many dimensions – primarily divided into legal, political, and social dimensions – and appears in various ways and takes different forms. This is why establishing a suitable general definition of discrimination is so challenging. Ignoring details, it could be stated that discrimination is the less favourable treatment of an individual or group of individuals due to some of their personal characteristics, such as race, sex, nationality/ethnic background, religion, sexual orientation, disability, health status, or other personal characteristics.

1.5.1. Causes of discrimination

Despite frequent and widespread proclamations on the validity of the principles of equality and non-discrimination and to uphold them, discrimination remains present in all cultures and communities. It is also not foreign to countries with developed and stable democratic institutions, nor to those that are still establishing them. Numerous factors are influencing such a situation, including the pervasiveness of stereotypes and prejudices, insufficiently developed human rights culture, conformism, intolerance, etc.

At the root of discrimination are stereotypes and prejudices towards members of certain social groups. This is why discrimination is frequently referred to as “prejudice in action.”

Stereotypes are widely accepted simplified ideas about specific groups, i.e., beliefs, generalized attitudes, and preconceived opinions about a certain group, whereby all members of the group are attributed with the same characteristics and their individual characteristics are neglected. Examples: Italians are great artists; Germans are cold; Roma people are lazy, etc.

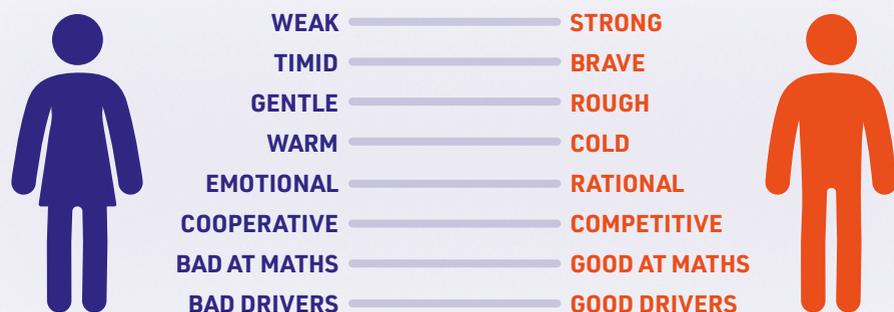
Prejudices are persistently maintained negative attitudes and emotions towards members of certain social groups, which are not based on knowledge and serious consideration, but rather represent unfounded and unsubstantiated opinions.

EXAMPLES: the belief that there are innate differences between races, with one being considered superior to the others (racism); condescending attitudes towards the elderly (ageism); hatred towards people of different sexual orientation, who are considered sinful, immoral, sick, and inferior to heterosexuals (homophobia); hatred, fear, hostility, and disgust towards persons who express their gender identity in a way different from the one assigned to them by the society based on their sex (transphobia), etc.

Stereotypes and prejudices are deeply rooted and widespread. The prevalence of prejudice against certain social groups is evidenced by the social distance that exists between respective majority populations and minority groups, which is measured by the relative willingness of one group (or groups) to accept or reject close social relations with members of another certain group (or other groups), such as marriage, socializing, and similar customs or behaviours.¹⁵

Gender-based discrimination is based on gender stereotypes and prejudices.

Gender stereotypes are pre-formed social and cultural patterns or ideas, which assign to women and men traits and roles determined and restricted by their sex. Some common gender stereotypes are presented in the table below.



Gender stereotypes support structural inequality in society and have a negative effect on the distribution of social resources between women and men. They are a serious obstacle to achieving gender equality because they limit the development of the talents and abilities of girls and boys and women and men, their educational and professional aspirations and experiences, and their life opportunities.¹⁶

Gender prejudices are attitudes and negative feelings towards the abilities and values of women and men, based on the idea that one of the sexes is less capable and less valuable than the other in certain aspects. Gender prejudices are also biases towards women and men based on gender stereotypes and gender roles assigned to them by society. Gender prejudices also include misogyny – hatred towards women, and misandry – hatred towards men. Such negative attitudes and feelings towards women and men are sexist and instil and provoke sexist behaviour, which is manifested by an individual or group being considered inferior due to their sex.

Sexism is any act, gesture, visual representation, spoken or written word(s), practice, or behaviour based on the idea that an individual or a group of individuals is inferior because of their sex, occurring in the public or private sphere, with the purpose or effect of violating the human dignity or rights of an individual or a group of individuals, resulting in physical, sexual, psychological, or socio-economic harm to and/or the suffering of an individual or a group of individuals, and/or with the purpose of creating an intimidating, hostile, degrading, humiliating, or offensive environment, constituting a barrier to the autonomy and full realisation of human rights, and/or of maintaining and reinforcing gender stereotypes¹⁷.

Sexism is a manifestation of historically unequal power relations between women and men, which leads to discrimination and prevents the full advancement of women in society. Sexism and sexist behaviour reinforce gender stereotypes that affect women and men and girls and boys and it is an obstacle to achieving gender equality and building an inclusive society.

There are two types of sexism recognized in relation to women: hostile (overt) sexism, which involves a clear expression of negative attitudes, and benevolent (covert) sexism, which is manifested in attitudes such as that women should be

¹⁵ See more: Vesić Antić A: Diskriminacija kao društvena pojava, u: Nevena Petrušić (ur), Sudska građansko-pravna zaštita od diskriminacije, Poverenik za zaštitu ravnopravnosti i Pravosudna akademija, Beograd, 2012.

¹⁶ [Council of Europe Gender Equality Strategy 2018-2023, Strategic objective 1; Prevent and combat gender stereotypes and sexism, United Nations, Human Rights, Office of the High Commissioner for Human Rights.](#)

¹⁷ Recommendation CM/Rec(2019)1 of the Committee of Ministers of the Council of Europe on preventing and combating sexism

helped because they are the “weaker” sex. In much of the world, the overt expression of gender prejudices is less prominent today than before because it is not in line with widespread contemporary social norms. Today, sexist attitudes are commonly expressed more covertly and subtly. In this sense, terms such as hidden and subtle sexism are invoked.¹⁸ However, just like overt sexism, covert sexism towards women also encourages discrimination against women and erroneously serves as justification for quasi-protective actions to address the so-called inferior position of women. Sexist behaviour in communication is often expressed in a way that makes it difficult to recognize. For example, a man might explain something to a woman in a patronizing, overconfident, and/or simplistic way, purposefully conveying that she lacks knowledge about the topic. Another manifestation of such sexism is when a man interrupts a woman to explain what she actually wanted to say.

Expressing opinions, such as that gender discrimination doesn't exist, that women ask for “too many” rights, that gender equality is harmful to society, that women have lost a lot by insisting on gender equality, etc., is a very common occurrence in practice. These examples of seemingly neutral opinions are nothing but a covert and subtle way of expressing gender prejudices.

Sexist attitudes are expressed in various ways and in all environments. Workplace sexism manifests through offensive comments, objectification, sexist humour or jokes, over-familiar remarks, silencing or ignoring people, comments about dressing and physical appearance, sexist body language, lack of respect, and masculine practices that intimidate or exclude women and favour male colleagues. Sexist assumptions based on traditional gender roles may result in the belief that female employees, as mothers or future mothers, are less reliable colleagues and employees than male employees. Conversely, there may be hostility towards mothers who do not stay at home or, alternatively, mothers may be excluded from important opportunities to advance their careers. This contributes to the so-called “glass ceiling” that limits women's opportunities for promotion and upward mobility. Sexist remarks can also be aimed at men who engage in caring responsibilities traditionally associated with women and mothers.¹⁹

Sexist attitudes also affect the creation and implementation of laws and policies, the interpretation and application of regulations, etc. Gender prejudices are fre-

quently the precise reason behind the work of men and women being valued differently, as well as behind tolerance for and the mild sanctioning of gender-based violence, etc.²⁰ In many situations, the behaviour of people, even those who publicly advocate for gender equality, is based on gender stereotypes and prejudices, without such persons realizing it. This is why it is necessary to work on the elimination of these attitudes, which requires people having an open mind and a readiness to recognize and become aware of gender stereotypes and prejudices, addressing the consequences of gender stereotypes and prejudices, developing compassion for people who are targets of gender prejudices and discrimination, and creating an environment with zero tolerance for gender prejudice and discrimination.

1.5.2. Structural, institutional, and individual discrimination

To understand the phenomenon of discrimination, it is necessary to understand the difference between structural (systemic), institutional, and individual (situational) discrimination.

Structural (systemic) discrimination – is the discrimination of certain groups in terms of access to rights and resources in the community. Members of groups subject to systemic discrimination formally have all generally applicable rights, but social barriers are preventing them from enjoying their rights on an equal basis with others. As a result, they are at a disadvantage in terms of their social status, they are socially excluded, and they are unable to fully participate in the economic, social, and cultural life of the community.

Structural discrimination produces systemic inequalities. It is easy to detect, but difficult to eliminate because it is too often seen as part of the “natural” and “normal” order of things, it is deeply rooted, and it is systematically perpetuated in the most important economic, political, and cultural institutions. Therefore, the responsibility for structural discrimination, and for addressing it, is not individual, but primarily lies with the state and its institutions, which are under the control of the predominant group.

EXAMPLES: Stereotypical division into “male” and “female” occupations; a disproportionately small number of women in the total composition of the army, in command positions, and in military missions; sexual harassment and other forms of gender-based violence against women in the army, etc.

¹⁸ Todorović, M. Benevolentni seksizam i rodna ravnopravnost, *Genero*, Vol. 17, 2013, Mihić, V. Izraženost i korelati rodni predrasuda kod stanovnika u Vojvodini, *Primijenjena psihologija*, 2014.

¹⁹ Recommendation CM/Rec(2019)1 of the Committee of Ministers of the Council of Europe on preventing and combating sexism

²⁰ Majda Halilović, Callum Watson, Heather Huhtanen and Mylene Socquet-Juglard (ed.), *Gender Bias and the Law: Legal Frameworks and Practice from Bosnia & Herzegovina and Beyond*, Atlantic Initiative and DCAF, Sarajevo, 2017.

Institutional discrimination is a discriminatory policy of institutions under the control of the predominant group towards certain minority and marginalized groups. It is related to structural discrimination and manifests through the actions/behaviour of those creating and implementing the policies of institutions.

Institutional discrimination is embedded in the structures and procedures of institutions, which are typically based on prejudices and disregard for the position and needs of individuals or groups, thus denying them the opportunity to enjoy recognized rights under equal conditions and on an equal basis.

EXAMPLES: Women's military uniforms are not tailored to the needs of pregnant women; toilets for women in the army are not provided and/or are not adequately equipped; sexual harassment of women in the military is tolerated.

Individual (situational) discrimination is discrimination committed by one or more individuals against a certain individual or group of individuals. With individual discrimination, the perpetrator and the victim of a specific act of discrimination are known, or can be ascertained, so it is possible to determine individual responsibility for the act of discrimination and provide protection to the victim of discrimination.

EXAMPLES: Although the female candidate scored more points according to the criteria set by the internal call for the promotion of soldiers under the contract of the staff officer, the male candidate was given preference during the selection; a commander tells a female non-commissioned officer who often uses sick leave due to her child's illness that she jeopardizes her professional career by doing so; a public call for the selection of cadets for education at a foreign military academy stipulates that the candidates should not be married, have children, etc.

An employer is looking for a female in the job advertisement, even though it is a job that can be done by both women and men; an employer publishes an advertisement for an accountant's job, prescribing that candidates must exhibit a high level of physical strength and endurance in testing.

Structural, institutional, and individual discrimination exist in all areas of social life: in education, employment, at work, in the security system, in health care and social protection, in the economy, etc. Its targets are natural and legal persons, as well as various groups of people who share the same personal characteristics.

To eradicate discrimination, it is not enough to have appropriate laws; what's also needed is a shift in cultural values and attitudes and in the principles on which social organization is based, as well as effective mechanisms for preventing and protecting against discrimination.

1.6. Legal concept and elements of discrimination

In legal systems, discrimination, as a legal concept, is defined by legislation. All Western Balkans countries have adopted general anti-discrimination laws, which are the main source of anti-discrimination legislation. These laws define the general concept of discrimination.

- Bosnia and Herzegovina: Law on the Prohibition of Discrimination ("Official Gazette of BiH," No. 59/09 and 66/16 (Bosnia and Herzegovina LPD) – Article 2, paragraph 1.
- Montenegro: Law on the Prohibition of Discrimination ("Official Gazette of Montenegro," No. 46/10, 40/11, 18/14 and 42/17 (Montenegro LPD) – Article 2, paragraph 2.
- North Macedonia: Law on the Prevention of and Protection against Discrimination ("Official Gazette of North Macedonia," No. 258/2020 (North Macedonia LPPD) – Article 6.
- Serbia: Law on the Prohibition of Discrimination ("Official Gazette of the Republic of Serbia," No. 22/2009 (Serbia LPD) – Article 2, paragraph 1, item 1.

There are some differences in the wording of the legal definitions of discrimination, but they are mainly due to differences in the level of concretization. If the differences in slight details are removed, all definitions contain identical elements that constitute the legal concept of discrimination, which make it distinct in relation to other illicit behaviours. These are unjustifiably unequal treatment of an individual or group of individuals: 1) in relation to another individual or group of individuals; 2) based on some of the individual's or the group's personal characteristics.

1.6.1. Unequal treatment

The essence of discrimination is reflected in the unjustifiably unequal treatment of an individual or group of individuals in relation to another individual or group of individuals based on some of the individual's or the group's personal characteristics. This means that not every instance of unequal treatment is discrimination, but only those that are unjustified, i.e., that have no objective and reasonable justification. Whether unequal treatment is justified or not is evaluated in each individual case by conducting discrimination testing, based on a careful analysis of all facts and circumstances.²¹

Examples: it is justified that women and men in the army have differently tailored uniforms and pieces of military equipment (for example, bulletproof vests); it is justified to grant certain duty-related allowances to parents of pre-school children; it is not justified to enrol only men in military academies or that only married individuals have the opportunity to be appointed to military representative offices.

Discrimination can take place in various ways: by denying a person a right that is available to others, by restricting a right that is fully granted to others, by giving privileges to others, by speech or written commentary that insults the dignity of an individual or group of individuals on the basis of personal characteristics, by expressing ideas that encourage violence against an individual or group of individuals due to personal characteristics, etc. The very act of discrimination can be committed by doing – taking a real action (e.g., sexual harassment by unwanted touching of body parts) or a legal action (e.g., posting an advertisement that excludes divorced persons from applying), speech (e.g., denying women's ability to effectively use combat weapons, verbal intimidation), gestures (e.g., insulting gestures), etc. An act of discrimination can also be committed by omission – failing to take an action that should be taken (e.g., failing to provide appropriate locker rooms for women).

For a behaviour to be qualified as an act of discrimination, the intention and motive of the perpetrator are irrelevant; it is the act itself that has to be objectively evaluated. It is not relevant, nor is it examined, whether the perpetrator of discrimination has prejudices towards the group or an individual belonging to that group. Laws cannot prohibit people from having certain negative attitudes and emotions towards

certain groups, but they can prohibit people from expressing these attitudes in their treatment of members of those groups by discriminating against them in certain settings.

1.6.2. Personal characteristics as grounds of discrimination

Discrimination is always based on personal characteristics, which are stated as the reason and grounds of discrimination. If the unequal treatment is not based on personal characteristics, then it is not a case of discrimination, though this does exclude it from being a case of some other illicit behaviour.

Personal characteristics are personal attributes of a person that determine their physical, psychological, spiritual, economic, or social identity. Some personal characteristics are innate, such as, for example, race, genetic characteristics, and ethnicity, while some personal characteristics are acquired and can change, such as religion, political beliefs, health status, etc. Since identity is made up of many attributes, laws usually list those personal characteristics which are the most common grounds of discrimination: skin colour, race, nationality, ethnic background, religious or political beliefs, sex, sexual orientation, disability, marital and family status, age, health status, membership in political, trade union, or other organizations, etc. It is important that the list of personal characteristics which are prohibited as grounds of discrimination is not exhaustive and that any other personal characteristics can be the grounds of discrimination.

Grounds of discrimination can be a real personal characteristic – a personal characteristic that really exists, but it can also be an assumed personal characteristic – a personal characteristic that the discriminated person does not have, but which the perpetrator of discrimination assumes that he or she has.

The personal characteristic which is the grounds of discrimination of a person most often concerns that person himself/herself. Sometimes, however, a person is discriminated against based on the personal characteristics of their family member or a person close to them. This type of discrimination is known as associative discrimination.

Personal characteristics, which are a part of a person's identity, should be strictly distinguished from personality traits, such as character, work habits, confidence, determination, consistency, cooperativeness, flexibility, etc., because these are characteristics of a person's personality and not part of a person's identity.

²¹ For discrimination testing, which is carried out to examine whether discrimination has been committed in a particular case, see Chapter 1.8 Determining discrimination in the Handbook.

Therefore, if a person is given an advantage because they are more capable, creative, skilled, etc. compared to others, then this is not discrimination.

1.7. Forms and types of discrimination

There are two main forms of discrimination: direct and indirect discrimination. These two forms of discrimination are defined and prohibited in all four anti-discrimination laws of the Western Balkan countries. Although there are some differences in the wording of the legal definitions, they do not have substantial differences.

1.7.1. Direct discrimination

Direct discrimination is a clear and visible form of discrimination that consists of the unequal treatment of an individual or group of individuals due to some of the individual's or the group's personal characteristics. The prohibition of direct discrimination is based on the principle of formal equality, which requires that people who are in the same or similar situation must be treated consistently (equally), regardless of their personal characteristics. Therefore, unjustified unequal treatment of an individual/group of individuals constitutes direct discrimination. Respecting the prohibition of direct discrimination leads to formal equality.

The elements of direct discrimination are: 1) unequal (unfavourable) treatment of an individual/group of individuals, 2) due to some of the individual's or the group's personal characteristics, 3) in relation to another individual/group of individuals who are in the same or similar (analogous) situation.

DIRECT DISCRIMINATION → **UNEQUAL TREATMENT OF EQUALS**

Direct discrimination can be committed by doing or not doing (omission) and is reflected in an individual/group of individuals, due to some of the individual's or the group's personal characteristics, being denied a right that is available to others, or in having some of their right(s) limited, while fully recognizing the right(s) for others, or being put at a disadvantage by giving other people priority or benefit, etc.

When examining whether direct discrimination has been committed, it is necessary to use a "comparator," which is an individual who is in the same or similar situation as the victim(s) of discrimination, but differs from him/her/them in that he/she does not have the personal characteristics of the victim(s) of discrimination. However, sometimes a "comparator" cannot be found, so a "hypothetical comparator" is used. Sometimes a "comparator" is not necessary. For example, if an employer does not hire a pregnant woman, there is no "comparator" because a man cannot be pregnant.

EXAMPLES: During the job interview, a member of the commission asks the female candidate if she is married, if she has children, and how old the children are, while he doesn't ask the male candidate these questions.

A superior officer sends a male officer for a seven-day training, instead of a female officer, who fulfils all the required conditions, and explains his choice by stating that she has family obligations because she is a mother of a young child.

1.7.2. Indirect discrimination

Indirect discrimination is a covert form of discrimination that consists of equal treatment of all, but which produces disproportionately unequal consequences for an individual or group of individuals due to some of the individual's or the group's personal characteristics. The prevention of indirect discrimination is based on the idea that people in different positions should be treated differently to the extent necessary to enable them equal opportunities to enjoy rights and freedoms and equal access to services and social resources.

Achieving this goal requires taking into account the unfavourable position of certain groups of individuals due to some personal characteristics when prescribing a certain rule, setting criteria, conditions, requirements, etc., which apply to all, so that such a rule/criterion/condition does not create more unfavourable consequences for them in relation to others. Accordingly, the prohibition of indirect discrimination is a form of achieving substantive equality between social groups which are recognized and acknowledged by the legal order as established categories (women, men, national minorities, the elderly, persons with disabilities, etc.).

In indirect discrimination, there is a seemingly neutral rule/criterion, which applies equally to all, but puts a certain group of individuals or an individual belonging to this group at a disadvantage, compared to others who do not have this characteristic. In defining indirect discrimination, the following elements are distinguished: 1) a neutral rule (requirement, condition, criterion, or practice), 2) puts an individual or group of individuals at a disproportionate disadvantage, 3) due to some of the individual's or the group's personal characteristics, and 4) in relation to other individuals who are in the same or similar situation.

INDIRECT DISCRIMINATION → EQUAL TREATMENT OF UNEQUALS

While direct discrimination is about the different treatment of people in a similar situation, indirect discrimination is about the equal treatment of people who are in a different situation. In other words, direct discrimination is a different (unfavourable) treatment, while in cases of indirect discrimination there is no difference in treatment, but there are different consequences, which are disproportionately unfavourable to a particular group of individuals or individuals belonging to that group. Unlike direct discrimination, where it is obvious at first glance that different (unfavourable) treatment is based on personal characteristics, this is not so obvious in indirect discrimination. On the contrary, treatment is seemingly based on the principle of equality, and only when the consequences are examined is it obvious that equal treatment puts an individual or group of individuals, due to some of the individual's or the group's personal characteristics, at a disadvantage compared to another individual or group of individuals. What is common to both direct and indirect discrimination is the end result – one individual or group of individuals is at a disadvantage compared to other people, and the source of the inequality is some of the individual's or the group's personal characteristics.

EXAMPLES: A rule has been introduced which says that for an officer or non-commissioned officer to be promoted to a higher rank, they need to receive a grade of at least 3 on a scale of 1-5 for three years in a row, but only those who worked for more than six months in the previous year can receive a grade; this discriminates against female officers and non-commissioned officers who use maternity leave and/or other leave to care for their child more often than men.

A commanding officer constantly schedules his team meetings after working hours, so working women and men who need to pick up children from day-care, kindergarten, or school after working hours are not able to attend these meetings; this discriminates against women and men with family responsibilities.

1.7.3. Special forms of discrimination

In addition to direct and indirect discrimination, the relevant laws of the Western Balkan countries also regulate certain special forms (types) of discrimination. The four anti-discrimination laws, however, differ in terms of the list of special forms of discrimination they define and prohibit (Table 1).

LPD of BOSNIA AND HERZEGOVINA	LPD of MONTENEGRO	LPPD of the REPUBLIC OF NORTH MACEDONIA	LPD of the REPUBLIC OF SERBIA
<ul style="list-style-type: none"> • Harassment • Sexual harassment • Mobbing • Segregation • Issuing orders for discrimination • Assisting in the commission of discrimination • Incitement to discrimination 	<ul style="list-style-type: none"> • Harassment • Sexual harassment • Segregation • Hate speech • Incitement to discrimination • Assisting in the commission of discrimination • Giving instructions for the commission of discrimination • Announcing the intention to commit discrimination 	<ul style="list-style-type: none"> • Calling for discrimination • Incitement to discrimination • Giving instructions for the commission of discrimination • Harassment • Sexual harassment • Victimization • Segregation 	<ul style="list-style-type: none"> • Violation of the principle of equal rights and obligations • Calling to account (victimization) • Association for the purpose of the commission of discrimination hate speech • Harassment and degrading treatment

Table 1: Special forms of discrimination in the four countries of the Western Balkans region²²

Some anti-discrimination laws also separately regulate certain specific cases of discrimination taking place in certain areas or against certain personal characteristics. The LPD of Montenegro regulates discrimination in the use of public facilities and areas, age-based discrimination, discrimination in the field of labour, etc., while the LPD of Serbia specifically regulates discrimination based on sex, discrimination against children, discrimination on the grounds of trade union or political affiliation, etc.

²² Mobbing is prohibited in the legal systems of all Western Balkans countries, and they have adopted special laws on the prevention of and protection against mobbing. Only in Bosnia and Herzegovina is mobbing cited by the Law on the Prohibition of Discrimination as a special form of discrimination. See section 1.7.4.4 Mobbing in the Handbook for more information.

Although anti-discrimination laws vary in terms of the number and different kinds of special forms and types of discrimination, the prohibition of discrimination is universal, both in terms of the grounds of discrimination and in terms of the areas and entities that the prohibition of discrimination is binding on. Most laws prescribe the following special forms of discrimination:

HARASSMENT – conduct towards an individual or group of individuals based on some of the individual’s or the group’s personal characteristics which aims to or objectively violates dignity, causes fear, feelings of humiliation, and/or insults, especially if such conduct creates an intimidating, hostile, humiliating, and/or offensive environment. Harassment can be committed in various ways – by saying insulting words, writing graffiti, posting messages on social networks, etc.

HATE SPEECH – public communication of ideas and opinions that spread, incite, encourage, and/or justify discrimination, hatred, or violence against a racial, national, ethnic, religious, sexual, gender, or other social group or its members. Hate speech spreads and encourages xenophobia, racism, antisemitism, homophobia, and other forms of hatred based on intolerance.

SEGREGATION – forced and systematic separation of people on the grounds of their personal characteristics. In the Western Balkans countries, the most common cases of segregation are unhygienic settlements inhabited only by Roma people, schools where the majority of students are Roma children, and special schools for children with disabilities.

VICTIMIZATION – exposing an individual who reports, seeks, or expresses an intention to seek protection from discrimination to unpleasant situations and/or bullying, which includes individuals expressing their readiness to provide assistance and support to a discriminated individual or group of individuals in achieving protection against discrimination by testifying or acting in other ways. Victimization can be committed by the person who committed the act of discrimination, but also by a third person.

All four anti-discrimination laws also regulate and prohibit severe forms of discrimination. These are aggravated forms of discrimination that can affect a wider range of people or cause particularly severe consequences. However, the laws differ in terms of the number and forms of discrimination that are qualified as severe forms of discrimination (Table 2).

LPD of BOSNIA AND HERZEGOVINA	LPD of MONTENEGRO	LPPD of the REPUBLIC OF NORTH MACEDONIA	LPD of the REPUBLIC OF SERBIA
Multiple discrimination	Multiple discrimination	Multiple discrimination	Provoking and encouraging inequality, hatred, and/or intolerance on certain grounds
Repeated discrimination	Repeated discrimination	Intersectional discrimination	Promoting or conducting discrimination by public authorities and in proceedings before public authorities
Persistent discrimination	Persistent discrimination	Repeated discrimination	Promoting discrimination through the media
	Discrimination conducted by propaganda through the media and in public places	Persistent discrimination	Slavery, human trafficking, apartheid, genocide, ethnic cleansing, and their promotion
	Discrimination with particularly severe consequences		Multiple or cross-sectional discrimination
			Repeated discrimination
			Persistent discrimination
			Discrimination leading to particularly severe consequences

Table 2: Severe forms of discrimination – a comparative overview in the four Western Balkans countries

1.7.4. Gender-based discrimination

Gender-based discrimination is discrimination committed against an individual or group of individuals on the grounds of the individual's or the group's sex and gender identity.

1.7.4.1. Grounds of gender-based discrimination

The most common grounds of gender-based discrimination against individuals and groups of individuals is the sex of the individual or group. Discrimination against women on the grounds of sex also includes discrimination on the grounds of pregnancy and circumstances related to pregnancy. For example, when a woman exercises her legitimate right to pregnancy leave, she may be discriminated against at work by being denied the possibility of promotion, even though she meets all the conditions for promotion. Maternity-based discrimination is committed, for example, when a mother is denied the opportunity to take breaks at work to breast-feed her baby. Sex-based discrimination can be committed against both women and men, as well as intersex people – people born with both male and female sex characteristics, who can self-identify as women, as men, or as sexually indeterminate persons. Discrimination against persons who have adjusted their sex to their gender identity also has the characteristics of sex-based discrimination.

Gender-based discrimination is often the result of the combined factors of the sex of the victim(s), as a biological characteristic of women and men, and the socially constructed identity, attributes, and roles, i.e., the social and cultural significance, attached to biological differences between women and men. Namely, discrimination based on sex, as a biological fact, also includes discrimination based on gender, as a sociological category that refers to the social roles of women and men in a particular social context. This is why both women and men can be discriminated against based on the gender roles assigned to their sex.

EXAMPLES: A female lieutenant was assigned to the position of company commander, which she successfully performed, and which was confirmed by the official evaluation of "outstanding." After three years at this position, she used pregnancy and maternity leave, in accordance with the regulations. After returning from maternity leave, she was assigned to her formation position of clerk, which does not allow her to advance in the service. Meanwhile, a male lieutenant who had just been promoted to the rank was appointed to her position. This is a typical example of discrimination against women. The decision

on reassignment to another (lower) formation position is likely justified by the needs of the service or other reasons, so at first glance, it is not obvious that this is a discriminatory decision. However, regardless of the reasons justifying the decision, the fact that the female lieutenant successfully performed her duty before going on pregnancy and maternity leave, that she received high marks, and that after returning from leave she was assigned to a lower formation position is a sufficient basis for concluding that this is a matter of discrimination at work.

NCO N.N., a father of a two-year-old child with a working wife, took child-care leave three times during the year. At the first team meeting attended by the non-commissioned officer upon his return from the third leave, the superior officer says: "NCO N.N. is also with us today. I wanted to ask you if your child has a mother? I know that the law gives you the right to take leave for your child's illness, but how do you think to build a career if you are constantly absent? Obviously, we can't count on you." This is an example of public support for gender prejudices based on stereotypical roles of sexes, which is a special form of gender discrimination.

Gender-based discrimination also exists when it is based on gender identity. Gender identity is a personal understanding of one's own gender, which may or may not match the gender assigned to the person at birth and the sex-assigned gender role.

Most people identify their gender in accordance with their biological sex and sex-assigned gender role. However, there are people whose gender identity is different from their sex assigned at birth, which include trans men – people who are assigned as female at birth and have a male gender identity, and trans women – people who are assigned as male at birth and have a female gender identity. However, the gender identity of some people is non-binary, i.e., it goes beyond the traditional gender identities of women and men. Many of these individuals reject the dichotomy of male and female gender roles, which is often seen as undermining the gender boundaries imposed by society. The common term gender-queer persons is used for such people. Some trans women and trans men resort to hormone therapy and/or surgery to adjust their sex to their gender identity (transsexual persons), while some do not feel this need, and have adjusted their own gender identity through behaviour, clothing, speech, gestures, etc.²³

²³ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity; Hammarberg, T. Discrimination on grounds of sexual orientation and gender identity in Europe, Council of Europe, 2011; Protecting Human

Discrimination based on sex and gender identity should be distinguished from discrimination based on sexual orientation, which means constant emotional and sexual attraction to persons of a certain sex, and according to which persons can be heterosexual (attracted to the opposite sex) or homosexual (attracted to the same sex – lesbians and gays), bisexual (attracted to both sexes), and asexual (not attracted to either sex).²⁴

1.7.4.2. Forms of gender-based discrimination

Just like discrimination based on other personal characteristics, gender-based discrimination can be structural, institutional, and individual (situational).

Structural gender-based discrimination is most often revealed by gender-disaggregated statistical data. In the Western Balkans countries, as in many other countries across the world, there is evidence of gender gaps to the detriment of women in almost all areas of public and private life.

In the armed forces of the Western Balkans countries, as in many other countries, women are still not equally represented, as is the case in many other professions where there are unequal numbers of men and women in favour of one or the other sex. This is a consequence of women's long-time, historical exclusion from the military and the military education system and the representation of women in the professional composition of the armed forces as merely symbolic. Today, however, in the Western Balkan countries, all forms and levels of training for the military profession are more accessible to women, including education at military academies, which is the result of gender mainstreaming in defence systems. Given that stereotypes about the gender roles of women and men are still widespread and negatively affect women's interest in the military profession, various measures are being taken in defence systems to motivate and attract women to it. This creates conditions for a gradual increase in the number of women both as soldiers and in high positions, in peacekeeping missions, etc.

Rights of Transgender Persons: A short guide to legal gender recognition, Council of Europe, 2015.

²⁴ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity; Hammarberg, T. Discrimination on grounds of sexual orientation and gender identity in Europe, Council of Europe, 2011; Banović, D. Vasić, V. Seksualna orijentacija i rodni identitet: pravo i praksa u BiH, Sarajevo: Sarajevski otvoreni centar, 2013; Petrušić, N. Beker, K. Praktikum za zaštitu od diskriminacije, Partneri za demokratske promjene Srbija i Centar za alternativno rješavanje sukoba, Beograd, 2012.

Institutional gender-based discrimination is reflected in the implementation of discriminatory policies of institutions based on gender prejudices and disregard for the needs of women and men and certain vulnerable groups of women and men, thus denying them the opportunity to enjoy recognized rights on an equal basis. Institutional gender-based discrimination in the armed forces exists, for example, if a preference is given to candidates based on their gender when forming teams for participation in peacekeeping operations.

Good practice example: Successfully resolved institutional discrimination – Republic of Serbia

A man working in an organizational unit where over 80% of employees were women came to the "person of trust" and pointed out that for several years, during the annual ceremonies marking significant dates of the MoD and the AF and rewarding employees for good work results (financially, with award leave, or only with commendation), the financial awards or award leaves had been given exclusively to women, without clearly defined criteria. By inspecting the relevant data, the employee's claims were confirmed. The person of trust then pointed out the mentioned fact to the managing staff, which resulted in awards being given in a fair way in the following period, i.e., financial awards or award leaves were given to both men and women.

Individual (situational) gender-based discrimination is unequal treatment of individuals or groups of individuals in different life situations. For example, instead of a female candidate, a male candidate is selected despite exhibiting poorer results on the relevant test.

Just like discrimination on any other grounds, gender-based discrimination can take the form of direct and indirect discrimination and be committed in various ways. Notably, sex, gender, and gender identity, as personal characteristics, are often in combination with other personal characteristics in cases of various forms of multiple discrimination being committed.

1.7.4.3. Sexual harassment and sexual abuse

Sexual harassment and sexual abuse, whose victims are more often women than men, are forms of gender-based discrimination, but at the same time, they are also forms of gender-based violence. Sexual harassment and sexual abuse can take place in a variety of ways and be committed in all environments: in the family, on the street, in public transport, in schools, at work, etc. This handbook deals primarily with the topic of gender-based discrimination in the armed forces. This is why, wherever possible, examples from the military environment have been employed.

Sexual harassment is any form of unwanted verbal, non-verbal, or physical conduct of sexual nature with the purpose or effect of hurting the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment.²⁵

Sexual harassment is defined in the relevant laws of the Western Balkans countries in a similar way.²⁶

There are two defined types of sexual harassment. The first type is sexual harassment in a professional relationship, which consists of a superior making decisions about the interests of a subordinate employee with the condition of the latter accepting sexual proposals, requests, or behaviour ("favour for a favour" sexual harassment). From the legal point of view, in this type of sexual harassment, which is also called sexual extortion, the fact that the subordinate person "voluntarily" agreed to such a relationship or was even in some kind of intimate relationship with the superior is irrelevant. The second type of sexual harassment is the sexualisation of the work environment, which is committed by various verbal or non-verbal acts of a sexual nature, which reduce the victim to a sexual object, reducing his/her reputation, professional status, or possibilities for professional development.

²⁵ Article 40 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011.

²⁶ Article 4, paragraph 2 of the Bosnia and Herzegovina LPD; Article 7, paragraph 2 of the Montenegro LPD; Article 9 of the Labour Relations Law of the Republic of North Macedonia, "Official Gazette of the Republic of Macedonia," No. 74/2015; Article 21, paragraph 3 of the Labour Law of the Republic of Serbia ("Official Gazette of the Republic of Serbia," No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - CC decision, 113/2017 and 95/2018 - authentic interpretation).

Sexual harassment can be committed in various ways and the most common are:²⁷

Physical acts of a sexual nature:

- sexual assaults and attempted assaults
- neck or shoulder massaging
- touching clothes, hair, or body parts
- hugging, kissing, patting, or caressing
- leaning over a person, restricting movement, pinching, and similar acts
- standing too close to a person and similar acts

Verbal acts of sexual nature:

- instigating intimate encounters
- offering sexual "services"
- sending letters, text messages, or other material of sexual nature
- teasing, joking, commenting, or asking about sexual activities
- addressing an adult with names such as "girl," "sweetie," "love," etc.
- bragging about sexual prowess
- redirecting a business conversation towards sexual topics
- rude and vulgar humour
- asking questions about sexual fantasies, preferences, or experiences
- personal intimate questions about social or sexual life
- sexual comments about a person's clothing, anatomy, or appearance
- spreading rumours about a person's sexual life and the like

Non-verbal communication of sexual nature:

- sexualized gestures
- whistling after a person
- sending kisses and smacking lips, and similar acts

²⁷ See more in: Council of Europe, Recommendation CM/Rec (2010) 4, p. 59 - [Human rights of members of the armed forces \(coe.int\)](https://www.coe.int/t/t09/HR/Pages/HR_10_4.aspx)

Sexual harassment is a violation of a person's dignity in several respects: the victim's self-esteem is reduced because he/she is put in a subordinate position (humiliation), the victim is treated as an instrument or as a means to achieve someone else's goal and interest (objectification), his/her value is reduced because he/she is not treated as an equal human being (degradation), and the victim is deprived of his/her humanity by being reduced to a lower or worthless being (dehumanization). This is why the goal of prohibiting sexual harassment is to prevent the belittling and degradation of victims caused by reducing them to the object of someone's sexual lust or interest, thereby seeking to preserve their subordinate position in society. Any behaviour contributing to this form of degradation and objectification is a violation of the principle of non-discrimination.

When evaluating sexual harassment as a form of discrimination, it is not necessary to make any comparison to prove it, because harassment is, in itself, unwanted due to the manner in which it is committed and because of the potential consequences. When determining whether sexual harassment has been committed, the victim's understanding and experience of the particular behaviour in question, i.e., how it affected him/her, is crucial. Failing to consider this could result in this form of discrimination continuing and increasing, as the perpetrator could carry on with the harassment, claiming that it is normal, unopposed behaviour. However, even if a victim has not experienced some behaviour as sexual harassment, it can still be qualified as such based on objective criteria.

Sexual harassment is too often treated as a trivial problem and the mistaken view that it can be easily avoided and stopped appears to be widespread. Very often, the harassment is a behaviour that has been repeated over a long period of time and that the victim cannot adequately resolve on his/her own.

The broader concept of sexual harassment also includes gender-based harassment, i.e., harassment based on sex, which has no sexual connotation.²⁸

EXAMPLE of gender-based harassment: A non-commissioned officer in a live-fire exercise belittles and humiliates a female soldier by saying in front of other exercise participants: "Here comes our lady soldier! Watch out, people! Please don't turn the rifle around, just shoot straight ahead."

²⁸ Selanec, G., *Analiza Zakona o ravnopravnosti polova*, Zagreb: CESI, 2008; Vasiljević, S., *The problem of sexual harassment in comparative perspective*, Cambridge: University of Cambridge, 2012; Selanec, G. *Jamstvo zabrane diskriminativnog uznemiravanja*

Sexual abuse is a common name for various forms of gender-based discrimination and gender-based sexual violence. It is most often aimed at women precisely because they are women and disproportionately affects women. Sexual abuse includes various forms of sexual assault, such as rape, attempted rape, sexual exploitation, coercion to unwanted sexual acts, inducing sexual intercourse by abuse of official position, etc. Sexual abuse occurs in a variety of settings, including the work environment.

In the Western Balkans countries, as in other countries, many forms of sexual harassment and sexual abuse are criminalized as separate criminal offences, some of which are prosecuted ex officio and some of which are prosecuted through private lawsuits.

1.7.4.4. Mobbing

Mobbing (harassment at work) is a systematic and continuous hostile and abusive behaviour at work towards an employee by one or more individuals, which aims or results in damage to his/her reputation, personal and professional integrity, health and professional status, deterioration of working conditions, and/or isolation, often inducing the employee to terminate the employment on his/her own initiative, i.e., to quit. The prohibition of mobbing is in the function of protecting human dignity, i.e., the dignity of the person at work and the personal and professional integrity of the employee.

Mobbing is a "non-specific type of harassment" that is conducted through various actions (about 70 types of behaviours have been recorded) and is usually not based on a personal characteristic, but on personal animosity towards the victim. In that sense, mobbing based on a personal characteristic can only be provisionally considered discrimination, because the manner in which it is conducted and its consequences are completely different from discrimination.

In comparison to acts of discrimination, acts of mobbing are usually more aggressive and often involve the organized behaviour of a larger number of people. While discrimination can be a one-off act, in mobbing the behaviour is repeated for a longer period of time, i.e., it is manifested in continuity. Another difference between discrimination and mobbing is also reflected in that the intention is not of legal importance in the case of discrimination, while it is relevant in the case of mobbing, as the person(s) committing the mobbing does/do so with the intention of harming the person towards whom he/she/they has/have a personal animosity or of gaining some interest in that way.²⁹

²⁹ Simović, V. *Mobbing-pojam, uzroci, posljedice i mehanizmi zaštite*, Pravni zbornik br. 1-2/2010, Podgorica; Reljanović, M. Petrović, K. A. *Šikanozno vršenje prava, diskriminacija i zlostavljanje na radu - Zakonska regulativa i praksa*, Pravni zapisi, god. II, broj 1, 2011.

The approach to the legal regulation of mobbing in the Western Balkans countries is not the same.³⁰ In Bosnia and Herzegovina, mobbing is regulated by the anti-discrimination law, as a form of discrimination. The Republic of North Macedonia regulates mobbing in the Law on Labour Relations, qualifying it as a form of discrimination, as well as in the Law on Protection from Harassment at Work³¹. In Montenegro, mobbing and protection against mobbing are regulated in the Law on Prohibition of Harassment at Work³², and in the Republic of Serbia in the Law on Prevention of Harassment at Work.³³

1.7.4.5. Multiple discrimination

The term “multiple discrimination” is a common name for several different forms of multiple discrimination: 1) common multiple discrimination, 2) compound discrimination, and 3) intersectional discrimination.³⁴

Common multiple discrimination exists when a person is discriminated against on the grounds of various personal characteristics, but at different times or in different situations (Figure 2).

EXAMPLE: A woman employed in the army was not selected to the team for a multinational operation in a foreign country because of her sex, was not deployed to a military representative office because she was unmarried, and was not sent to specialist training in handling new weapons because of her age.

Although each act of discrimination is separate in this type of multiple discrimination, different experiences of discrimination on different grounds accumulate in the same person.

30 Vasiljević, S. Usporedno pravna analiza zakonodavstva u oblasti borbe protiv mobinga, Studija zemalja: Hrvatska, Makedonija, Crna Gora, Srbija, Zagreb: Udruga za pomoć i edukaciju žrtava mobinga, 2012; Reljanović, M. Regulacija mobinga u Bosni i Hercegovini u kontekstu Zakona o zabrani diskriminacije, Sarajevo: Analitika – Centar za društvena istraživanja, 2015.

31 Law on Protection from Harassment at Work (“Official Gazette of the Republic of Macedonia,” No. 79/2013).

32 Law on Prohibition of Harassment at Work (“Official Gazette of Montenegro,” No. 30/12 and 54/16)

33 Law on Prevention of Harassment at Work (“Official Gazette of the Republic of Serbia,” No. 36/2010).

34 Vasiljević, S. Slično i različito – Diskriminacija u Evropskoj uniji i Republici Hrvatskoj, Tim press d.o.o. Zagreb, 2011; Beker, K. Multiple Discrimination Against Women in Serbia and Selected EU Countries: a Comparative Analysis, Novi Sad: University of Novi Sad, ACIMSI, 2020; Makkonen, T. [Multiple, Compound and Intersectional Discrimination: Bringing the Experiences of the Most Marginalized to the Fore](#), Institute For Human Rights, Åbo Akademy University, April 2002.



Figure 2

Compound (cumulative, additional) discrimination exists when a person is discriminated against on the grounds of several personal characteristics at the same time, by combining personal characteristics, which produces and compounds additional adverse effects (Figure 3).

EXAMPLE: Due to the existence of gender stereotypes about the ability of women to lead and the tacit rule about jobs “intended” for the Roma population, the chances of a Roma woman receiving a military scholarship intended for the training of future military pilots are diminished.



Figure 3

Intersectional discrimination is a specific type of multiple discrimination, which exists when a person is discriminated against on the grounds of several personal characteristics that are in inseparable interaction, or indivisibly intersect and intertwine, so that discrimination cannot be analysed or separated by individual personal characteristics.

EXAMPLE: A trans woman who is in the final stage of gender transitioning through hormone therapy has been denied access to a training for operating an armoured fighting vehicle (Fig. 4). When determining intersectional discrimination, it is not necessary, nor is it possible, to find a “comparator” that would serve for comparison precisely due to the intersection of personal characteristics.

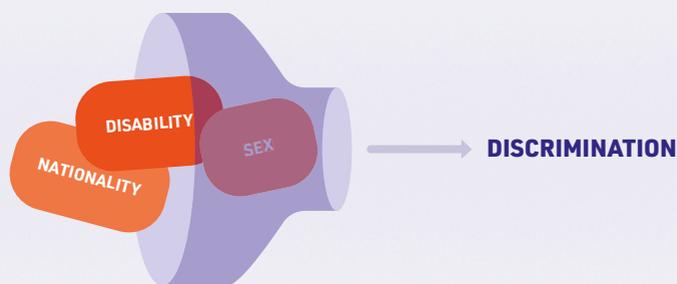


Figure 4

1.8. Determining discrimination

Not every differentiation is automatically discrimination, only that which is unjustified. It is sometimes obvious at first glance that differentiation is justified, but much more often it is necessary to gather information and evidence to draw an accurate conclusion about whether discrimination has been committed in a particular case.

To facilitate determining discrimination, anti-discrimination laws stipulate exceptions to the principle of equal treatment.

Exceptions are regulated differently in anti-discrimination laws and their number is not the same. Two exceptions appear in all laws: special (affirmative action) measures, which are introduced so that certain social groups that are in a subor-

ordinate position may achieve essential real equality, and measures to ensure that persons with disabilities enjoy equal rights and freedoms, such as reasonable accommodation³⁵ at the workplace, etc.

In some laws, exceptions listed include: prescribing the retirement age, arranging insurance premiums based on age, prescribing conditions for membership and activity in religious communities in accordance with religious teachings, rituals, and affairs of the religious community, special protection provided to certain categories of employees, such as minors, people with disabilities, and women during pregnancy and on maternity leave, parents of preschool-aged children, etc.

In cases of unequal treatment, it is necessary to examine whether there is an objective and reasonable justification for different treatment, i.e., putting someone at a disadvantage, which requires the implementation of discrimination testing. General discrimination testing consists of four stages: The testing in each subsequent stage starts only if the conclusion of the testing in the previous stage was positive.

General discrimination testing:

First stage: determining the existence of a difference in treatment;

Second stage: examining whether the difference in treatment is based on personal characteristics;

Third stage: examining whether the specific act (action/behaviour/quality) was lawful and legitimate (objectively justified), given the goal or the consequences it produced;

Fourth stage: examining whether there is a proportionality between the measure taken and the goal achieved by the measure.

There are certain differences in the implementation of discrimination testing in cases of suspected direct or indirect discrimination: in testing for direct discrimination, the treatment is compared, while for indirect discrimination, the

³⁵ “Reasonable accommodation” is a term denoting the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 2 of the UN Convention on the Rights of Persons with Disabilities).

consequences of the treatment are compared. In both forms of discrimination, it is determined whether there is an objective justification for the unequal treatment based on personal characteristics, given the aim and consequences, and whether there is a proportionality between the aim and the means used to achieve that aim.

Regarding suspected indirect discrimination, it should always be determined whether a particular course of action, criterion, or condition that applies equally to everyone has a legitimate aim. For example, the aim of a rule which prescribes completed primary school as a precondition for enrolment in a military secondary school is legitimate, but a rule stating that only men can enrol in a military secondary school would not have a legitimate aim, because it would violate regulations prohibiting discrimination based on sex. If the aim of the relevant action, criterion, or condition is found to be legitimate, it should be determined whether there is a proportionality between the desired aim and the specific action, criteria, condition, as a means to achieve this end. This demands examining whether the means in a specific case were appropriate to achieve the aim and whether their application was necessary, i.e., whether there may have been some other less restrictive means to achieve the same aim.³⁶ For example, with the aim of achieving the principle of equality, equal conditions are prescribed for the retirement of male and female members of the army. This rule has a legitimate aim, but it disproportionately affects army divers, because this is a specific military service where the work is performed in an unnatural working environment.

In some cases of discrimination, a special test is used to determine discrimination. For example, with regard to employment, it is prescribed that it is not considered discrimination to differentiate, exclude, or give priority due to the specifics of a particular job when the personal characteristic of the person represents an actual and decisive condition for the performance of the work, provided that the purpose to be achieved is justified. That is why, when determining discrimination in employment, it should be examined whether the specifics of a job objectively require certain personal characteristics to be listed as special conditions for employment.

EXAMPLE: Example: It is justified for a job advertisement for a military helicopter pilot to require that candidates meet special criteria in terms of psychophysical health, but it is not justified to require candidates meet such criteria for a job in administration.

When it comes to sex as a personal characteristic, setting such conditions is generally not allowed, except in some very limited exceptions when it can be justified. For example, it is justified to list sex as a special condition for an art-related job (for example, a singer of a song has to be female, or an actor or actress is required for a certain role), when a person of certain sex and appearance is required for modelling work, in hiring only women in recreational centres for women, or in hiring only men as guards in prisons for men, and vice versa.³⁷

Proving discrimination is particularly challenging because, as a rule, it is not committed overtly but is covered up and justified with various excuses, making it difficult to determine the cause-and-effect relationship between personal characteristics and unequal treatment. However, discrimination itself is a consequence of prejudices and stereotypes of which the perpetrators of discrimination are sometimes unaware. In practice, direct evidence of discriminatory treatment is rare, and some of the existing evidence is often not available to victims. In order to overcome the difficulties in proving discrimination and make the situation of individuals exposed to discrimination easier, specific rules on the burden of proof have been developed. In essence, the individual who claims to have been discriminated against should offer facts and evidence, based on which it can be concluded that the discrimination was probably committed, and if he/she succeeds in convincing the relevant adjudicators, then the person who has allegedly committed discrimination must prove that the principle of equality has not been violated, i.e., that discrimination has not been committed. These specific rules on shifting the burden of proof are prescribed by the anti-discrimination laws of all Western Balkans countries.

³⁶ Petrušić, N. Krstić, I. Marinković. Komentar zakona o zabrani diskriminacije, Beograd: Službeni glasnik, 2016.

³⁷ Handbook on European Non-discrimination Law, European Union Agency for Fundamental Rights, Council of Europe, Luxembourg: Publications Office of the European Union, 2011.



2. LEGAL AND INSTITUTIONAL FRAMEWORK FOR GENDER EQUALITY AND EQUAL OPPORTUNITIES POLICY

2.1. General remarks

Establishing a valid legal and **institutional** framework is crucial for achieving gender equality and equal opportunities. Its most important elements are legislation and other regulations and strategies and prescribed procedures that define the courses of action and the priorities and obligations of relevant public authorities and institutions with the aim of monitoring, promoting, and advancing equal participation of women and men in all spheres of public and political life. All these mechanisms are necessary for the effective implementation of gender equality and equal opportunities policy.

In order to achieve real gender equality in some areas, it is necessary to achieve formal equality (e.g., equal pay for women and men for equal work and work of the same value). However, in gender-divided societies, it is not enough to give women

the same treatment as men, but it is necessary to take into account the biological, social, and cultural differences between them, which in some areas require different treatment of women and men. It is also necessary to include the intersectionality perspective³⁸, in order to take into account the differences between different groups of women and men.

To achieve gender equality, it is not enough to simply increase the number of women in areas where they are underrepresented. Rather, it is necessary to ensure that the interests and experiences of women and men and different groups of women and men are included in all programmes and policies, so that everyone benefits from development equally and inequality is not perpetuated. This is not possible without the equal participation of women and men in decision-making, public affairs, and designing and implementing policies, programmes, and measures at all levels and in all spheres of life.

2.2. Gender equality and equal opportunities policy

2.2.1. Approaches to achieving gender equality

In principle, there are two basic approaches for resolving the problem of gender inequality: 1) an approach focused on women (change women); and 2) an approach focused on eliminating systemic and structural causes of gender inequalities (change society). The first approach involves taking special measures aimed at women, while the second approach involves systemic gender mainstreaming in all regulations, public policies, and programmes.

At the global level, approaches to addressing the issue of gender inequality have changed over time.

The first approach, “Women in Development” (WID), was designed in the 1970s. Its starting point was that women could make an economic contribution to the devel-

³⁸ The perspective of intersectionality is based on the view that each person is a set of certain complex, multi-layered, and interdependent identity determinants, and that identities are unique and indivisible, i.e., they do not represent a simple sum of several identity determinants. Therefore, the experiences of certain marginalized groups of women and men are not the same, so, in some cases of discrimination, it is necessary to take into account identity determinants that are so intertwined that they cannot be separated; Crenshaw, K. W. [Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color](#), *Stanford Law Review*, Vol. 43, No. 6, 1991, Smith, B. [Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective](#).

opment of society and they represented an untapped resource. Thus, the focus was on strengthening the role of women in economic development. This approach has influenced the creation of programmes for improving the education and employment of women and their political representation in order to increase resources for their development and well-being. However, this approach was based on accepting the existing social structures, which implied maintaining the traditional roles and responsibilities that society had assigned to women and men. Employing such an approach does not call into question the causes and nature of women's subordination and oppression in any way, as it sees the gender roles of women and men as more related to their sex and biological differences than to socially constructed roles and relationships.

The second approach, "Women and Development" (WAD), was based on the view that women had always been an integral part of the development process, and it was therefore necessary to examine why women had not benefited from development strategies in previous decades and to consider the sources and nature of women's subordination and oppression. Although the use of this approach has revealed and disclosed the difficult position of women, especially in developing countries, along with structural inequalities, its scope is limited because the approach itself focuses on women's issues independently of men and generally neglects the social, economic, and political empowerment of women in relation to men in a developmental context.

The third approach, which is the basis for the gender equality policy of most international organizations and development agencies today, is "Gender and Development" (GAD). This approach is based on the view that the essential problem is not the insufficient involvement of women in development, but the inequality of women and men and social processes and institutions that encourage inequality. This is why the position of women cannot be analysed in isolation. The broader context of their life in the family, economy, and society must be taken into account, as well as how society and institutions encourage inequality between women and men through values and practices. The "Gender and Development" approach shifts the focus from women to the unequal power relations between women and men. The starting point is that women and men are both integral parts of any long-term development strategy aimed at creating changes in the social, economic, and political relations of power and control.

Example of using different approaches:

An attempt to solve the problem of the under-representation of women in the army could be made by taking incentive measures aimed at motivating and attracting women to military service. Such measures would be based on the idea that the problem is that women are not interested in military service, so they should be stimulated through appropriate measures. Such measures would be limited in scope, as they would not be aimed at addressing, and thus fail to address, the root causes of the under-representation of women in the military, which are actually based on stereotypical gender roles and the consequent gender segregation of professions and occupations. Therefore, the permanent resolution to this problem requires the elimination of social barriers that cause this phenomenon, which implies a systemic transformation of gender relations.

2.2.2. Gender mainstreaming

Experience shows that achieving real gender equality is not possible without a substantial transformation of gender relations, and for this to happen, it is necessary to implement strategies that involve gender mainstreaming, in all policies, at all levels, and at all stages of decision-making.

The phrase "Gender mainstreaming" is translated in various ways (in the languages of the Western Balkans countries): "systemic introduction of the gender perspective," "introduction of gender equality into the mainstream," "gender-aware policy," "gendering of public policies," "gendering," "gender integration," "integration of the gender perspective," etc.

The concept of gender mainstreaming is an approach to achieving gender equality, which has replaced the decades-old approach centred on women. The turning point came at the Fourth World Conference on Women, held under the auspices of the UN in 1995 in Beijing, where the Beijing Declaration and Platform for Action were adopted.

There are various definitions of gender mainstreaming. The UN Economic and Social Council defines this strategy as the "process of assessing the implications for women and men of any planned action, including legislation, policies or pro-

grammes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality.³⁹ According to the Council of Europe definition, this strategy is a process of “reorganisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated into all policies at all levels and all stages, by the actors normally involved in policymaking.”⁴⁰ There are also other definitions with different wording, but the essence is the same.

At the level of the European Union, the concept of gender mainstreaming was first defined in 1996.⁴¹

The gender mainstreaming strategy was created after the realization that the recognition of equal rights and special measures in favour of women to remedy the unequal treatment in the past were not enough, as they had not only failed to eliminate gender inequality, but sometimes even exacerbated it. This is why the transformation of gender relations is necessary for achieving gender equality, accomplished by addressing the systemic and structural causes of gender inequality. Instead of partial measures, a comprehensive and inclusive approach is employed, one which should lead to lasting changes in gender relations and to achieving the goal of gender equality.

The commitment to the concept of gender mainstreaming has stemmed from the view that efforts aimed at promoting gender equality should not be limited to the implementation of laws, measures, and policies, but that the gender aspect must be essentially embedded in them from the start, in the earliest processes of shaping all public policies at all levels. The bedrock principle is that there are no gender-neutral policies; each policy affects women and men in different ways because their position and needs are not the same. If these are not taken into account, then a policy is “gender-blind” because it does not acknowledge gender differences and can worsen gender inequalities. Therefore, at all stages of creating

³⁹ Gender mainstreaming, Extract from the [Report of the Economic and Social Council for 1997 \(A/52/3, 18 September 1997\)](#).

⁴⁰ [Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices. Final Report of Activities of the Group of Specialists on Mainstreaming EG-S-MS, Council of Europe, 1998](#)

⁴¹ Incorporating Equal Opportunities For Women And Men Into All Community Policies And Activities COM (96) 67 final

laws, policies, programmes, and measures at all levels, from their initial design to their implementation and evaluation, it is necessary that a gender impact assessment be conducted on women and men and different groups of women and men. Such an assessment makes it possible to take into account the position, power, interests, needs, and experiences of women and men, ensuring that women and men benefit equally without perpetuating inequality.

This assessment is to also include certain groups of women and men, given that women and men are not two homogeneous groups. Rather, there are different groups of women and men whose position is not the same because of other factors intersecting and affecting it, such as social status, ethnicity, disability, age, etc. This makes it imperative that the position, power, needs, interests, and experiences of different groups of women and men are all considered.

Since the state has the key responsibility for, plays the key role in, and is the greatest provider of resources for achieving gender equality, a precondition for gender mainstreaming is that the institutions of the system recognize gender equality as a developmental issue, thereby making it one of the goals in all policies, in all fields, and at all levels, including those that are gender-neutral at first glance, such as, for example, environmental protection, climate change, urban planning, etc. In other words, gender equality stops being a “women’s” issue, as it is sometimes treated, and becomes a social issue, i.e., the official commitment and policy of the state.

Gender mainstreaming means that gender equality is taken as the starting point, goal, and principle in all decision-making and policies, at all stages, and by all involved actors. A comprehensive impact assessment determines how the planned measures/activities in one field could affect women and men and certain groups of women and men, whether they could improve gender equality and the position of women, or of men, and if they are at a disadvantage in that field.

Gender mainstreaming is not an end in itself, but a means to achieve the ultimate goal – equal rights and equal opportunities for all. This requires that policies/ measures and programmes take into account the existing gender inequalities, as well as the different needs, interests, and positions of women and men.

Gender mainstreaming is a complementary strategy and is not a substitute for gender equality laws, institutional mechanisms for gender equality, and specific interventions and measures aimed at bridging gender gaps.

Gender mainstreaming in the defence system means that the gender component is integrated into all internal policies, all strategic, planning, and programme documents, and into the work procedures and decisions guiding the work process. This ensures a working environment in the armed forces where both women and men have equal opportunities to achieve their professional capacities and contribute to the realization of the social role and duties of the armed forces in a democratic society. Gender mainstreaming in the defence system sends a strong message to society – if women can make a significant contribution to the defence system, which is a predominantly male sector, especially compared to others, then other sectors should have no restrictions in terms of women’s participation and empowerment. UNSCR 1325 calls for gender mainstreaming in order to maintain and build peace by all Member States, especially in the context of United Nations-led peacekeeping missions.⁴²

2.2.3. Special measures as an instrument of equal opportunities policies

The implementation of the gender mainstreaming strategy does not exclude the need for special measures, as these are two complementary approaches.

Special (affirmative action) measures are legislative, administrative, and other measures of limited duration, introduced with the aim of accelerating the equal participation of women and men in political, economic, social, cultural, and other spheres of life and of ensuring substantial equality of women and men. Special measures are an instrument of gender equality and equal opportunities policy. They are employed to remedy the consequences of past and present gender-based discrimination. Given that women are in an unequal position in almost all areas, as confirmed by gender-disaggregated data, most of the special measures for achieving gender equality are adopted in favour of women or certain groups of women.

Each special measure, such as quotas for the underrepresented sex, support measures for businesswomen, targeted recruitment and employment of women, etc., must have a specific and clearly defined goal, whose achievement shall eliminate the need for the special measure. This is what distinguishes special

measures from general social policy measures, which are aimed at improving the living conditions of certain groups of women and men, such as their security, housing conditions, social protection, etc.

Each special measure represents a departure from formal equality, which requires equal treatment of everyone. This is why anti-discrimination laws explicitly stipulate that special measures are not to be regarded as discrimination. Some anti-discrimination laws further emphasize that special measures must be objectively justified, proportionate, and appropriate for achieving the goal for which they are introduced.

- LPD of **BOSNIA AND HERZEGOVINA**: [...] The following measures shall not be considered discriminatory if they realize a legitimate goal, if there is a reasonable proportionality between the means used and goals to be achieved, and when: a) they come out of the implementation or adoption of temporary special measures designed to prevent or compensate for damages that persons suffer, on grounds given in Article 2 of this Law, especially for members of vulnerable groups, such as: persons with disabilities, members of national minorities, women, pregnant women, children, youth, the elderly and other socially excluded persons, civilian victims of war, victims in criminal proceedings, displaced persons, refugees and asylum seekers; i.e., to enable their full participation in all spheres of life (Article 5).
- LPD of **MONTENEGRO**: Legislation and special measures aimed at creating conditions for the realisation of national, gender, and overall equality and protection of persons being in unequal position on any grounds may be imposed or introduced and implemented by state authorities, authorities of the state administration, authorities of units of local self-government, public enterprises, and other legal persons performing public powers, as well as other legal and natural persons, within their authorities and powers.

The measures referred to in paragraph 1 of this Article shall be applied in proportion to the relevant needs and possibilities and shall last until the goals established by those measures are achieved (Article 5).

- LPPD of the **REPUBLIC OF NORTH MACEDONIA**: (1) Measures and actions taken with the aim of eliminating the unequal enjoyment of human rights and freedoms shall not be considered discrimination until the factual equality of individuals or groups is achieved, if the distinguishing is justified and objective and the means to achieve this goal are proportionate, appropriate, and necessary.

⁴² Egnell, R. [Gender Perspectives and Military Effectiveness Implementing UNSCR 1325 and the National Action Plan on Women, Peace, and Security](#).

(2) The measures and actions referred to in paragraph (1) shall have a limited duration and shall be used until the achievement of the factual equality of individuals or groups in the enjoyment of their rights (Article 7).

- LPD of **SERBIA**: Special measures introduced to achieve full equality, protection, and progress of disadvantaged persons or groups shall not be considered discrimination (Article 14).

Good practice example:

Methodologies for recruitment, education, scholarships, voluntary military service and participation in projects of the MoD of Montenegro have an additional criterion – in cases of two candidates of different sexes having the same number of points in testing, preference will be given to the female candidate. The basis for the development of this methodology is stated in the Law on the Armed Forces: for admission, Article 49, paragraph 2; for education and training, Article 117, paragraph 5; for the selection of persons for scholarships, Article 119, paragraph 4; and for the selection of persons for voluntary military service, Article 195, paragraph 3.

2.3. International legal framework for protection against gender-based discrimination, sexual harassment, and abuse

The international legal framework for protection against gender-based discrimination, sexual harassment, and abuse consists of international human rights treaties adopted under the auspices of the United Nations and the Council of Europe. Some international treaties regulate a wider range of issues, including the prohibition of discrimination, while some are exclusively dedicated to combating certain forms of discrimination.

In a broader sense, the international legal framework also includes a number of legally non-binding documents adopted under the auspices of the United Nations and the Council of Europe which establish legal standards and guidelines for combating gender-based discrimination, sexual harassment, and abuse. For countries in the process of European integration, the legislation of the European Union is also an essential consideration and they should harmonize their legislation with it.

2.3.1. International legal documents under the auspices of the United Nations

2.3.1.1. International treaties under the auspices of the United Nations

The Charter of the United Nations (1945) contains several provisions related to human rights, with an emphasis on the prohibition of discrimination. Already in the Preamble, it is pointed out: “We the peoples of the United Nations determined.. to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..” Article 1, paragraph 3 states as one of the four main purposes of the UN “to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” In Article 55, it is envisaged that the UN shall work on improving standards of living, full employment, and conditions of economic and social progress and development, on solutions to international economic, social, health, and related problems, on universal respect for, and observance of,

human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Universal Declaration of Human Rights (1948) is the most important document on human rights, which made human rights concrete and universally protected for the first time. The principle of equality and non-discrimination is proclaimed by stipulating that all human beings are born free and equal in dignity and rights (Article 1), and that everyone is guaranteed equality in the rights and freedoms prescribed by the Universal Declaration, without distinction as to race, skin colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (Article 7). The Universal Declaration guarantees equality before the law, as well as the right to protection against discrimination. With regard to marriage and access to public services, the equality of adult women and men is recognized. Everyone has the right to life, liberty, and security (Article 3).

The International Covenant on Civil and Political Rights (1966) guarantees a full set of rights, including the right to life (Article 6), the prohibition of torture, inhuman or degrading treatment or punishment (Article 7), and the right to liberty and security of person (Article 9). Discrimination is prohibited in terms of the enjoyment of rights guaranteed by the Covenant (Articles 2 and 3), as well as in the enjoyment of rights guaranteed by national law (Article 26). With regard to the grounds of discrimination, it lists race, colour, sex, language, religion, political or other opinion, national or social origin, property, and place of birth, but the list of personal characteristics is not exhaustive and the prohibition of discrimination in terms of grounds of discrimination is universal.

The International Covenant on Economic, Social and Cultural Rights (1966) prohibits discrimination in respect of the rights it guarantees (Article 2). Some of the grounds for the prohibition of discrimination are: race, colour, sex, language, religion, political or other opinion, national or social origin, property, and birth - and discrimination is also prohibited on any other grounds. The Covenant also establishes the commitment of the States Parties to ensure the equal remuneration for work of equal value, without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (Article 3).

The UN Convention on the Elimination of All Forms of Discrimination against Women (1979) defines discrimination of women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or

nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Article 1). The prohibition of discrimination against women applies to all fields, and States Parties are obliged to eliminate discrimination against women in political and public life, when acquiring and changing their nationality, in education, employment, and work, in marriage and family relations, and in other fields. Of particular importance is the obligation of States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women - Article 5, paragraph 1 (a).

The International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines and prohibits racial discrimination (Article 1). States Parties shall take all measures to eliminate racial discrimination and its encouragement (Article 2), as well as to prohibit the work of organizations and individuals aimed at the organized promotion of racial discrimination, and shall declare as criminal offences all dissemination of ideas based on racial hatred, incitement to racial discrimination, and all acts of violence against any race or group of persons of another colour or ethnic origin (Article 4). Of importance is also the obligation of States Parties to assure to everyone within their jurisdiction effective protection against all forms of racial discrimination, as well as reparation for any damage suffered as a result of racial discrimination (Article 6).

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) obligates States Parties to prevent all forms of torture in the territory under their jurisdiction. The definition of torture is broad and includes any act by which severe suffering, whether physical or mental, is inflicted on a person. Member States are obligated to take all legislative, administrative, judicial, or other measures to prevent acts of torture of persons in any territory under their jurisdiction, and no exceptional circumstances or any order from a superior officer or a public authority may be invoked as a justification of torture. Member States have the obligation to prevent not only torture by public law enforcement authorities, but also torture and other similar acts by private groups or individuals against persons under their control.

The UN Convention on the Rights of Persons with Disabilities (2006) guarantees the full and equal enjoyment of all human rights of persons with disabilities and promotes respect for their innate dignity. This Convention obliges states to adopt

all appropriate legislative, administrative, and other measures to ensure equality and non-discrimination of people with disabilities and the rights recognized in this Convention. They are mandated to take all necessary measures to abolish or modify all regulations, customs, and practices that constitute discrimination against persons with disabilities. The Convention provides a catalogue of rights for persons with disabilities, with accessibility being particularly important among them, as it represents one of the essential prerequisites for the equal participation of these persons in all aspects of social life.

2.3.1.2. Other United Nations legal documents

Resolutions, declarations, and other formally and legally non-binding international documents adopted under the auspices of the United Nations and stemming from the consensus in the international community are of great importance for combating gender-based discrimination, sexual harassment, and abuse.

The Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in Vienna (June 1993) and endorsed by United Nations General Assembly Resolution 48/121 expresses concerns about various forms of discrimination and violence to which women continue to be exposed all over the world and reaffirms that the human rights of women and of the girl child are an inalienable, indivisible, and integral part of universal human rights. It is pointed out that “violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law”.

The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in Beijing in 1995, represent a form of a programme for training and empowering women and eliminating all obstacles for the active participation of women in all aspects of public and private life. The Declaration points out that equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for equality, sustainable development, and peace. A separate chapter of the Platform for Action is dedicated to violence against women, which violates, impairs, and nullifies the enjoyment by women of their human rights and fundamental freedoms and which, as it is highlighted, is a manifestation of the unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.

In the chapter “Women and armed conflict,” it is stated that peace at the local, national, regional, and global levels is achievable and that it is inextricably linked to the progress of women. Six strategic objectives are established: increase the participation of women in conflict resolution at decision-making levels and protect women living in situations of armed and other conflicts or under foreign occupation (objective E.1); reduce excessive military expenditures and control the availability of armaments (objective E.2); promote non-violent forms of conflict resolution and reduce the incidence of human rights abuse in conflict situations (objective E.3); promote women’s contribution to fostering a culture of peace (objective E.4); provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women (objective E.5); provide assistance to women of the colonies and non-self-governing territories (objective E.6).

In the Global Development Agenda 2030, adopted at the United Nations Sustainable Development Summit in 2015 (Agenda 2030), Sustainable Development Goal 5 is to achieve gender equality and empower all women and girls. Its targets, among others, are: ending all forms of discrimination against all women and everywhere, as well as eliminating all forms of violence against women and girls in the public and private spheres, including sexual and other forms of exploitation; the full and effective participation of women; and equal opportunities for leadership at all levels of decision-making in political, economic, and public life. Also relevant to this Handbook is Sustainable Development Goal 16, which aims to promote peaceful and inclusive societies for sustainable development, to provide access to justice for all, and to build effective, accountable, and inclusive institutions at all levels.

2.3.1.3. Relevant United Nations Security Council resolutions

United Nations Security Council resolutions are of particular importance for gender mainstreaming in the defence system, in the inclusion of women in peace processes, and in the implementation of peace agreements.

UNSCR 1325 (2000) – Women, Peace and Security, unanimously adopted by the UN Security Council, is the first official Security Council document that requires parties in a conflict to prevent violations of women’s rights, to support women’s participation in peace negotiations and in post-conflict reconstruction, and to protect women and girls from sexual and gender-based violence in armed conflict, especially bearing in mind that the abuse and rape of women and girls have

become an important weapon of war and one of the methods of extreme torture. The Resolution highlights the unique impact of conflict on women and calls for the adoption of a gender perspective to address the special needs of women and girls during conflicts, repatriation and resettlement, rehabilitation, reintegration, and post-conflict recovery.⁴³

UNSCR 1820 (2008) addresses issues of sexual violence in conflict and post-conflict situations and emphasizes the importance of preventing sexual violence against women, of implementing a zero-tolerance policy towards sexual exploitation and abuse, and of punishing perpetrators.

UNSCR 1888 (2009) is dedicated to the protection of women and girls from sexual violence in armed conflicts. The resolution provides for the appointment of a special representative of the Secretary-General and the deployment of teams of experts which shall work in the field in order to establish more effective coordination, implementation, and reporting on the implementation of Resolution 1820. UNSCR 1889 (2009) is focused on protecting women and girls in post-conflict situations. It calls for further measures to increase women's participation during all stages of post-conflict recovery: conflict resolution, post-conflict planning and peacebuilding, political and economic decision-making, combating stereotypes and promoting women's leadership and capacities, and aid programme management, as well as for supporting women's organizations.

UNSCR 1960 (2010) represents a response to the slow progress on addressing the issue of sexual violence in situations of armed conflict, in particular against women and children. It calls for concrete measures and the establishing of institutional mechanisms for the prevention of and protection from sexual violence in conflicts. UNSCR 2106 (2013) notes the slow progress in the implementation of the UNSCR 1960 and calls for effective measures to prosecute and respond to cases of sexual violence, which would contribute to the maintenance of international peace and security.

⁴³ The OSCE, as a regional organization committed to security, supports the implementation of the UNSCR 1325 and the Women, Peace and Security Agenda in the region. The organization emphasizes the need for women to engage in conflict prevention, as well as in crisis management and post-conflict reconstruction processes. [The OSCE has a Programme for Gender Issues](#) that supports both the governmental and non-governmental sectors through analysis, tools, training, and expert advice to help states meet their commitments under UNSCR 1325. The OSCE provides assistance in the development of National Action Plans, as well as in identifying the conditions, trends, and challenges for the implementation of NAPs.

UNSCR 2122 (2013) emphasizes the need for continuous implementation of UNSCR 1325 and national action plans, as well as the improvement of coordination, monitoring, and evaluation systems. It particularly emphasizes the importance of women's leadership and the greater participation of women in monitoring progress in conflict resolution and peacekeeping.

UNSCR 2242 (2015) points out that women's participation is a crucial component of efforts to address challenges in the global context, characterized by rising violent extremism, climate change, and large numbers of displaced persons, with emphasis on the essential link between women's participation and sustainable peace and security.

UNSCR 2272 (2016) establishes a mechanism for the prevention of sexual exploitation and abuse by members of UN peacekeeping forces in peacekeeping operations. The resolution addresses sexual exploitation and abuse as an issue of UN credibility and the organization's ability to conduct peacekeeping missions. It is aimed at eliminating sexual exploitation and abuse arising from institutional cultures based on militarized and patriarchal security patterns. The resolution envisages the possibility of the military or police contingent in which individuals are accused of sexual exploitation and abuse being replaced by another contingent from the relevant state, which shall respond appropriately and prosecute cases of sexual exploitation and abuse.

UNSCR 2467 (2019) is dedicated to sexual violence in armed conflicts, and to their resolution. It promotes a survivor-centred approach, which should provide compensation and adequate health care, including reproductive health care, to victims. The resolution emphasizes that structural gender inequality and discrimination are the main causes of sexual violence and highlights the essential role of women's participation and empowerment in building a path to sustainable peace and security.

UNSCR 2493 (2019) – the tenth resolution within the Security Council's Women, Peace and Security agenda, urges Member States to commit to implementing the nine previously adopted resolutions. The Resolution represents a step forward in the field of women's participation in all stages of peace processes, as well as in creating a safer environment for civil society, including formal and informal community women leaders, women peacebuilders, political actors, and those who protect and promote human rights, enabling these agents to carry out their work independently and without undue interference, threats, and hate speech, including in carrying out actions in situations of armed conflict.

UNSCR2538 (2020) represents an important breakthrough since it is the first resolution adopted by the UN Security Council that relates specifically to the role of women in peacekeeping forces. Also significant is that it is a very rare case of a resolution co-sponsored by all members of the Security Council. Some of the main elements of the resolution regard the need to increase the number of women in UN missions, the need for cooperation in training and capacity building, and the establishment of networks of female staff; here, it calls for improving the security of female staff in missions and providing adequate accommodation for female mission staff. Finally, the resolution calls for cooperation between the UN and regional organizations in this regard.

2.3.2. International legal documents under the auspices of the Council of Europe

Under the auspices of the Council of Europe⁴⁴, several international treaties pertinent to protection against discrimination, sexual harassment, and abuse have been adopted. Also important for the successful fight against these phenomena are numerous legally non-binding documents, which provide guidelines for the actions of states in this field.

2.3.2.1. International treaties under the auspices of the Council of Europe

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) guarantees civil and political rights, including the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), and prohibits discrimination in the enjoyment of the said rights on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status (Article 14). Given that the prohibition of discrimination applies to the rights guaranteed by the Convention, Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted,

⁴⁴ [The Council of Europe](#) is the leading human rights organization in Europe, comprising 47 member states, of which 28 are member states of the European Union. The Council of Europe advocates freedom of expression and the media, freedom of assembly, equality, and the protection of minorities. It assists member states in fighting corruption and terrorism and undertaking necessary judicial reforms. The Council of Europe is seated in Strasbourg, France. The Parliamentary Assembly consists of 318 members of parliament from the member states. The Assembly elects the Secretary General, the Human Rights Commissioner, and the judges to the European Court of Human Rights. The Human Rights Commissioner independently reports on and brings attention to human rights violations.

which prescribes the general prohibition of discrimination (2000). It extended the prohibition of discrimination to rights guaranteed by national laws.

The Council of Europe Convention on Action against Trafficking in Human Beings (2005) declares that the implementation of the Convention's provisions, particularly the use of measures to protect and promote the rights of victims, should be ensured without discrimination on any grounds. Notably, the Convention emphasizes that there is a strong link between trafficking in human beings and gender, which is why it is necessary to include the gender equality perspective in the field of trafficking in human beings.

The Council of Europe Convention on preventing and combating violence against women and domestic violence – also referred to as the Istanbul Convention (2011) establishes binding standards for protection from violence against women and domestic violence. States Parties are obliged to take the necessary legislative and other measures and to exercise due diligence to prevent, investigate, and punish violence perpetrated by non-State actors, as well as to provide reparation to its victims. It emphasizes the need for the coordinated action of State actors and all institutions of the system that are responsible for working with women victims of violence, especially domestic violence. Violence against women is identified as a violation of human rights and a form of discrimination against women, and it is established that States Parties have an obligation to ensure the implementation of the Convention without discrimination on any grounds (Article 4). In the field of prevention, States Parties have the responsibility to promote changes in the social and cultural patterns with a view to eradicating prejudices, customs, traditions, and all other practices based on the idea of the inferiority of women and men, to raise public awareness, and to provide appropriate training to employees on the prevention and detection of violence, the needs and rights of victims, and on how to prevent secondary victimisation (Articles 12 and 15). It was adopted with the aim of establishing zero tolerance for violence against women and domestic violence, effectively combating all forms of discrimination against women, and promoting essential equality between women and men.

2.3.2.2. Other international legal documents of the Council of Europe

The European Social Charter (revised) (1996) is a fundamental document of the Council of Europe in the field of social rights. It serves as a counterpart to the European Convention on Human Rights in the field of economic and social rights. Among other things, the Charter establishes the right to equal opportunities and

equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20), as well as the right of employees with family responsibilities to equal treatment and opportunities.

The European Charter for Equality of Women and Men in Local Life (2006) is intended for local and regional governments, which publicly commit, by signing it, to follow the principles of gender equality and implement the provisions of the Charter in their communities. This includes the implementation of the principles of equality between women and men and the elimination of gender stereotypes and all forms of gender discrimination.

Numerous recommendations have also been adopted within the Council of Europe, the most important of which are: Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision-making; Recommendation No. R (90) 4 on the elimination of sexism from language; Recommendation No. R (98) 14 on gender mainstreaming; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation 1325 (1997) on traffic in women and forced prostitution; Recommendation No. R (96) 5 on reconciling work and family life; Recommendation Rec (2002) 5 on the protection of women against violence; Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision-making; Recommendation CM/Rec (2007) 13 on gender mainstreaming in education; Recommendation CM/Rec (2007) 17 on gender equality standards and mechanisms; Recommendation CM/Rec (2013) 1 on gender equality and media; Recommendation CM/Rec (2017) 9 on gender equality in the audiovisual sector; Recommendation CM/Rec (2019) 1 on preventing and combating sexism, etc.

2.4. European Union law

2.4.1. Primary and secondary legislation

Legislation relevant to protection against discrimination, sexual harassment, and abuse is contained in sources of primary and secondary legislation. Primary legislation consists of treaties setting EU objectives, rules on EU institutions, and relations between the Member States and the EU, while secondary legislation includes directives, decisions, rules, recommendations, and opinions based on the principles and objectives established in primary legislation.

The original Treaty establishing the European Economic Community (1957) contains several provisions prohibiting all forms of discrimination on the grounds of nationality, and includes the prohibition of discrimination on grounds of sex in the context of employment. The Maastricht Treaty (1992) also contains a provision on the prohibition of discrimination based on sex in employment, through it wasn't until the Treaty of Amsterdam (1999) which in addition to proclaiming equality between men and women in the labour market also provided the European Council with important powers to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation (Article 13). The Treaty of Lisbon (2007) states, among other things, that the EU shall combat social exclusion and discrimination, and shall promote social justice and protection, (and) equality between women and men... (Article 2).

The Charter of Fundamental Rights of the European Union (1993) was the first document to provide a catalogue of human rights guaranteed in the EU, and one part of the Charter is dedicated to the prohibition of discrimination and the principles of equality and equity. It forbids discrimination on any grounds, including genetic features and sexual orientation, which are mentioned for the first time as prohibited grounds of discrimination. The Charter was adopted as a legally non-binding document, but became binding with the entry into force of the Treaty of Lisbon (2007), as it was incorporated in its text.

Secondary sources in the field of non-discrimination are EU directives, among others:

- ▶ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- ▶ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;
- ▶ Council Directive 2002/73/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- ▶ Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
- ▶ Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;
- ▶ Council Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

The content of the directives demonstrates progress in the legal regulation of discrimination. Directive 2002/73/EC contains a broad definition of indirect discrimination and defines gender-based and sexual harassment. The scopes of the prohibitions of discrimination vary in certain areas because there are differences in personal characteristics indicated as grounds of discrimination prohibited in the areas covered by the directives. The proposal of the so-called Horizontal Directive was adopted in 2009 to improve protection against discrimination, but it has not yet been passed.

Another relevant document for protection against sexual harassment and abuse in the EU countries is Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive), which, among other things, guarantees more effective protection and specialized support to victims of sexual or gender-based violence.

2.4.2. Other relevant legal documents of the European Union

Numerous legally non-binding documents also provide incentives for achieving gender equality in the EU countries: Recommendation 84/635/EC on the promotion of positive action for women; Recommendation 92/131/EEC on the protection of the dignity of women and men at work; Council Resolution of 12 July 1982 on the promotion of equal opportunities for women; Council Resolution of 27 March 1995 on the balanced participation of men and women in decision-making; Resolution of the Council and of the Ministers for Employment and Social Policy on the balanced participation of women and men in family and working life from 2000; European Parliament resolution on women in decision-making from 2000, etc.

Gender equality policy in EU countries is implemented in accordance with the EU Gender Equality Strategy 2020-2025. Its key objectives are ending gender-based violence, challenging gender stereotypes, closing gender gaps in the labour market, achieving equal participation across different sectors of the economy, addressing the gender pay and pension gap, closing the gender care gap, and achieving gender balance in decision-making and politics. The Strategy employs a dual approach – gender mainstreaming and targeted measures in certain areas, with intersectionality as a cross-cutting principle for its implementation.

2.5. Legal and strategic framework for protection against gender-based discrimination, sexual harassment, and abuse in the Western Balkans countries

2.5.1. Legal framework

2.5.1.1. General anti-discrimination regulations

The legal framework for gender equality and non-discrimination in the Western Balkan countries consists of regulations contained in their constitutions and anti-discrimination laws.

The Constitution of Bosnia and Herzegovina (Annex 4 of The General Framework Agreement for Peace in Bosnia and Herzegovina and "Official Gazette of BiH," No. 25/2009 – Amendment 1) stipulates that the enjoyment of rights and freedoms is guaranteed to all persons without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status (Article 4).

The Constitution of Montenegro ("Official Gazette of Montenegro," No. 01/07 and 38/13 - Amendments 1-16) prohibits any direct or indirect discrimination on any grounds and prescribes that regulations and the introduction of special measures aimed at creating the conditions for the exercise of national, gender, and overall equality and protection of individuals who are in an unequal position on any grounds shall not be considered discrimination (Article 8). It is stipulated that the state shall guarantee the equality of women and men and shall develop the policy of equal opportunities (Article 18).

The Constitution of the Republic of North Macedonia ("Official Gazette of the Republic of Macedonia," No. 52/1991), with Amendments 1-36 (1992-2019) stipulates that citizens are equal before the Constitution and the law in their freedoms and rights, regardless of their sex, race, colour of skin, national and social origin, political and religious beliefs, property, and social status.

The Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia," No. 98/2006) stipulates that the State shall guarantee the equality of women and men and develop an equal opportunities policy (Article 15), prohibits discrimination on any grounds, and provides for the possibility of introducing special measures to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens, which shall not be deemed discrimination (Article 21).

All states have adopted the following general and special anti-discrimination laws (Table 3):

BOSNIA AND HERZEGOVINA	MONTENEGRO	REPUBLIC OF NORTH MACEDONIA	REPUBLIC OF SERBIA
Law on the Prohibition of Discrimination (2009)	Law on the Prohibition of Discrimination (2010)	Law on the Prevention of and Protection against Discrimination (2020)	Law on the Prohibition of Discrimination (2009)
Law on the Equality of Sexes ("Official Gazette of BiH," No. 16/2003)	Law on Gender Equality ("Official Gazette of the Republic of Montenegro," No. 46/07 and "Official Gazette of Montenegro," No. 73/10, 40/11 and 35/15)	Law on Equal Opportunities for Women and Men ("Official Gazette of the Republic of Macedonia," No 201/2015 – consolidated text).	Law on Gender Equality ("Official Gazette of the Republic of Serbia," No. 104/2009.)
	Law on the Prohibition of Discrimination against Persons with Disabilities ("Official Gazette of Montenegro," No. 35/15 and 44/15)		Law on the Prevention of Discrimination against Persons with Disabilities ("Official Gazette of the Republic of Serbia," No. 33/2006).

Table 3: Anti-discrimination laws – comparative data for the four Western Balkans countries

2.5.1.2. Regulations on the prohibition of discrimination in the laws on the armed forces of the Western Balkans countries

Provisions on the prohibition of gender-based and other discrimination and on equal opportunities contained in laws on the armed forces are critical to this sector.

The Law on Service in the Armed Forces of Bosnia and Herzegovina (“Official Gazette of BiH,” No. 88/2005, 53/2007, 59/2009, 74/2010, 42/2012, 41/2016, and 38/2018) stipulates that professional military personnel and persons wishing to be admitted to the Armed Forces shall be treated with full respect according to the principles of transparency, fairness, and equal opportunities, that there shall be no discrimination on any grounds, and that the Minister of Defence shall ensure that these obligations are respected in the Armed Forces (Article 28). The law also contains a specific gender-responsive norm, which stipulates that a spouse of a military member who is killed or dies due to a wound, injury, or illness, in case he/she doesn't meet the requirements for a survivor's pension, may at his/her own request be referred for training to acquire secondary education up to four years, if at the time of death he/she had not attained a suitable educational level or was unemployed (Article 43).

The Law on the Armed Forces of Montenegro (“Official Gazette of Montenegro,” No. 51/17 and 34/19) guarantees to persons applying for enlistment in the Armed Forces the application of the principles of transparency, fairness, and equal rights, without discrimination on any grounds, and prohibits putting persons serving in the Armed Forces in a privileged or unequal position in the exercise of their rights and obligations or denying and restricting rights on any grounds (Article 16). Additionally, upon enlistment in the Armed Forces, the same law stipulates that proportional representation of members of minority groups and other minority national communities, as well as gender-balanced representation, shall be taken into account – Article 47, paragraph 3. The law also contains a clause on the use of gender-sensitive language, prescribing that the terms used in this law for natural persons in the masculine gender also apply to the feminine gender – Article 13.

The Law on Service in the Army of the Republic of Macedonia (“Official Gazette of the Republic Macedonia,” No. 77/12, 29/14, 33/15, 193/15, 71/16, and The Law on Service in the Army of the Republic of North Macedonia (“Official Gazette of the Republic of North Macedonia,” No. 101/19, 14/20) prescribes that the Law has a gender-sensitive approach and applies equally to women and men serving in the Army, and that all terms used in the Law in the masculine gender imply the same

terms in the feminine gender (Article 1-a). The law also prescribes that the persons responsible for issuing orders on the appointment, promotion, dismissal, transfer, deployment, etc., of those serving, or seeking to serve, in the Army are obliged to take into account the appropriate and equitable representation of members of communities, as well as to apply a gender perspective (Article 13-a).

The Law on the Armed Forces of the Republic of Serbia (“Official Gazette of the Republic of Serbia,” No. 116/2007, 88/2009, 101/2010 - other law, 10/2015, 88/2015 - CC Decision, 36/2018 and 94/2019) stipulates that the legal provisions apply equally to women and men, and that it is prohibited to give privileges to or deny members of the Serbian Armed Forces their rights or duties, especially on the grounds of racial, religious, sexual or national affiliation, origin, or any other personal characteristics (Article 13, paragraph 3).

2.5.2. Strategic framework for gender equality

All Western Balkans countries have adopted strategies for achieving gender equality at the state level, as well as action plans for the implementation of UNSCR 1325 – Women, Peace and Security.

Bosnia and Herzegovina adopted in 2018 the third Action Plan for Gender Equality (Gender Action Plan BiH (GAP) for the Period 2018-2022 “Official Gazette of BiH,” No. 89/18). Previous action plans were successfully implemented in the periods 2013-2017 and 2006-2011.

The Action Plan for Gender Equality / Gender Action Plan (GAP) for the Period 2018-2022 sets goals (Table 4), programmes, and measures for achieving gender equality in all areas of social life and work, in the public and private spheres. This strategic document provides guidelines for the development of operational plans of institutions at all levels of government in BiH. It establishes priority and cross-cutting areas, as well as areas related to strengthening the system, mechanisms, and instruments for achieving gender equality, and prescribes strengthening cooperation and partnerships. This plan clarifies the duties of institutional mechanisms for gender equality, as well as the duties and responsibilities of line ministries in each priority area.

STRATEGIC GOAL 1:	STRATEGIC GOAL 2:	STRATEGIC GOAL 3:
Development, implementation, and monitoring of the programme of measures for the advancement of gender equality within governmental institutions, as per priority areas.	Establishing and strengthening the system, mechanisms, and instruments for the achievement of gender equality.	Establishing and strengthening cooperation and partnerships.

Table 4: Strategic goals of the GAP 2018-2022 – Bosnia and Herzegovina

The Council of Ministers of Bosnia and Herzegovina adopted the third Action Plan for the Implementation of UNSCR 1325 Women, Peace and Security in Bosnia and Herzegovina for the Period 2018-2022 (“Official Gazette of BiH,” No. 1/2019; AP for UNSCR 1325). Previous action plans were successfully implemented for the periods 2014-2017 and 2010-2013. The third Action Plan contains three strategic objectives, which contain medium-term objectives, expected results, and activities (Table 5).

STRATEGIC OBJECTIVE 1:	STRATEGIC OBJECTIVE 2:	STRATEGIC OBJECTIVE 3:
Increased participation of women in military forces and police and peacekeeping missions, including participation in decision-making positions.	Increased level of human security from a gender equality perspective.	Improved conditions and access to the implementation of the AP for UNSCR 1325.
MEDIUM-TERM OBJECTIVES:		
1. Key policies, legislation, and other regulations enable the increased participation of women in military forces and police and peacekeeping missions, including participation in decision-making.	2.1. Reduced rate of trafficking in human beings in Bosnia and Herzegovina.	3.1. Improved coordination mechanisms and instruments for the implementation of the AP for UNSCR 1325.
2. The existence of prerequisites for improving the position and advancement of women in military forces and police and peacekeeping missions, including decision-making positions.	2.2. Increased support and help for victims who have endured sexual violence and other forms of wartime suffering.	3.1. Enhanced cooperation with other actors.
3. Raised awareness about the importance of women’s participation in decision-making and maintaining peace and security.	2.3. Enhanced gender responsible approach and support systems in conditions of ongoing security threats and challenges.	

Table 5: Strategic objectives of the AP for UNSCR 1325 – Bosnia and Herzegovina

Examples of good practice in the implementation of the AP for UNSCR 1325 in Bosnia and Herzegovina

The Ministry of Defence of BiH adopted in December 2018 the “Standard Operating Procedures for Gender Equality in the Armed Forces of Bosnia and Herzegovina.” These regulate the organizational structure, competencies, and functions of the AF of BiH in the field of gender equality, the implementation of tasks from regulations and procedures in case of violations of gender equality in the AF of BiH, and other matters related to gender equality in the AF of BiH. The purpose of the Standard Operating Procedures is to fully integrate the gender perspective and gender equality into the AF of BiH by defining specific procedures in the implementation of the Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina. The Standard Operating Procedures establish the competence, organizational structure, and functions of the AF of BiH in the field of gender equality, the implementation of tasks and procedures in the field of gender equality (planning, implementation, monitoring, reporting and information dissemination), and the planning and implementation of training in the field of gender equality.

In October 2019, the Ministry of Defence of BiH adopted the legal document “[Gender equality policy in the BiH Ministry of Defence and the BiH Armed Forces](#),” which aims to integrate gender equality within BiH defence institutions into all development policies and strategies, as well as to define the principles, goals, and responsibilities in the process of exercising democratic principles and fundamental human rights that require gender equality. This document explicitly prescribes that gender equality shall not have the status of a special issue, but shall be the subject of all policies and programmes of action in the MoD of BiH and the AF of BiH. The document strongly promotes the approach of gender mainstreaming, pointing out that it does not focus only on women, but sees all persons, both women and men, as subjects of the development process and as target groups in that process.

In an extraordinary telephone session, held on October 15, 2019, the Council of Ministers of BiH adopted, at the proposal of the Ministry of Human Rights and Refugees, [Information on the mechanisms for effective prevention of and protection against gender-based and sexual harassment at work in institutions of Bosnia and Herzegovina](#), with [A Guide to Taking Effective Measures to Prevent Gender-Based and Sexual Harassment at Work in Institutions of Bosnia and Herzegovina](#).

The Ministry of Defence of Bosnia and Herzegovina implemented the Conclusion of the Council of Ministers of Bosnia and Herzegovina adopted at the session held on October 15, 2019 and pursuant to it adopted the Decision on the zero-tolerance policy towards acts of sexual and gender-based harassment and the Decision on the appointment of the Advisor for Gender-based and Sexual Harassment at Work.

In 2017, the Council of Ministers of BiH adopted the [Final Report on the Implementation of the AP for UNSCR 1325 for the Period 2014-2017 in Bosnia and Herzegovina](#). The report contains recommendations and lessons learned that were the starting point for drafting the new Action Plan.

The Government of Montenegro adopted in 2017 the third Action Plan for Achieving Gender Equality in Montenegro (APAGE) 2017-2021, with the Programme for Implementation for the Period 2017-2018, while the second Programme for the Implementation of APAGE 2019-2020 was adopted in March 2019. Previous action plans were successfully implemented for the periods 2008-2013 and 2013-2017. APAGE is a developmental document for the implementation of the gender equality policy, which defines seven strategic goals (Table 6). The Ministry of Defence and the AF of Montenegro have been recognized in the field of action – equality in the decision-making process in political and public life, within the strategic goal: equal participation of both women and men at all levels of decision-making, related to achieving the goal: implementation of UNSCR 1325 – Women, Peace and Security.⁴⁵

STRATEGIC GOALS:

1. Establish a society of equal opportunities and eliminate all forms of gender-based discrimination.
2. Introduce gender-sensitive education at all levels of education.
3. Increase employment of women and eliminate all forms of discrimination of women in the labour market.
4. Improve available gender-sensitive health care.
5. Prevent all forms of violence against women and domestic violence and improve the position and protection of the rights of victims of all forms of violence.
6. Prevent gender stereotypes and introduce gender equality policy in the media, culture, and sport.
7. Equal participation of both women and men at all levels of decision-making.

Table 6: Strategic goals from APAGE – Montenegro

45 Action Plan for Achieving Gender Equality in Montenegro (APAGE) 2017-2021

Examples of good practices for Montenegro

Gender Equality Index: [The Gender Equality Index](#) for Montenegro was developed at the initiative of the Department for Gender Equality of the Ministry for Human and Minority Rights, and in cooperation with the European Institute for Gender Equality (EIGE) and the United Nations Development Programme (UNDP) in Montenegro, under the remit of the project “Support to Anti-Discrimination and Gender Equality Policies” in 2019. The Index is based on the methodology of the Gender Equality Index developed by the EIGE for EU Member States. The data used to calculate it refer to the year 2017. The Gender Equality Index for Montenegro was calculated to be 55, while the average value recorded for the EU-28 countries was 67.4. The biggest differences related to gender equality were indicated in the domains of money and power, while the lowest were in the domains of health and labour. The index is an important resource for gender mainstreaming in all public policies.

Capacity building through activities with NATO and other international partners:

The NATO Bi-Strategic Command Directive (BI-SCD) 40-1 operationalizes the implementation of UNSCR 1325. The Directive applies to NATO command structures, including the Allied Command Operations and Allied Command Transformation, as well as all to other NATO command structures, all NATO members, and Partnership for Peace countries. As a part of implementing this directive, the MoD and the AF of Montenegro sent Major Sanja Pejović, Gender Equality Coordinator of the AF of Montenegro and a Gender Equality Instructor, to training in Sweden, with the support of the UNDP SEESAC regional project. She attended the NATO-accredited international military training for gender advisers in military operations at the strategic level and successfully completed it. Afterwards, she was appointed as a gender advisor at the strategic level in the AF of Montenegro. As of July 20, 2018, she was deployed to work as a Gender Adviser (GENAD) at the Supreme Headquarters Allied Powers Europe (SHAPE) in Mons. This marked the first position that Montenegro has received as a NATO member in the NATO command structure.

Montenegro is currently implementing the second Action Plan for the Implementation of the UNSCR 1325 for the Period 2019-2022 with the Implementation Programme for 2019-2020, which was adopted by the Government of Montenegro in September 2019. It was preceded by the Action Plan for the Period 2017-2018, whose adoption in February 2017 was significant not only for Montenegro as a UN member state, but also from the aspect of Montenegro’s NATO membership and in the context of negotiations for accession to the European Union, especially for Chapter

31 – Foreign, security and defence policy 32 activities were implemented within this Action Plan, accounting for 78% of the total implementation of the AP. Five activities were partially implemented, while only four activities were not implemented [Report on the Implementation of the Action Plan for the Implementation of UN Security Council Resolution 1325 – Women, Peace and Security in Montenegro \(2017-2018\)](#)

The Action Plan for the Implementation of UNSCR 1325 for the Period 2019-2022 with the Implementation Programme for 2019-2020 covers and elaborates on key areas for the implementation of UNSCR 1325 and related resolutions (Table 7). The Government of Montenegro adopted the [annual report](#) on the implementation of the current programme in April 2020.

STRATEGIC GOALS:

1. Increasing women’s participation in decision-making and peace processes
2. Protecting women and girls in conflict zones
3. Integrating the gender perspective and gender education into peacekeeping operations

OPERATIONAL GOALS:

- Strengthen the role of institutional mechanisms for monitoring the implementation of the Action Plan for UNSCR 1325 and related resolutions (within this goal – eight activities);
- Strengthen the gender perspective through participation in international activities on the implementation of UNSCR 1325 and related resolutions (two activities);
- Integrate the gender perspective into educational programmes at all levels of education, including activities on the implementation of UNSCR 1325 and related resolutions, especially those referring to gender aspects of human security and peacekeeping, in order to integrate the gender perspective and gender education into peacekeeping operations (seven activities);
- Introduce gender balance in the activities of the security system (five activities);
- Increase the representation of women in the security sector and in peacebuilding decision-making activities and processes (four activities);
- Raising awareness about gender-based discrimination, gender-based violence, and violence against women and establishing effective preventive protection of women and girls from gender-based discrimination, gender-based violence, and violence against women (three activities);
- Raising awareness of the general public about the problem of human trafficking and establishing effective preventive protection of women and girls from human trafficking (three activities);
- Improving cooperation in the implementation of UNSCR 1325 and related resolutions (four activities); and Improving efficiency in monitoring the implementation of the AP for the Implementation of UNSCR 1325 and related resolutions (four activities).

Table 7: Strategic and operational goals of the AP for the Implementation of UNSCR 1325 (2019-2022) – Montenegro

Examples of good practice in the AP for the implementation of UNSCR 1325 in Montenegro

The Ministry of Defence adopted the “Guidelines for the Attraction and Retention of Women in the AF of Montenegro,” which are intended for the command staff of the AF, organizational units dealing with human resources, planning and development, education and training, operations, public relations, and all structures within the Ministry of Defence and the AF of Montenegro that are responsible for the recruitment, enlistment, selection, and professional development of persons in the AF of Montenegro. Attracting and retaining women in the AF of Montenegro and their career advancement promote more efficient and accountable armed forces, and women’s participation in peacekeeping missions and operations contributes to making peace processes across the world more effective and efficient.

With the support of UNDP SEESAC, the AF of Montenegro are implementing the project Mentoring for Gender Equality, within which an officer from the Human Resources Department of the General Staff of the AF of Montenegro worked in 2015 with a mentor to develop his competencies in the field of gender mainstreaming and the implementation of UNSCR 1325 and related resolutions. The Mentoring for Gender Equality project also continued in 2019/2020.

The Republic of North Macedonia adopted in January 2013 the Gender Equality Strategy 2013–2020 (GES). The Strategy is the result of efforts to fulfil the commitment established in the Law on Equal Opportunities for Women and Men (“Official Gazette of the Republic of Macedonia,” No. 201/2015 – consolidated text of the LEO), and was developed within the project implemented by the Ministry of Labour and Social Policy, in cooperation with UN Women and UN agencies in the Republic of North Macedonia. The current GES is an upgrade of the previous national policy established by the National Action Plan for Gender Equality 2007–2012. The Gender Equality Strategy 2013–2020 is currently being implemented in accordance with the National Action Plan for Gender Equality 2018–2020, and the drafting of a new GES for the period 2021–2026 is currently underway.

The goal of the GES is to enable equal participation of women and men in all areas of the public and private sectors, equal status and treatment in the exercise of their rights, and equal benefits from the achieved results. The strategy defines the framework for full equality between women and men as a multisectoral, horizontal, and universal social and political priority (Table 8).

STRATEGIC GOALS 1:

1. Establishing an effective and efficient system for achieving gender equality through functional support mechanisms at the national and local levels, harmonizing indicators for measuring progress in the field of gender equality, and ensuring gender-disaggregated statistics.
 - 1.1. Ensured systemic support for gender mainstreaming in policies and financial instruments, in accordance with the LEO.
 - 1.2. Strengthened and efficient functionality of gender equality mechanisms in accordance with the provisions of the LEO.
 - 1.3. Established/developed indicators for measuring gender equality based on the available gender-disaggregated statistical data and international and national commitments.

STRATEGIC GOALS 2:

2. Improving the level of gender equality in priority areas.
 - 2.1. Increasing the gender-responsive participation of women in decision-making processes in the legislative and executive branches of government, party politics, and editorial broadcasting activity.
 - 2.2. Raised public awareness of gender-based violence and an improved legal framework that offers standards for efficient protection from and punishment of various forms of gender-based violence.
 - 2.3. Established and tested/piloted policies for eliminating barriers/obstacles and increased employment of women (balancing private/professional life, strengthening women’s entrepreneurship, reducing discrimination in the labour market).
 - 2.4. Established and tested educational programmes for gender equality in preschool, primary, secondary, and higher education (refers to two pilot kindergartens, a gender equality module in the subject Society / Civic Organization in primary education, the subject of Gender Equality or Sexual Reproductive Health in secondary education and one subject of gender equality at the Faculty of Pedagogy and the Institute for Social Work).
 - 2.5. Health care – will be further defined based on specified activities.
 - 2.6. Improved access and quality of services for women and men in the field of social protection, as a result of the increased capacities of service providers in the field of gender equality in social work.

Table 8: Strategic goals of the GES – Republic of North Macedonia

STRATEGIC GOALS 3:

3. Nurturing/creating a culture of equal opportunities and promoting equal treatment and non-discrimination based on sex.
 - 3.1. Strengthened public awareness of the causes and consequences of gender inequality through promoting and supporting positive examples of gender-sensitive media content, cultural and educational initiatives, and gender-responsible social, corporate, private, and public enterprises.
 - 3.2. Established coordination/cooperation between the public, private, and civil sectors in the implementation of the LEO.
 - 3.3. Established functional mechanisms for protection and response in cases of gender-based discrimination in the public and private sectors, in accordance with the LEO.

The Republic of North Macedonia made significant progress in the implementation of UNSCR 1325 – Women, Peace and Security by adopting the first [National Action Plan \(NAP\) 2013-2016](#). The first NAP was aimed at gender mainstreaming foreign, security, and defence policy by strengthening the active role of women and achieving gender equality. In this sense, the adoption of the first NAP defined policy guidelines, principles, stakeholders, activities, strategies, indicators, monitoring and evaluation, and financial implications. The first NAP contained three strategic goals: Strategic Goal 1: Strengthen the gender perspective in the formulation and implementation of the peace, security, and defence policy of the Republic of Macedonia; Strategic Goal 2: Strengthen the participation of women in and the contribution of women to international, civilian, and military missions in which the Republic of Macedonia takes part; and Strategic Goal 3: Prevent violence and protect women’s rights in times of peace, of conflict, and of humanitarian disasters.

At the 76th session of the Government of the Republic of North Macedonia, [the second National Action Plan for the Implementation of UNSCR 1325 Women, Peace and Security for the Period 2020-2025](#) was adopted with decision No. 44-7107/01 of 13 July 2020, and the Ministry of Defence was designated as the competent institution for coordinating the implementation process. In order to harmonize the ambitions of the NAP with its implementation, five strategic goals for the realization of the NAP mission have been defined after comprehensive consultations with all stakeholders. All goals are mutually supported, and Strategic Goal 5 is cross-cutting and represents a catalyst for the other four goals. Each strategic goal clearly links to the principles of UNSCR 1325.

STRATEGIC GOALS:

1. Leadership – Transparency in selection for, retention of, and promotion to leadership positions, while respecting the principle of equal opportunities for women and men.
2. Participation – Transparency and inclusion in society, while respecting the principle of equal opportunities for women and men.
3. Facilitation – Sustainable and effective conditions in supporting the different needs of women and men.
4. Protection – Ensuring comprehensive and effective protection of women and men.
5. Communication, education, and training – Effective and comprehensive communication, education, and training for the Women, Peace and Security agenda (cross-cutting Strategic Goal).

Table 9: Strategic goals of the NAP for the implementation of UNSCR 1325 (2020-2025) – Republic of North Macedonia

The Second NAP (2020-2025) is to be implemented through individual operational plans that are the responsibility of the relevant state authorities and the Association of Local Self-Government Units. The Ministry of Defence shall be in charge of the process of monitoring and reporting on the progress in implementing activities; a special Coordination, Monitoring, and Evaluation Cell (CMEC) was established within the structure of the MoD for this purpose. The CMEC is to send mandatory reports to all key stakeholders once a year and conduct an independent evaluation of the data collected for the purpose of analysing annual progress. The CMEC shall report to the Parliamentary Committee on Equal Opportunities for Women and Men, in order to allow democratic oversight of the process. The reports are to be made available to the public.

The Republic of Serbia is basing the implementation of gender equality and equal opportunities policies on two key strategic documents: the Strategy for the Prevention of and Protection against Discrimination 2013-2018 (“Official Gazette of the Republic of Serbia,” No. 60/2013) and the Action Plan for the Implementation of the Strategy 2014-2018 (“Official Gazette of the Republic of Serbia,” No. 107/2014). These strategic documents identify women as one of nine groups at particular risk of discrimination.

The strategic framework of the gender equality policy was established by the National Gender Equality Strategy (NGES) 2016-2020 with the Action Plan for the Implementation of the National Gender Equality Strategy 2016-2018 (“Official Gazette of the Republic of Serbia,” No. 4/2016).

The National Gender Equality Strategy was the second strategic document of this type, preceded by the National Strategy for Improving the Status of Women and Promoting Gender Equality (“Official Gazette of the Republic of Serbia,” No. 15/09) with the accompanying Action Plan for Improving the Status of Women and Promoting Gender Equality 2010-2015. The evaluation of this strategic document indicated that its goals and targets were relevant and focused on the areas and problems of gender inequality that were present at the time of its adoption, and which still remain today, but that there were shortcomings resulting from the absence of an explicit and comprehensive theory of the fields requiring change, such as gender segregation in education, the gender gap in pay and social benefits, and the uneven level of efficiency. The most effective forms of implementation were seen in the area of systemic changes encouraged by the establishment of mechanisms for the introduction of a gender perspective in public policies, yet these were seen as less effective in the areas of changing the culture of gender equality and promoting equal opportunities.

The National Gender Equality Strategy identifies three main strategic goals, with appropriate measures envisaged for their achievement (Table 10):

STRATEGIC GOALS 1:

1. Changed gender patterns and improved gender equality culture.
 - 1.1. Increased gender equality capacities and knowledge of managers and staff in public authorities.
 - 1.2. Gender-sensitive formal education.
 - 1.3. Developing knowledge and visibility of academic results in gender studies.
 - 1.4. Increased public awareness of the significance of gender equality.
 - 1.5. Increased safety of women from gender-based violence in the family and intimate partner relations.

STRATEGIC GOALS 2:

2. Increased equality of women and men by implementing an equal opportunities policy and measures.
 - 2.1. Equal participation of women and men in parenting and in the economy of care.
 - 2.2. Equal participation of women and men in public and political decision-making.
 - 2.3. Improved economic and labour market status of women.
 - 2.4. Enhanced role of women in the security system.
 - 2.5. Women and men in rural areas actively and equally contribute to development and have equal access to development results.
 - 2.6. Improved position of women discriminated against on multiple grounds and vulnerable women.
 - 2.7. Improved health of women and equal access to healthcare services.

STRATEGIC GOALS 3:

3. System-wide gender mainstreaming in the policy adoption, implementation, and monitoring processes.
 - 3.1. Established functional gender equality mechanisms at all levels.
 - 3.2. Gender perspective included in all strategic documents.
 - 3.3. Gender analysis of policies, programmes, and measures.
 - 3.4. Gender-sensitive statistics and records.
 - 3.5. Gender-responsive budgeting.
 - 3.6. Established mechanisms of cooperation with associations.
 - 3.7. Established international and regional cooperation and exchange of good practices.

Table 10: Strategic goals and measures of the NGES – Republic of Serbia

In the National Strategy, of particular importance from the aspect of the security system is target 2.4: Enhanced role of women in the security system.

Good practice example in the Republic of Serbia

The Republic of Serbia was the first country outside the EU to introduce the Gender Equality Index of the European Institute for Gender Equality, according to the EIGE methodology. The Gender Equality Index measures gender equality on a scale from 1 (complete inequality) to 100 (complete equality) in six core domains: knowledge, work, money, health, time, and power; and in two additional domains: violence and intersecting inequalities. The first Gender Equality Index for Serbia was published in 2016, and [the second](#) in 2018. In two years, the result improved by 3.4 points to 55.8 points, with no domain recording negative changes. The greatest progress was seen in the domains of power – 9.3 points and health – 9 points. In comparison to EU Member States, Serbia is ranked 22nd.

Serbia is currently still implementing the second National Action Plan for the Implementation of UNSCR 1325 – Women, Peace and Security in the Republic of Serbia (2017-2020) (“Official Gazette of the Republic of Serbia,” No. 53/2017). It was preceded by the National Action Plan 2010-2015, whose implementation, among other things, improved the “visibility” of women’s representation in the security system and their place and role in maintaining peace and security; the total representation of women in the security system increased by 4.13%, and in decision-making (commanding/management) by 5.21%. Media campaigns were successfully organized for the employment of women in the operational composition of the army and police and for the admission of girls to the Military Academy and the Military Gymnasium, etc.

The [Report on the Implementation of the National Action Plan for the Implementation of UNSCR 1325 – Women, Peace and Security in the Republic of Serbia \(2010-2015\)](#) was adopted in 2016.

The second National Action Plan for the Implementation of UNSCR 1325 – Women, Peace and Security in the Republic of Serbia (2017-2020) established one general and five specific goals (Table 11).

GENERAL GOAL:

Improved security of women in society through integral implementation of UNSCR 1325 – Women, Peace and Security in the Republic of Serbia (2017-2020) in the areas of prevention, participation, protection, and recovery, with greater involvement of the local community

SPECIFIC GOALS:

1. Improved efficiency and effectiveness of the work of all actors, institutional bodies, and mechanisms envisaged for the implementation of the National Action Plan.
2. Developed preventive mechanisms to increase the security of women in peace, in conflict, and in the post-conflict recovery of society in the country and abroad.
3. Increased representation, inclusion, and decision-making of women in all the processes related to the preservation of peace and security.
4. Improved regulatory conditions and institutional capacities for accessible and effective protection of women.
5. Enhanced systems of support for the recovery of women who have suffered any form of threat to security in the post-conflict rehabilitation of society, crises, and emergencies.

Table 11: NAP Goals – Republic of Serbia

2.6. Institutional framework for gender equality

2.6.1. Institutional mechanisms for gender equality

A crucial prerequisite for gender equality policy is a valid institutional framework, consisting of institutions within the legislative and executive branches, as well as institutions working in the field of gender equality protection. All Western Balkans countries have established a coherent network of institutional mechanisms for gender equality, including institutional mechanisms for monitoring the implementation of action plans for the implementation of UNSCR 1325.

Bosnia and Herzegovina has established a network of institutional mechanisms in the field of legislative and executive government at the state, entity, and local levels (Table 12).

LEGISLATIVE BRANCH:	EXECUTIVE BRANCH:
Gender Equality Committee of the House of Representatives of the Parliamentary Assembly of BiH	Agency for Gender Equality of Bosnia and Herzegovina
Gender Equality Committee of the House of Representatives of the Parliament of the Federation of BiH	Gender Centre of the Federation of Bosnia and Herzegovina
Gender Equality Committee of the House of Peoples of the Parliament of the Federation of BiH	Gender Centre – Centre for Gender Equality of the Government of Republika Srpska
Equal Opportunities Committee of the National Assembly of Republika Srpska	Gender Equality Committee of City and Municipal Councils and Mayor's Offices
Gender Equality Committee of the Brčko District of BiH	Persons in charge of gender issues in state administration bodies
Gender Equality Committees of the Cantonal Assemblies	
Gender Equality Committees of the Assemblies of Cities and Municipalities	

Table 12: Institutional mechanisms for gender equality – Bosnia and Herzegovina

In **Montenegro**, the network of institutional mechanisms for gender equality consists of institutional mechanisms within the legislative and executive government bodies, at the state and local levels (Table 13).

LEGISLATIVE BRANCH:
Gender Equality Committee of the Parliament of Montenegro
EXECUTIVE BRANCH:
Department for Gender Equality Affairs at the Ministry of Human and Minority Rights
National Council for Gender Equality with eight committees:
1. Committee for the Greater Political Participation of Women
2. Committee for the Economic Empowerment of Women in the Labour Market
3. Committee for Protection from Domestic Violence and Violence against Women
4. Committee for Health Care and the Social Protection of Women
5. Committee for Science, Culture, Education, and Sports
6. Committee for Sustainable and Rural Development
7. Committee for International Cooperation
8. Committee for Cooperation with Local Self-governments
Coordinators for activities related to the issue of gender equality in public administration bodies
Gender equality coordinators in municipalities

Table 13: Institutional mechanisms for gender equality – Montenegro

In the **Republic of North Macedonia**, there is a very broad network of institutional mechanisms for gender equality at the state and local levels (Table 14).

LEGISLATIVE BRANCH:	EXECUTIVE BRANCH:
Committee for Equal Opportunities of Women and Men of the Assembly of the Republic of North Macedonia	Intersectoral advisory and consultation group for equal opportunities of women and men in the Government of the Republic of North Macedonia
Club of Female MPs	Sector for equal opportunities within the Ministry of Labour and Social Policy
Committees for equal opportunities of women and men within local self-government councils	State Advisor for Equal Opportunities of the Ministry of Labour and Social Policy
	Civil servant – legal representative for proving unequal treatment based on sex of the Ministry of Labour and Social Policy
	Coordinators and deputy coordinators for equal opportunities for women and men at each ministry
	Coordinators and deputy coordinators for equal opportunities for women and men in local self-government units

Table 14: Institutional mechanisms for gender equality – Republic of North Macedonia

In the **Republic of Serbia**, institutional mechanisms for gender equality in the legislative and executive government exist at the state, provincial, and local levels (Table 15).

LEGISLATIVE BRANCH:	EXECUTIVE BRANCH:
Committee on Human and Minority Rights and Gender Equality of the National Assembly	Coordination Body for Gender Equality of the Government of the Republic of Serbia
Committee on Gender Equality of the Assembly of the Autonomous Province of Vojvodina	Ministry of Human and Minority Rights and Social Dialogue – Sector for Anti-Discrimination Policy and Promotion of Gender Equality
Committees of the assemblies of cities and municipalities	Council for Gender Equality of the Government of the Autonomous Province of Vojvodina
	Provincial Secretariat for Social Policy, Demography, and Gender Equality
	Institute for Gender Equality of the Autonomous Province of Vojvodina
	Committees at city and municipal councils

Table 15: Institutional mechanisms for gender equality – Serbia

2.6.2. Institutional mechanisms for monitoring the implementation of action plans for the implementation of UNSCR 1325

In **Bosnia and Herzegovina**, the key institutional mechanism for monitoring the implementation of action plans for the implementation of UNSCR 1325 is the Coordination Board for Monitoring the Implementation of the Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina for the Period 2018-2022. This body was established by the decision of the Council of Ministers of BiH on August 5, 2019 (“Official Gazette of BiH,” No. 60/2019). This institutional mechanism consists of representatives of the following bodies and organizations: the Ministry of Defence of BiH and the Armed Forces of BiH, the Ministry of Security of BiH, the Ministry of Foreign Affairs of BiH, the Ministry of Justice of BiH, the Ministry of Finance and the Treasury of BiH, the Ministry of Human Rights and Refugees of BiH, the State Investigation and Protection Agency (SIPA), the Border Police of BiH, the Directorate for the Coordination of Police Bodies, the Police Support Agency, the Office of the Parliamentary Military Commissioner, the Legislation Office of the Council of Ministers of BiH, the Mine Action Centre – BHMAC, the Federal Ministry of the Interior, the Federal Police Administration, and the Gender Centre of the Federation of BiH, as well as representatives of the NGOs “Lara” from Bijeljina and “Women from Una” from Bihać.

The Coordination Board for Monitoring the Implementation of the AP is mandated to monitor its implementation, and in particular to: a) develop, discuss, and adopt annual operational plans for the implementation of the AP based on the proposed operational plans of each institution represented in the Coordination Board; b) adopt the monitoring and evaluation plan, which is drafted on the basis of the proposed monitoring and evaluation plans of each institution represented in the Coordination Board; c) coordinate the implementation of AP activities in competent institutions, and in international and national non-governmental organizations; d) prepare, discuss, and submit annual reports on the implementation of the AP to the Council of Ministers of Bosnia and Herzegovina for adoption; and e) organize regular meetings of the Coordination Board and non-governmental organizations (NGOs) that have signed the Memorandum of Understanding for monitoring the implementation of the AP for the implementation of UNSCR 1325 in BiH (NGO Coordination Group).

In **Montenegro**, the monitoring of the implementation of the Action Plan for the Implementation of UNSCR 1325 for the Period 2019-2022 is conducted by the MoD and the Intersectoral Working Group, consisting of representatives of the Parliament of Montenegro through the Gender Equality Committee, as well as of representatives of the General Secretariat of the Government of Montenegro, the MoD and AF of Montenegro, the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Culture, the Ministry of Finance, the Ministry of Human and Minority Rights, the Ministry of Justice, the Ministry of Health, the Ministry of Labour and Social Welfare, the Ministry of the Interior, the Human Resources Administration, the Union of Municipalities of Montenegro, the Customs Administration, the Police Administration, the National Office to Monitor and Combat Trafficking in Persons, and the Police Academy.⁴⁶

The intersectoral working group is responsible for proposing, monitoring, and reporting on the implementation of activities.

In the **Republic of North Macedonia**, several mechanisms have been established for monitoring the implementation of action plans for the implementation of UNSCR 1325 (Table 16).

NAME:	COMPOSITION AND MANDATE:
<p>Ministry of Defence</p>	<p>The Ministry of Defence, where the Body for the Coordination, Monitoring, and Evaluation of the NAP is located, has the obligation to fulfil its tasks during the implementation of the NAP. The Body for Coordination, Monitoring, and Evaluation is the primary national operational mechanism for ensuring the effectiveness and transparency of the NAP implementation. Its primary responsibility is to coordinate and delegate operational planning with relevant ministries.</p> <p>Implementation in 2020:</p> <p>The key responsibilities of the Body for Coordination, Monitoring, and Evaluation are the following:</p> <ol style="list-style-type: none"> 1) ensure regular coordination with ministries and other stakeholders to confirm, synergize, and support the operational implementation of incremental changes within the NAP's strategic policy; 2) design, engage, and monitor regular objective and subjective independent evaluations of operational progress and provide regular feedback to all stakeholders; 3) provide additional technical advice and support and ensure joint action upon request and/or as needed; 4) coordinate the submission of regular reports to the strategic oversight body in order to verify and validate the operational reports of ministries; 5) provide a central point for the coordination, communication, and engagement of stakeholders, with the widest and most comprehensive range of consultations possible within the available resources and operational constraints; 6) consult, coordinate, and communicate desired outcomes on the annual level, based on the positive theory of change, to strengthen progress, eliminate gaps, and provide a clear roadmap for achieving the strategic outcome.

⁴⁶ The names of the ministries are valid as of November 2020.

<p>Coordinators and deputy coordinators for equal opportunities for women and men in public administration bodies</p>	<p>These officials are appointed by public administration bodies. They monitor the implementation of the principle of equal opportunities for women and men in the strategic plans of line ministries and budgets, which cooperate with the Ministry of Labour and Social Policy. They are mandated to coordinate tasks from the mandates of public administration bodies in establishing equal opportunities and to inform the Ministry of Labour and Social Policy about it in writing, to offer their opinions and proposals for promoting and improving equal opportunities within the mandate of public administration bodies, and to coordinate and cooperate with the Ministry of Labour and Social Policy in performing their tasks. The specific competencies of the coordinator and deputy coordinator in each public administration body are determined by the document for the systematization of jobs in public administration bodies. They have the obligation to submit a work report to the Ministry of Labour and Social Policy once a year. The report of the coordinator and deputy coordinator is to be published on the website of the public administration body. The Ministry of Defence has appointed a coordinator and a deputy coordinator for equal opportunities.</p>	<p>Committee for Equal Opportunities of Women and Men of the Assembly of the Republic of North Macedonia</p>	<p>This committee consists of deputies of the Assembly of the Republic of North Macedonia. It has the mandate to monitor the implementation of laws in the field of equality between women and men and non-discrimination, as well as of strategic documents in this area.</p>
<p>Intersectoral Advisory Group for Equal Opportunities of Women and Men, established by the Government of the Republic of North Macedonia</p>	<p>This group is appointed by the Government. It consists of officials, senior civil servants, representatives of civil society organizations and associations of employers, experts, representatives of local self-governments, trade unions, and other entities. The manner of its work is governed by the rules of procedure, and the Ministry of Labour and Social Policy coordinates the work of the group. The group is responsible for: promoting the concept of gender mainstreaming in the general policies of all public institutions; monitoring the integration of this concept in sectoral policies, in cooperation with the social sector partners and institutions in individual areas; monitoring the progress of the harmonization of national legislation; participating in the development of and providing guidance in the process of drafting the Gender Equality Strategy; and monitoring the periodic reports of institutions. The Ministry of Defence has a representative in the Intersectoral Advisory and Consultation Group for Equal Opportunities of Women and Men in the Government of the Republic of North Macedonia.</p>	<p>National Coordinating Body for Combating Domestic Violence</p>	<p>This body consists of two representatives, a member and a deputy, from each of the Ministry of Labour and Social Policy, the Ministry of the Interior, the Ministry of Health, the Ministry of Justice, and the Ministry of Education and Science, two representatives of the Assembly of the Republic of North Macedonia, two representatives of the judicial system, one of whom is a judge of the basic court, elected at the proposal of the Judicial Council of the Republic of North Macedonia, and one of whom is a public prosecutor, elected at the proposal of the Council of Public Prosecutors of the Republic of North Macedonia, a representative of the Office of the Ombudsman, and two representatives of civil society, i.e., from the associations registered for working on the issue of domestic violence. The body may, when necessary, involve other institutions, the business community, local governments, and representatives of academia, cultural and scientific professionals, associations, and of the media.</p> <p>The body is chaired by the Minister of Labour and Social Policy, and administrative tasks are performed by the Ministry of Labour and Social Policy. The National Coordination Body for Combating Domestic Violence is responsible for: monitoring and analysing the situation related to domestic violence, coordinating the activities of competent institutions and associations, and proposing measures for the improvement of national policies and measures for the implementation of national policies.</p> <p>The National Coordination Body for Combating Domestic Violence shall adopt its rules of procedure and inform the Government of the Republic of North Macedonia of its work by submitting annual reports.</p>

National Commission for Combating Trafficking in Human Beings and Illegal Migration	The members of this commission and the National Coordinator of the National Commission for Combating Trafficking in Human Beings and Illegal Migration are appointed by the Government. The key mandates of the Commission are: the monitoring and analysis of the situation related to human trafficking and illegal migration; the coordination of activities of competent institutions; and cooperation with international and non-governmental organizations involved in resolving problems in the field of human trafficking.
Local prevention councils	These councils are bodies in charge of developing and building the concept of community policing, especially in local self-government. Local prevention councils contribute to building trust and improving partnerships between institutions, local self-government, and citizens.
Coordinators and deputy coordinators for equal opportunities for women and men in local self-government units	These officials are appointed by local self-government units from the ranks of civil servants in local self-government units. It is the responsibility of the coordinator to: promote equal opportunities and non-discrimination within the competence of the local self-government unit; offer proposals and opinions related to equal opportunities; advise local self-government units, institutions, and organizations at the local level; prepare reports on the status of equal opportunities and non-discrimination within local self-government units; cooperate with the Commission for Equal Opportunities of Women and Men within the councils of the local self-government unit and launch joint initiatives with the aim of promoting equal opportunities and non-discrimination; cooperate with non-governmental organizations and other institutions at the local level on the issue of equal opportunities and non-discrimination; monitor the situation regarding equal opportunities at the local level and propose initiatives for taking measures to improve the situation regarding equal opportunities and non-discrimination; coordinate and cooperate with the Ministry of Labour and Social Policy in performing its activities; and at least once a year, submit a report to the Ministry of Labour and Social Policy, which shall be published on the website of the local self-government unit.

Committee for Equal Opportunities of Women and Men of the Local Self-government Assemblies

This committee is a permanent body established by the councils of local self-government units. Its mandate is to: offer opinions on the materials and proposals decided upon by the assemblies of local self-government units; participate in the drafting and adoption of strategic documents, especially developmental strategies, budgets, statutes, work programmes of the assembly, etc.; identify and make proposals for the integration and formalization of the principles of equal opportunities and non-discrimination in the work of local self-government and municipal administration bodies; ensure the consistent implementation of laws in the field of equal opportunities and non-discrimination; submit proposals of measures and activities for the promotion of equal opportunities and non-discrimination, etc.

Table 16: Institutional mechanisms for monitoring the implementation of the NAP – Republic of North Macedonia

The **Republic of Serbia** has established a complex network of bodies for monitoring the implementation of the NAP (Table 17).

NAME:	COMPOSITION AND MANDATE:
Political Council of the Government	This is the highest political body for monitoring the implementation of the NAP, consisting of State Secretaries, the President of the Coordination Body for Gender Equality, the Director of the Office for Human and Minority Rights, and managers of gender equality mechanisms. The Political Council consists of 11 persons, who are appointed by the function they perform.
Operational Body of the Government	This body provides expert, administrative, and technical support in coordinating, monitoring, analysing, and reporting on the implementation of the NAP; it ensures the achievement of the goals and tasks from the NAP and consists of experts from the Coordination Body for Gender Equality.
Commission for Monitoring the Implementation of the NAP	This supervisory body was established by the National Assembly of the Republic of Serbia and the Assembly of AP Vojvodina and consists of the representatives of parliamentary groups.

<p>Analytical groups and research teams</p>	<p>These are bodies established in institutions in the security system to plan and monitor the implementation of relevant activities, conduct gender analysis, and report on the results of the implementation of the NAP. Monitoring of the implementation of the NAP within the competence of the Ministry of Defence and the Serbian Armed Forces is carried out by the Analytical Group of the Ministry of Defence and the Serbian Armed Forces.</p>	<p>in the MoD and the AF, including their education, training and career guidance, participation in multinational operations, civilian missions, and international activities; coordinating the cooperation of the MoD with other implementers of activities and partners for the implementation of the NAP and participation in the activities implemented within this cooperation; implementing measures and activities in coordination with the organizational unit of the MoD responsible for cooperation with the media for timely and accurate information dissemination to the public about gender equality in the MoD and the AF; participation in organizing media support in implementing goals and tasks from the NAP; development, approval, and implementation of the Work Plan of the Advisor to the Minister of Defence for the implementation of the NAP in the MoD and the AF; formulating recommendations and guidelines for the implementation and improvement of the gender equality policy in the MoD and the AF; holding meetings with the Minister of Defence to consult and report on the measures and activities taken in the implementation of the NAP; providing assistance to the Analytical Group of the MoD and AF and “persons of trust” in addressing issues related to achieving gender equality in the MoD and the AF; holding consultations and coordination meetings with these “persons of trust;” participation in the meetings of the Analytical Group of the MoD and AF, as well as organizing training for these persons; coordinating and participating in the preparation of reports on the implementation of the NAP within the competence of the MoD and the AF; participation in international and national meetings, seminars, and conferences.</p>
<p>Contact persons</p>	<p>These contacts are individuals in local self-government units, civil society organizations, scientific and research institutions, and the media who plan and monitor the implementation of activities, conduct gender analysis, and report relevant findings. The function of contact persons is performed by appointed coordinators for gender equality or individuals who have completed additional training on UNSCR 1325.</p>	
<p>Advisor for the Implementation of the NAP</p>	<p>This official serves as the mechanism for gender mainstreaming in the policies and programmes of public administration and local self-government bodies whose task is to ensure the creation of the necessary preconditions for achieving the goals of the NAP. An Advisor to the Minister of Defence for the implementation of the NAP has been appointed in the MoD and the AF.</p> <p>The responsibilities of the Advisor for the Implementation of the NAP in the MoD and AF include: ensuring the creation of the necessary preconditions for achieving the goals of the NAP in the MoD and the AF; initiating, coordinating, and participating in the implementation of activities aimed at gender mainstreaming in the policies and programmes of the MoD and the AF; initiating and monitoring the activities of the Analytical Group for the Implementation of the NAP within the competence of the MoD and the AF regarding the provision of expert and administrative/technical support to the Political Council of the Government for the implementation of the NAP; reviewing the reports of the Analytical Group for the Implementation of the NAP and taking measures for their publication on the MoD website; the coordination of activities related to the drafting of plans and documents, as well as other activities, related to the implementation of gender equality policy in the MoD and the AF; monitoring the implementation of measures necessary for continuous record-keeping in the competent organizational units of the MoD and the AF engaged in tasks concerning human resources and staffing policy, vocational education, training, and science, and related to the representation of women, both professional military personnel and civilians</p>	
		<p>Gender Advisor in all civilian and military missions</p> <p>One or several advisors in multinational operations, whose introduction is planned by the NAP.</p>

Table 17: Institutional mechanisms for monitoring the implementation of the NAP – Republic of Serbia

In addition to monitoring the implementation of the Action Plans for the Implementation of UNSCR 1325 carried out by the responsible institutional mechanisms, independent monitoring of the implementation of the NAP is carried out in all countries by civil society organizations and academia.



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3. PREVENTION OF GENDER-BASED DISCRIMINATION, SEXUAL HARASSMENT, AND ABUSE

Prevention of gender-based discrimination, sexual harassment, and abuse requires long-term, comprehensive, and coordinated activities to combat gender stereotypes and prejudices and social and cultural patterns of behaviour of both men and women, as well as to transform gender relations in all spheres of public and private life. This long-term transformative process requires a well-designed strategy of action and the broad mobilization of all social actors to promote gender equality and respect for other and different people as common values, consciously accepted by society, without whose essential understanding there is no peaceful coexistence, social stability, and progress.

Every institution and organization can make an important contribution to the prevention of gender-based discrimination, sexual harassment, and abuse by undertaking various activities in the field of combating and preventing these phenomena. This also applies to institutions in the defence system.

Experience shows that the following measures and activities are crucial for the effective combating and prevention of gender-based discrimination and sexual abuse and for the creation of a safe, stimulating, and friendly environment for all employees:

- Raising awareness of and sensitivity to the issues of gender-based discrimination, sexual harassment, and abuse, as well as their causes and consequences;
- Changing behaviour patterns of employees which are based on stereotypes and prejudices about women and men, members of gender, and sexual and other minorities;⁴⁷
- Building the gender competencies of staff, which includes gender awareness, gender sensitivity, awareness of gender inequalities, and gender gaps;
- Developing a culture of human rights, a sense of community, and tolerance and respect for employee diversity;
- Developing accountability for following the principles of gender equality and non-discrimination;
- Effectively prosecuting cases of gender-based discrimination, sexual harassment, and abuse, which leads to general prevention;
- Protecting against all forms of victimization after the reporting of cases of gender-based discrimination; and
- Improving communication and constructive conflict resolution skills.

These activities can be successfully implemented in organizations that are firmly committed to the zero-tolerance policy for discrimination, sexual harassment, and abuse.

Gender-responsive military leadership plays an important role in preventing gender-based discrimination, sexual harassment, and abuse. With their attitude and behaviour towards their subordinates, unit commanders show their commitment to the principle of gender equality and demonstrate professional behaviour that represents a model expected of all members of the military. This includes recognizing and publicly condemning the expression of gender and other stereotypes and prejudices, monitoring the situation in interpersonal relationships, taking appropriate measures to combat discriminatory behaviours based on gender and other stereotypes and prejudices, and encouraging victims to report discrimination, sexual harassment, and abuse.

⁴⁷ Gender minorities are individuals whose gender self-determination is different from their sex-assigned gender role, including intersex, transsexual, and transgender people, and people whose gender identity goes beyond the binary gender division into men and women. Sexual minorities are lesbian, gay, bisexual, and asexual people.

The messages sent by commanders are very powerful and contribute to a change in consciousness and behaviour.

Good practice example: Lieutenant General David Morrison's response to a scandal involving sexist behaviour in the Australian Army

The following speech demonstrates the importance of senior officers in the highest positions supporting the zero-tolerance policy for sexual harassment.

“Earlier today I addressed the media and through them the Australian public about ongoing investigations into a group of officers and NCOs whose conduct, if proven, has not only brought the Australian army into disrepute, but has let down every one of you, and all of those whose past service has won the respect of our nation.

There are limits to how much I can tell you because the investigations into this network by both the civilian and military police are ongoing. But evidence collected to date has identified a group of men within our ranks who have allegedly produced highly inappropriate material demeaning women and distributed it across the internet and Defence’s email networks. If this is true then the actions of these members are in direct contravention to every value the Australian Army stands for.

By now, I assume you know my attitude to this type of conduct. I have stated categorically many times that the Army has to be an inclusive organization in which every soldier, man and woman, is able to reach their full potential and is encouraged to do so. Those who think that it is okay to behave in a way that demeans or exploits their colleagues have no place in this Army. Our service has been engaged in continuous operations since 1999, and in its longest war ever in Afghanistan. In all operations, female soldiers and officers have proven themselves worthy of the best traditions of the Australian Army. They are vital to us maintaining our capability now and into the future.

If that does not suit you, then get out!

You may find another employer where your attitude and behaviour is acceptable, but I doubt it. The same goes for those who think that toughness is built on humiliating others.

Every one of us is responsible for the culture and reputation of our army and the environment in which we work. If you've become aware of any individual degrading another then show moral courage and take a stand against it. No one has EVER explained to me how the exploitation or degradation of others enhances capability or honours the traditions of the Australian Army.

I will be ruthless in ridding the Army of people who cannot live up to its values. And I need every one of you to support me in achieving this. The standard you walk past is the standard you accept. That goes for all of us, but especially those who by their rank have a leadership role.

If we are a great national institution, if we care about the legacy left to us by those who served before us, if we care about the legacy we leave to those who, in turn, will protect and secure Australia, then it is up to us to make a difference. If you're not up to it, find something else to do with your life. There is no place for you amongst this band of brothers and sisters.”

Lieutenant General David Morrison received huge support after addressing his troops with [this message](#).

The prevention of gender-based discrimination, sexual harassment, and abuse by and against members of the armed forces has been set as one of the priorities in the defence systems of the Western Balkan countries, as evidenced by numerous and diverse activities.

Example of good practice in the defence system of Bosnia and Herzegovina: participation of the MoD and AF of BiH in the project “Women, Peace and Security” – preparatory activities for a comprehensive gender analysis

In 2018, the Armed Forces of BiH joined the Women, Peace and Security Chiefs of Defence Network through the Chiefs of Joint Staff of the AF of BiH. By joining the Network, the AF of BiH committed to fulfilling the following obligations: 1) conducting an analysis of the AF of BiH from a gender perspective, including an overview of internal institutions and documents (policies, procedures, and work culture) and military training and operations, with an emphasis on qualitative data; 2) appointing military advisers for gender equality in strategic and operational headquarters; 3) integrating the principles of UNSCR 1325 Women, Peace and Security, as well as other relevant resolutions, into the military doctrine and guidelines; 4) gender mainstreaming the exercises and training scenarios of the AF of BiH. From March 6 to 8, 2019, the first international conference within the Chiefs of Defence Network – Women, Peace and Security – was organized. The Time Plan for the Implementation of the Conclusions of the Conference was adopted, determining the goals of the activities that the MoD and AF of BiH must carry out in the period 2019/2020: Goal 1 – “Gender mainstreaming the exercises and training scenarios of the AF of BiH;” Goal 2 – “Infrastructure works towards creating better conditions for the accommodation of women and men in the MoD and AF of BiH (room for work, internal service, guard service, rest and personal hygiene, etc.);” Goal 3 – “Drafting a comprehensive gender analysis of the AF of BiH;” and Goal 4 – “Analysis and harmonization of policies, regulations, and procedures.”

In December 2019, the MoD of BiH adopted the Methodology of Gender Analysis of the Armed Forces of BiH in accordance with the Time Plan for the Implementation of the Conclusions of the Conference.

Through the several key steps of joining the network, organizing the conference, and developing the relevant time plan and methodology, the AF of BiH have systematically prepared for conducting a detailed gender analysis of the Armed Forces, based on which it would be possible to draw evidence-based conclusions and guidelines for further improving gender equality in the AF of BiH at different levels. Implementation activities were planned for the period 2020/2021

In December 2019, the MoD of BiH adopted the Methodology of Gender Analysis of the Armed Forces of BiH in accordance with the Time Plan for the Implementation of the Conclusions of the Conference, following which the MoD and AF of BiH conducted a comprehensive gender analysis. The analysis of the AF of BiH from the gender perspective included an overview of internal institutions (policies, procedures, and work culture) and military training and operations, with an emphasis on qualitative data. The gender analysis of the AF of BiH comprised an analysis of the current situation and relevant data from the past five years (from 2015) and defined specific recommendations and proposals for improving the situation in this area through several key steps: joining the network, organizing the conference, developing the relevant time plan and methodology, and conducting a detailed gender analysis of the AF; conclusions were drawn and guidelines were established for further improving gender equality in the AF of BiH at multiple levels. Implementation activities were planned for the period 2020/2021.

Example of good practice in the defence system of Montenegro: Improving the gender competencies of members of the Armed Forces of Montenegro

With the aim of more efficient education in the field of gender equality, annual training plans on UNSCR 1325 and its related resolutions have been adopted at the level of the General Staff of the AF of Montenegro, with special emphasis on gender-based violence, other forms of violence against women, and anti-discrimination laws. In 2019, training was organized on the topic “Protection against Sex-based Discrimination” for the command staff of the General Staff and AF units, along with training on the topic “Gender Equality, Gender-based Violence, Sexual Violence and Violence against Women,” intended for AF members and MoD employees.

Annual training plans shall pay special attention to presenting the Action Plan for the Implementation of UNSCR 1325 – Women, Peace and Security. Every year, the Ministry of Defence adopts the Action Plan for the Implementation of Gender Equality Policy and UNSCR 1325 in the MoD and AF, which combines the commitments from the APAGE and the AP for UNSCR 1325 and envisages other activities, as needed, with the aim of greater integration of gender equality into the defence system. Plans for the implementation of UNSCR 1325 are adopted through these annual training plans. This represents a systemic solution for all male and female members of the armed forces to understand the importance of the gender perspective.

The Armed Forces of Montenegro have joined the Women, Peace and Security Chiefs of Defence Network.

Example of good practice in the defence system of North Macedonia: Improving the internal system of protection against harassment at work of employees in the Ministry of Defence and the Army

In order to prevent gender discrimination, sexual harassment, and harassment at work of employees in the Ministry of Defence and the Army, the MoD has adopted the "Instructions for Protection from Harassment at Work for Employees of the Ministry of Defence and Army," in line with the NATO Policy on Preventing and Responding to Sexual Exploitation and Abuse, whose implementation was initiated on December 2, 2019. This document establishes the rights, obligations, and responsibilities of the MoD and the Army, as well as the rights and responsibilities of employees in the MoD and the Army.

To efficiently implement the "Instructions for Protection from Harassment at Work for Employees of the Ministry of Defence and Army," the MoD has appointed an authorized person for protection against harassment at work, established a dedicated telephone line (for landline and mobile numbers), and appointed gender representatives to provide advice and assistance in the organizational units of the MoD and the Army. A decision was also adopted appointing mediators to conduct mediation in cases of harassment at work within the internal procedure for protection against harassment. Basic training was organized by NATO-certified gender trainers for gender representatives from the Ministry of Defence and trainers from the Ministry of Labour and Social Policy.

A [dedicated web page](#) with information on the manner and procedure of reporting harassment at work has been published on the MoD website and an illustrated Guide/Brochure for protection against harassment at work was prepared and distributed to every employee in the MoD and the Army. In the period from December 2019 to January 2020, the Instructions and the Guide/Brochure were promoted in all basic units of the Army, in order to educate, raise the awareness of, and encourage employees to initiate internal procedures for protection against harassment at work.

Example of good practice in the defence system of the Republic of Serbia: Training and publication of gender-sensitive educational material in the Ministry of Defence

The Ministry of Defence of the Republic of Serbia, with the support of UNDP SEESAC, developed the [Gender Training Manual](#) for the Ministry of Defence of the Republic of Serbia and the Serbian Armed Forces. Courses were organized to train the trainers for gender equality from the MoD and the AF and to improve the knowledge of members of the MoD and the AF in the field of gender equality. The Manual was written to support the organization of training in the field of gender equality intended for various target groups in the MoD and the AF. The Manual is primarily intended for gender trainers, but also for anyone interested in learning more about gender equality, basic concepts, the legislative framework, in gaining familiarity with statistics, and in reading practical examples from defence systems. After years of experience employing this Manual, trainers shall revise and publish an updated version of the Manual with the support of UNDP SEESAC, based on its evaluation and implementation in practice.

The military magazine "Odbrana" ("Defence"), published by the Media Centre "Odbrana" of the Public Relations Directorate of the Ministry of Defence of Serbia, periodically publishes articles related to gender equality. In September 2011, it published the special supplement 68 "Gender Equality Glossary;" in April 2017, it published the special supplement 167 "Towards more efficient implementation of UNSCR – Women, Peace and Security;" and in November 2019, in the section "A lawyer answers your questions," it explained the legal basis of the relationship between professional and parental duties of professional military personnel depending on the age of the child.

4. PROTECTION AGAINST GENDER-BASED DISCRIMINATION, SEXUAL HARASSMENT, AND ABUSE

4.1. Protection before international bodies

4.1.1. Protection before treaty-based bodies established by United Nations conventions

In the UN-related system, oversight over the exercise of human rights is conducted by various bodies. These are bodies based on the UN Charter, but also treaty-based bodies established under human rights treaties. In addition to the oversight they exercise by reviewing periodic reports, these bodies also act on individual complaints of human rights violations. For example, the Human Rights Council of the UN General Assembly acts on individual petitions related to mass violations of human rights, but not to individual human rights violations. Committees established under international human rights treaties may also act on individual petitions related to human rights violations:

- Human Rights Committee, established under the International Covenant on Civil and Political Rights (1966);
- Committee on Economic, Social and Cultural Rights, established under the International Covenant on Economic, Social and Cultural Rights (1966);
- Committee on the Elimination of Racial Discrimination, established under the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- Committee on the Elimination of Discrimination against Women, established under the Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Committee on the Rights of Persons with Disabilities, established under the Convention on the Rights of Persons with Disabilities (2006).

The competence of each of the committees to act on individual petitions filed against the state will exist if the state has accepted this competence of the committee by ratifying the appropriate optional protocol or providing a statement.

All committees, with the exception of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, may conduct ex-officio investigations of cases of severe or systematic human rights violations, provided that states have accepted this competence.

In protecting the right to gender equality and non-discrimination, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has the most important role. With the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women from 1999, the CEDAW Committee received the powers to decide on individual petitions against the Member States filed by an individual or group of individuals for violation of any of the rights guaranteed by the Convention. Since all Western Balkans countries have ratified this Optional Protocol, an individual petition may be filed against each of the countries.

Reasons for communications (petitions) are reports of violations of rights resulting from the actions of the state, but also from the failure of the state to take measures it is obliged to take, i.e., to ensure the enjoyment and exercise of human rights and freedoms to women and to take effective measures to prevent the violation of such rights. The communication is admissible provided that the victim of the violation is an individual or a group of individuals under the jurisdiction of a State which is a party to the Convention.

The communication will be considered if it is submitted in writing, is not anonymous, and all remedies in the State have been exhausted, unless the application of those remedies is unduly prolonged or the aid is unlikely to be effective.⁴⁸

To prevent irreparable harm to the victim, the Committee is authorized to order the State to take the necessary urgent temporary measures before taking any decision on the communication.

The CEDAW Committee's Working Group on Communications, which consists of 25 members, decides on the communication. The procedure is based on the principle of communication being in writing and the principle of mutual hearing, it is confidential, and it consists of several stages: a preliminary procedure, a procedure for deciding on the admissibility of the communication, and a procedure for deciding on the merits of the case.

Each communication is submitted to the Member State, but only if the author of the communication has agreed to their identity being revealed. The Committee renders a decision on the merit by a simple majority of votes, provided that a member of the Committee who has not voted in favour of the decision may request that his/her dissenting opinion be submitted to the parties.

In the decision, which is in the form of an opinion, the Committee finds that the violation has been or has not been committed and gives recommendations as to the measures to be taken by the State. The opinion of the Committee has no executive force. The State is obliged to consider the opinion and recommendations of the Committee and submit a written response within six months, including information on the actions (measures) taken to implement the recommendations. At the request of the Committee, the State Party is obligated to provide additional information on the measures taken and must indicate in the next periodic report on the implementation of the Convention which measures it has taken. The Optional Protocol envisages the possibility of forming a special working group or appointing a rapporteur to monitor the implementation of the recommended measures, who shall report to the Committee.

⁴⁸ More detailed explanations on how to submit a communication (petition) and what it should contain are available on the website: un.org/womenwatch/daw/cedaw/protocol/modelform-E.pdf

EXAMPLE of a CEDAW Committee's decision: Case of X and Y v. Georgia, Communication No. 24/2009, [UN Doc. CEDAW/C/61/D/24/2009 \(2015\)](#)

This case was brought by a mother (X) and daughter (Y) who complained of Georgia's failure to prevent, investigate, and punish prolonged physical violence, and sexual and psychological abuse, suffered at the hands of their former husband and father, respectively. According to the communication, the violence suffered by X began in 1987 when she was raped by her future husband at a party. Shortly afterwards, she married him. Because of societal attitudes in Georgia which prize the sanctity of a women's virginity prior to marriage, X believed that no one else would wish to marry her because she was no longer a virgin. In the marriage, she gave birth to five children, giving up her job following the birth of her first child. Her husband was consistently violent towards the children and also subjected some of their children to sexual abuse.

Despite her reporting the incidents of physical and sexual abuse, her complaints were never investigated and no criminal charges were brought against her husband. In its first decision against Georgia, the CEDAW Committee recognised the violation of the rights of the authors of the communication by the state and found that Georgia had failed to ensure protection from violence against women, as a form of discrimination against women, that it had failed to establish legal protection of women's rights on an equal basis with men, that it had failed to take appropriate measures to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women, and that it had failed to fulfil its obligation to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, as well as customary and all other practices, that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

EXAMPLE of a CEDAW Committee's decision: Case of L.R. v. the Republic of Moldova, Communication No. 58/2013, [UN. Doc. CEDAW/C/66/D/58/2013](#)

L.R. married her husband V.R. in 1985. They had two daughters. V.R. was a veteran of the armed forces that fought in Afghanistan. He was a violent alcoholic and committed physical, psychological, and economic violence against L.R. and her children. They divorced in 2003, but the court decided that they had to continue living in the same apartment, so the violence persisted. L.R. continued to complain about the violence, but the police considered it a "family matter." In 2010, V.R. attempted to strangle L.R., which resulted in her losing consciousness. Ambulance and police services were called. Through the efforts of the civil society organization that provided support to L.R., the police ordered V.R. to stop the violence, but when the order was violated, the police only "reminded" V.R. of the order and did not take steps to evict him from the apartment. The violence lasted for several months, yet when L.R. reported it to the police, she was told that she should not file another complaint because "her statements did not match the accounts made by V.R." She filed several petitions to state authorities seeking protection. The police repeatedly told her that there was no evidence that any violence had been committed against her. Her appeal was unsuccessful in part because V.R. benefited from good references provided by the Union of Afghanistan War Veterans. L.R. tried to divide the apartment through the sale of shares, but it was rejected because V.R. would have had insufficient money to buy another dwelling with his share. In the court proceedings against V.R. for the committed violence, L.R. was required to be admitted to the clinical psychiatric hospital for psychiatric tests, because without such tests, as the authorities claimed, there was no evidence that a criminal offence had been committed, which L.R. refused. The CEDAW committee stated that the order for L.R. to undergo in-patient psychiatric testing clearly demonstrated gender bias towards victims of domestic violence. It also found that L.R. was discriminated against and that V.R.'s right to property and housing was privileged over L.R.'s right to physical and mental integrity, and that there were obvious stereotypes and preconceived notions of what constitutes domestic violence. CEDAW requested that Moldova take measures to guarantee the physical and mental integrity of L.R. and ensure that L.R. receive reparation "proportionate to the physical and mental harm suffered and to the gravity of the violations of her rights." The country was also requested to develop comprehensive measures to ensure better access to justice for victims of violence, including the elimination of the practice of compulsory psychiatric examination of domestic violence victims.

4.1.2. Protection before the European Court of Human Rights

The European Convention on Human Rights of 1950 established a monitoring mechanism with the task of controlling the state parties in the fulfilment of the undertaken commitments. Today, this role is performed by the European Court of Human Rights (ECHR), which also has jurisdiction over individual applications.

For the application to be admissible, the following conditions must be met: it is filed by the victim of a violation of rights, domestic remedies have been previously exhausted, it is filed within six months from the date of the final decision taken by a domestic court, it is not anonymous, it is not identical with an application previously decided by the Court, it has not been previously submitted to another international body, it is not incompatible with the provisions of the Convention, and the damage suffered by the applicant is severe. The State against which the application deemed admissible was filed shall be notified of it. The task of the seven-member panel deciding on the merits of the application is to examine the substance of the matter and reach a judgement. During the proceedings, an amicable settlement is sought between the applicant and the respondent State, and if no settlement is reached, the Panel shall render a judgement determining whether any right under the Convention or the Protocol has been violated.

Article 14 of the European Convention prohibits discrimination in the enjoyment of the rights set forth in the Convention and its protocols, so the right to non-discrimination is not an independent right. Since the Convention guarantees mainly civil and political rights, many economic, social, and cultural rights remain outside its scope of protection.

Given that all the Western Balkans countries have acceded to the European Convention, the ECHR is competent to act on applications against each of the countries.

The European Court of Human Rights has dealt with many cases of gender-based discrimination in the enjoyment of rights guaranteed by the European Convention and protocols.

EXAMPLE of a judgement of the European Court of Human Rights: *Carvalho Pinto de Sousa Morais v. Portugal*, [Application no. 17484/15, judgement of 25 July 2015](#)

At the age of 50, the applicant underwent gynaecological surgery, during which her left pudendal (main genital) nerve was damaged. After this surgery, she began to experience intense pain, had difficulty sitting and walking, had symptoms of depression and suicidality, lost sensation in the vagina, and could not have sexual relations. In the first-instance proceedings, the court awarded her EUR 80,000 in compensation for non-pecuniary damage and EUR 92,000 for pecuniary damage, of which EUR 16,000 was for the services of a maid the applicant had had to hire to help her with household tasks. The Supreme Administrative Court of Portugal reduced these amounts by one third, explaining its decision, *inter alia*, with its statement that the applicant “probably only needed to take care of her husband considering the age of her children” and that at the time of the operation she was already 50 years old and had two children and that her age was “the age when sex is not as important as in younger years.”

The European Court of Human Rights found that discrimination had been committed and that the assumption that sexuality is not as important for a 50-year-old woman and mother of two as it is for younger people reflects a traditional idea of female sexuality as being essentially linked to childbearing purposes while the idea that a woman is responsible for caring for her husband is a reflection of deeply patriarchal notions of gender roles. The Court pointed to the presence of harmful gender stereotypes in the Portuguese judicial system, which it illustrated by citing two other cases involving two men aged 55 and 59 who had become impotent after surgery, in which this situation was seen as a circumstance that affected their self-esteem and resulted in “tremendous and strong mental shock and severe mental pain,” irrespective of their age and whether they had children or not. The European Court clearly pointed out the presence of sexism and ageism in the reasoning of the national court and determined the presence of discrimination, pointing to discriminatory gender stereotypes and the prevailing sexism, in the Portuguese judicial system.

EXAMPLE of a judgement of the European Court of Human Rights in the case *X v. The Former Yugoslav Republic of Macedonia*, [Application no. 29683/16](#), judgement of 17 April 2019

Applicant X was a citizen of North Macedonia (at the time of the dispute the name of the country was the Former Yugoslav Republic of Macedonia). At birth, the applicant was registered as a girl, with a clearly female name. From an early age, X became to identify as male, so in 2010, X went to a specialist clinic in Belgrade where he was diagnosed with “transsexuality.” At the doctor's recommendation, the applicant started taking hormones to increase testosterone levels. In June, the applicant applied for a change of his first and last name. The application was allowed, with the Ministry of the Interior registering the applicant under a clearly male first name and issuing the applicant with a new identity card. However, the sex/gender marker and numerical personal code remained the same. In July 2011, X applied to have the sex/gender marker and the numerical personal code on his birth certificate corrected. This application was dismissed with the explanation that there is no official document showing that X's sex had been changed. X appealed to the Ministry of Justice, alleging that there was no statutory provision that regulated the matter at hand, that sex reassignment surgery was unavailable in his homeland, and such a request would subject him to unwanted medical treatment and sterilisation. He argued that he had already been diagnosed as transsexual, which was sufficient to obtain legal sex recognition. The Ministry of Justice rejected X's appeal in 2011, but in February 2013, the Administrative Court quashed the Ministry's decision. In June 2013, X underwent a double mastectomy (breast removal) and continued his hormonal therapy. In the repeated proceedings, the authorities instructed the Forensic Institute to examine X. Based on this examination, it was found that X should be provided with a document attesting to his new sex. However, in December 2014, the Ministry of Justice once again dismissed X's request for the alteration of the sex/gender marker, holding that there was still no “evidence of an actual change of sex,” so X was forced to challenge the decision before the Administrative Court again, and at the time of the ECHR's decision, the proceedings were still underway.

In the application sent to the ECHR, X stated that the protracted procedure in his seeking legal recognition of his gender identity was having negative consequences on his mental health and everyday life. The applicant complained under Article 8 of the European Convention (right to respect for private and family life) of the lack of a national regulatory framework for the legal recognition of his

gender identity and about the requirement, which had no basis in domestic law, that he undergo genital surgery.

The ECHR found that there had been a violation of the transgender applicant's right to respect for his private life due to the lack of prompt, transparent, and accessible procedures in national legislation that would allow for a change of sex/gender marker in public records. According to the ECHR, the national regulatory framework on legal gender recognition leaves a number of important questions unanswered, such as the question of which requirements a claimant needs to fulfil in order to have the sex/gender marker in the official records changed. This left the applicant in a situation of constant distressing uncertainty vis-à-vis his private life and the recognition of his identity.

Acting on the ECHR's recommendations, the State paid the applicant compensation in the name of just satisfaction, and the State Commission ordered the Registry to change the sex/gender marker in the official records. The state has also started implementing the ECHR recommendation on the establishment of a legal framework governing the conditions and procedures for the legal recognition of sex, in line with Council of Europe standards, in particular with the recommendation of the Committee of Ministers – CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. The Government established a commission to prepare a draft Law on Amendments to the Law on Civil Status Registration, which would enable the registration of a new sex, while a roadmap for implementing the ECHR judgement was agreed to at a meeting of representatives of the Council of Europe and the Ministry of Justice.

4.1.3. Protection before the Court of Justice of the European Union

The application of EU anti-discrimination law is primarily the responsibility of the national courts of its member states, but the European Court of Justice is endowed with certain powers in protection against discrimination, which stems from its authority to ensure compliance with EU law. The Court can exercise these powers in two ways – by acting on direct appeals and deciding on preliminary rulings.

The Court of Justice of the EU has jurisdiction to decide on five types of direct actions and, at the request of national courts, it can also resolve preliminary rulings regarding the exact meaning or validity of EU law to be applied in proceedings before a national court.

The Western Balkans countries are at various stages of the EU accession process, so the Court of Justice of the European Union does not have jurisdiction over direct appeals and requests to resolve preliminary rulings from non-EU countries. Given that all the Western Balkans countries are in the stage of harmonizing their regulations with the EU Acquis Communautaire, the case law of the Court of Justice is also relevant for these countries.

The EU Court of Justice has in many cases taken positions on violations of EU anti-discrimination law, including in cases related to gender-based discrimination.

EXAMPLES of judgements of the Court of Justice of the European Union:

[Pension Insurance Institution v. Christine Kleist, C-356/09, decision of 18 November 2010](#)

In this case, the European Court decided on the preliminary ruling in the case before the Supreme Court of Austria. The proceedings were initiated by a woman whose employment was terminated by the Austrian Pension Insurance Institution, according to its standard practice for all employees upon reaching retirement age. According to the applicable Austrian regulations, this was 60 years of age for women and 65 years of age for men. Mrs Kleist, who was the chief physician at the institution, wanted to work until the age of 65, but was forced to retire. Referring to an earlier decision in the Marshall case (C-152/84), the Court upheld its view that the termination of employment of an employee solely because she had reached the prescribed retirement age, if a different condition is prescribed for men, constituted direct discrimination on the ground of sex.

[Case of Tanja Kreil v. Federal Republic of Germany, C-285/98, judgement of 11 January 2000](#)

Tanja Kreil, who had been trained in electronics, applied for voluntary service in the German Armed Forces (Bundeswehr), requesting duties in weapon electronics maintenance. Her application was rejected by the recruitment centre on the grounds that women, in accordance with the law of the time, were barred from serving in military positions involving the use of arms, and were limited to only the medical and military-music services. The European Court of Justice took the view that such an exclusion, which applied to almost all military posts in the Bundeswehr, could not be regarded as a measure justified by the specific nature of the posts in question nor by the particular context in which the activities

in question were carried out. In these circumstances, even taking into account the discretion which the authorities had regarding the possibility of maintaining the exclusion in question, the Court pronounced that the national authorities could not adopt the general position that the composition of all armed units in the Bundeswehr had to remain exclusively male. In so doing, the authorities had contravened the principle of proportionality.

4.2. Protection before the courts of the Western Balkans countries

Protection against gender-based discrimination, sexual harassment, and abuse is further provided by independent human rights bodies and competent courts.

4.2.1. Protection before independent human rights institutions

The modern development of human rights is marked by the trend of establishing independent human rights institutions – special state bodies responsible for monitoring, promoting, and protecting human rights, which are established and funded by the state, but which operate independently of the government and other public authorities. Often the “unpleasant partners” of their governments, national institutions for the promotion and protection of human rights contribute significantly to the realization of international human rights standards at the state level. With the aim of improving institutional capacities to combat discrimination, many countries have established special bodies for equality, while some countries have decided to entrust protecting against discrimination to a human rights institution.

In Bosnia and Herzegovina and Montenegro, independent human rights institutions are responsible for handling complaints concerning discrimination, while North Macedonia and Serbia have established special institutions for the protection of equality.

In **Bosnia and Herzegovina** the institution of the Human Rights Ombudsman, an independent institution dealing with the protection of the rights of individuals and legal entities, is responsible for handling complaints of discrimination, in accordance with the BiH Constitution and international treaties annexed to the Constitution. According to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina (“Official Gazette of BiH,” No. 19/2002, 35/2004 and 32/2006), the

institution of the Ombudsman shall consist of three ombudsmen, one from each of three constituent peoples – Serbs, Croats, and Bosniaks. The Law on the Prohibition of Discrimination in BiH entrusts the institution of the Ombudsman with the status of the “central institution competent for protection from discrimination.” According to the provisions of the LPD, ombudsmen have a number of different competencies, including acting on complaints from those claiming to be victims of discrimination.

Bosnia and Herzegovina is the only country in the region that has established the institution of the Parliamentary Military Commissioner. The institution was established by the Law on the Parliamentary Military Commissioner of Bosnia and Herzegovina from 2009 (“Official Gazette of BiH,” No. 49/09), with the aim of strengthening the rule of law, protection of human rights, and freedoms of military personnel and cadets in the BiH Armed Forces and BiH MoD, as guaranteed by the BiH Constitution and international treaties. The law stipulates that the Military Commissioner shall cooperate with the BiH MoD, the General Inspectorate of the BiH MoD, the BiH AF, and the institution of the Human Rights Ombudsman of BiH in performing tasks within his/her competence.

The Parliamentary Military Commissioner is an independent commissioner of the Parliamentary Assembly of BiH and works exclusively on an expert basis. In conducting parliamentary oversight of the work and other issues in the field of protection of human rights and freedoms of military personnel and cadets in the AF and MoD of BiH, the Military Commissioner is responsible for investigating specific issues under the instructions of the Parliamentary Assembly of BiH and the Joint Defence and Security Committee of BiH. The Military Commissioner attends the sessions of the Parliamentary Assembly of BiH or the Joint Defence and Security Committee of BiH, may request reports from the Minister of Defence of BiH, and, in conducting disciplinary proceedings, may be given access to the necessary records.

The Parliamentary Military Commissioner submits an annual report to the Parliamentary Assembly of BiH, and may at any time submit individual reports to the Parliamentary Assembly of BiH or the Joint Defence and Security Committee of BiH.

The Rulebook on Cooperation of the Parliamentary Military Commissioner of BiH with the MoD, the General Inspectorate of the MoD of BiH, and the AF of BiH from 5 January 2010 (No. 01, 02-34-6-1428/09) governs the mutual coordination, cooperation, and joint action of the General Inspectorate of the MoD of BiH and the Parliamentary Military Commissioner of BiH.

In **Montenegro's** system for protection against discrimination, the central role is played by the Protector of Human Rights and Freedoms of Montenegro, which represents a national institutional mechanism for protection against discrimination. Activities of the Protector in this field are governed by the Law on the Protector of Human Rights and Freedoms of Montenegro (“Official Gazette of Montenegro,” No. 42/11, 32/14 and 21/17). One of the primary legal mandates of the Protector is to conduct proceedings in cases of discrimination, acting on complaints or on his/her own initiative.

In the **Republic of North Macedonia**, protection against discrimination is entrusted to the Commission for Protection against Discrimination. This autonomous and independent body, established by the Law on the Prevention of and Protection against Discrimination, consists of seven members elected and dismissed by the Assembly of the Republic of North Macedonia. The Commission has a broad mandate in the field of promoting, protecting, and preventing violations of equality, human rights, and non-discrimination. Among other things, the Commission acts on received complaints of discrimination, and has the mandate to act ex officio in cases of discrimination. Regarding the development of judicial anti-discrimination case law, it is important that the Commission has the authority to initiate court proceedings for protection against discrimination, as well as to appear in these proceedings on the side of the prosecutor.

In the **Republic of Serbia**, the central role in combating discrimination and promoting equality is allocated to the Commissioner for the Protection of Equality, an autonomous and independent state ombudsman-type body, which has the exclusive mandate to protect one single human right – the right to non-discrimination. Activities of the Commissioner are governed by the LPD and the Rules of Procedure, through which the Commissioner further regulates the procedure (“Official Gazette of the Republic of Serbia,” No. 34/2011). One of the primary mandates of the Commissioner is to conduct proceedings upon received complaints of discrimination, which may be filed by natural and legal persons and associations of citizens working on the protection of human rights. The Commissioner is also authorized to file criminal and misdemeanour charges, as well as to initiate “strategic litigation” in protecting against discrimination.

The aim of each of the independent bodies handling complaints of discrimination, regardless of their legal status, is to issue an expert opinion on whether an action in the concrete case constitutes an act of discrimination, to give appropriate recommenda-

tions to prevent further discrimination, and to enable the elimination of the situation and the consequences of discrimination. In this sense, the independent bodies cannot issue orders or possess repressive powers, nor do they decide on the rights and obligations of legal entities. Rather, they fulfil their legal role by giving opinions and recommendations, submitting reports, legislative initiatives, etc. While their opinions and recommendations cannot be enforced, their acts and decisions are substantiated by the authority of the institution itself and the arguments supporting them.

In practice thus far, these independent institutions responsible for handling complaints have successfully resolved many cases of gender-based discrimination, including cases related to acts of discrimination in the defence system.

Good practice example: Recommendation of the Ombudsman of Bosnia and Herzegovina regarding gender-based harassment by the media in the case [Ž-BL-06-981/18 P-311/18 of 18 December 2018](#)

The Ombudsman initiated the procedure ex officio on the occasion of an appearance on a TV show of a guest who was introduced by the host as a businessman, sports worker, cultural worker, advisor to the President, and a man who thinks about everyday life in very a specific way, with concrete suggestions and very bluntly. At that time, he performed the elected function of a councillor in the Assembly of the City of Banja Luka and was a member of the Senate of Republika Srpska. Speaking in the TV show about the position of employers, i.e. about the obligation of employers to reimburse employees in case of sick leave, he said: "A woman to become the breadwinner of the family, she can't be that [...] women have problems, let alone the fact that their husbands are beating them, but their children also started beating them, they want five marks, they want 10 marks [...] My workforce is young, I have a lot of pregnant women, now we have 67 pregnant women and new mothers, I was thinking about buying birth control pills, I will close the factory, my factory is at risk, my factory's work is endangered... the girl, after making love, takes sick leave after two months, in Tito's time it was called a pregnant woman, this has some strange name now, I don't even know what that's called and she is treated as if she cut her finger, as if she has a sore throat [...]. Why would I be financing the increase of the birth rate, this is not the job of the factory, gynaecologists are the worst doctors. I am telling you that in the Bema footwear factory, 65% of the work can be done by

children, writing, drawing, gluing on ribbons. It's harder to make a lunch at home than to do that. No, she starts bleeding, she immediately takes sick leave [...] But she is not stupid. She immediately has a second child. So she didn't work for 9 months, didn't work for one year, immediately has a second child, another pregnancy, another 9 months, a year. I have some seven women who immediately had a third child."

The Ombudsman found this was a case of gender-based harassment, which represents unwanted behaviour related to the attributed gender of a person, which belittles, humiliates, or insults a person in his or her capacity as a man or a woman, committed due to the gender roles of women and men in society, i.e., the gender roles believed that women and men need to perform. The Ombudsman sent a recommendation to the President of Republika Srpska to take measures to prevent and sanction inappropriate public appearances of members of the Senate of Republika Srpska which encourage discrimination and gender-based harassment, to the City Assembly of Banja Luka to take all necessary actions immediately upon receiving the recommendation to adopt a Code of Ethics regarding the conduct of councillors, and to the Union of Employers of Republika Srpska to take measures to prevent gender-based harassment by employers. All addressees had 30 days to inform the Ombudsman on how they would implement the respective recommendations.

Good practice example: Opinion of the Protector of Human Rights and Freedoms of Montenegro, No. 01-150/17, of 30 June 2017, in a case of discrimination against women on the grounds of age

Upon its own initiative, the Protector conducted a procedure to investigate the possible violation of the right to equal pay for equal work committed to the detriment of female senior prison police supervisors and senior class I police officers at the Bureau for the Execution of Criminal Sanctions, an administrative body within the Ministry of Justice, by adopting the Decision on Special Allowance ("Official Gazette of Montenegro," No. 61/16). The subject of the inspection was determining whether discrimination on the grounds of belonging to the female sex in the field of employment rights had been committed, rights which include the right to fair wages and equal pay for equal work. The Protector determined that the aforementioned Decision did not specify a special allowance for female senior prison police supervisors and senior class I police officers at the Department of Internal Security for Women of the Detention and Rehabilitation Centre Podgorica, nor for female senior class I prison police officers at the Department of Internal Security for Women of the Remand Prison Podgorica. According to the Protector's position, the Decision on Special Allowance treated the female employees of the Bureau for Execution of Criminal Sanctions unequally (unfavourably) in terms of monetary compensation, by failing to include female senior prison police supervisors and senior class I police officers and denying them the right to a special allowance to the basic salary in the amount of 15%. The excluded female employees were treated unequally on the grounds of sex, in comparison to employees of the opposite sex performing the same duties as the female employees of the Department of Internal Security for Women of the Detention and Rehabilitation Centre and the Remand Prison Podgorica.

The Protector recommended to the Ministry of Finance of the Government of Montenegro that it propose amendments to the Decision on Special Allowance and to equate female senior prison police supervisors and senior class I prison police officers of the Department of Internal Security for Women of the Detention and Rehabilitation Centre and the Remand Prison Podgorica with male senior prison police supervisors and senior class I prison police officers of the Department of Internal Security for Men of the Detention and Rehabilitation Centre and the Remand Prison Podgorica, in accordance with the established special allowance for performing specific tasks in cases of organized crime, corruption, money laundering, terrorism, and war crimes.

Good practice example: Opinion of the Commission for Protection against Discrimination of the Republic of North Macedonia in a case of discrimination on the grounds of sex, Annual Report of the Commission for Protection against Discrimination for 2015, p. 13.

The Commission for Protection against Discrimination received a complaint from a person who had claimed that she was discriminated against on the grounds of sex, in the field of labour and working conditions, in ProCredit Bank AD Skopje, where the person was employed. The complaint states that the complainant, upon informing her superiors that she was pregnant, was forced to sign an annex to her employment contract which reassigned her to a new post in Strumica. One month after taking up the new post in Strumica, she submitted the opinion of a gynaecologist stating that travelling was risky for her pregnancy and that she had to take sick leave. Immediately afterwards, on the first day, she received a phone call from a colleague from human resources, who tried to persuade her to sign an agreement on termination of employment. A few days later, she received a decision directing her to return to her original post in Ohrid. She was also told orally that she would not receive a salary increase and that on the first day after returning from maternity leave she would be "offered" an agreement to receive two or three more salaries and to leave the bank, and that if she did not sign such an agreement, she would be moved back to Strumica. In order to establish the facts, the Commission for Protection against Discrimination submitted the complaint within the legal deadline to the person against whom the complaint was filed, inviting the person to respond to the allegations from the complaint. The Commission examined the evidence submitted by the complainant and the response of the person accused of committing discrimination.

Based on the established facts, the Commission's opinion was that the complainant had been discriminated against on the grounds of sex, and ProCredit AD Skopje was issued a recommendation not to discriminate, exclude, or restrict employees on the grounds of sex – on the grounds of pregnancy or any other discriminatory grounds – which could lead to the deprivation, violation, or restriction of the equal recognition or enjoyment of human rights and fundamental freedoms compared to the treatment that other persons in the same or similar situation had. Also, it was stated that when employees are being reassigned to another post, especially in the case of pregnant women and mothers, they should always be allowed to reconcile family and professional duties.

Good practice example: Opinion of the Commissioner for the Protection of Equality in the case of I.K. against the Military Gymnasium

The opinion was adopted in the procedure regarding the complaint of person X against the Military Gymnasium in Belgrade regarding the recruitment posting for admission of civilian candidates to the Military Gymnasium in the school year 2013/2014, which stipulated the condition that candidates must be male. The Commissioner took the position that setting this condition prevented girls from enrolling the Military Gymnasium, which signified an act of direct sex-based discrimination against all potential female candidates.

The Commissioner rejected as unacceptable the arguments of the Ministry of Defence of Serbia saying that the number of candidates is determined according to the needs of the service and expressed according to the corresponding number and gender. In the opinion of the Commissioner, it is unclear which criteria were used to assess that there was no need for girls to enrol in the Military Gymnasium, especially given that conditions had been created for women to enrol in higher military education institutions.

The Ministry of Defence of the Republic of Serbia was recommended to harmonize the text of the advertisement with anti-discrimination regulations by removing the condition preventing girls from applying for enrolment in the Military Gymnasium for the next school year, as well as to take care in the future not to violate the provisions of the Law on the Prohibition of Discrimination and other anti-discrimination legislation when prescribing the conditions for enrolment in military educational institutions. This recommendation has been implemented and the Military Gymnasium has been enrolling girls since 2014.

At that time, the Ministry of Defence explained the Military Gymnasium's inability to admit girls by the lack of adequate capacities to accommodate girls in the boarding school. As soon as these conditions were created, the Military Gymnasium commenced enrolling girls.

In comparison to cases of gender and other forms of discrimination, sexual harassment and abuse of members of the ministries of defence and the armed forces of the Western Balkans countries are still rarely reported. Nevertheless, some cases of sexual harassment have been successfully resolved.

Good practice example: Successfully resolved case of sexual harassment of a female participant in the training of candidates for enlistment in the Armed Forces of Bosnia and Herzegovina⁴⁹

The procedure for sexual harassment was initiated after the report of a participant in the training of candidates for enlistment in military service, who stated that a certain senior officer verbally addressed her and her female colleagues in an inappropriate manner in front of other candidates, and when others were not around. In addition, she stated that the same senior officer had been sending her messages of inappropriate content on Viber in the previous 3-4 weeks. In messages sent to her by the senior officer, he had said that he wanted to help her, alluding to the provision of a service that involved "a favour for a favour." According to the complainant, these messages, to which she did not reply, constituted sexual harassment. The complaint also stated that the senior officer had followed the complainant on several occasions during the break from the kitchen area to her room, asking for an explanation for her not replying to his messages. He would also invite her to his office to talk.

The complainant filed the complaint to the inspector, the Parliamentary Military Commissioner of BiH, as well as along the chain of command. Upon receiving the complaint, the Inspector General launched a preliminary investigation procedure, the Parliamentary Military Commissioner went on-site with assistants to review the situation regarding the complaint immediately upon receiving it, and the competent senior officer in the unit for training candidates for enlisting in military service also launched an investigation procedure.

The procedure confirmed inappropriate behaviour and the violation of military discipline by the senior officer, who was disciplined and transferred from the unit for training candidates for military service. Until the completion of all procedures, this case was monitored by the General Inspectorate of the MoD of BiH and the Parliamentary Military Commissioner of BiH.

⁴⁹ Source: Archives of the Parliamentary Military Commissioner of BiH and the General Inspectorate of the MoD of BiH.

4.2.2. Judicial protection

Courts play a primary role in protection against gender-based discrimination, sexual harassment, and abuse. Relevant laws prescribe various forms of civil, criminal, misdemeanour law, and constitutional court protection.

Civil law protection against discrimination is a form of direct protection of the right to non-discrimination. It ensures not only the determining of discrimination, but also the prevention of further discrimination, i.e., the recurrence of discrimination, as well as appropriate satisfaction in the form of compensation for damages and the publication of the verdict in the media.

Misdemeanour law protection is regulated by qualifying various acts of discrimination as misdemeanours, with fines prescribed for individuals, legal entities, and responsible persons in legal entities.

Criminal law protection against discrimination is regulated by criminal laws, which prescribe various criminal offences related to the prohibition of discrimination, sexual harassment, and abuse.

Constitutional court protection of the right to non-discrimination is achieved through the control of the constitutionality and legality of laws and other general regulations from the aspect of the prohibition of discrimination and through decisions on constitutional complaints.

The legislation enables several proceedings to be conducted simultaneously and successively for the same act of discrimination, though in some situations, the final judgement or the initiation of one procedure excludes the possibility of conducting another procedure for the same act of discrimination.

The primary form of judicial protection against gender-based discrimination is civil law protection. Although the case law of courts in the Western Balkan countries in this field of law is still not sufficiently developed, it is gradually being established, with contributions from independent human rights institutions, whose practice in the field of anti-discrimination law is far richer.

Good practice example: Judgement of the Cantonal Court in Zenica, No. 43 0 Rs 113133 16 Rsž of 11 April 2016, which established discrimination on the grounds of pregnancy⁵⁰

In the second-instance judgement, the Cantonal Court in Zenica confirmed the decision of the first-instance court, which had established that the defendant discriminated against the plaintiff, i.e., violated her right to equal treatment and the right to work, by not extending her fixed-term employment contract and deregistering her from her pension and disability insurance while the plaintiff was on pregnancy leave, while extending the contracts of other employed women. The court ordered the defendant to hire back the plaintiff with a fixed-term contract and to ensure all her employment rights, to pay the plaintiff compensation in the amount of 2,000.00 KM for non-pecuniary damages reflected in the mental pain suffered due to the violation of her rights and freedoms as an individual, i.e., the right to equal treatment, and to publish the judgement at its own expense in printed and electronic media. According to the court, in this case, the plaintiff's pregnancy was her personal characteristic compared to other female candidates, i.e., employees, whose fixed-term employment contracts had been extended by the defendant. "Comparators" were other female employees who were not pregnant.

Good practice example: Judgement of the Higher Court in Podgorica Gž. No. 1005/18-10 of 24 April 2019, which established discrimination

The judgement of the Higher Court in Podgorica confirmed the first-instance judgement of the Basic Court in Kotor, which had established that the defendant-employer discriminated against the female plaintiff by paying the plaintiff unequal wages, i.e., unequal pay for equal work. The comparator in this case was a male employee who had the same qualifications and worked in the same position and performed the same work as the plaintiff – an administrator in the insurance sales sector. While the plaintiff's employment contract set the payment coefficient at 6.20, the male employee's coefficient was set at 9.10. Based on this, the plaintiff was calculated to have been paid a lower salary, which did not depend on the scope or the results of work performed. The judgement prohibited the defendant from repeating the stated acts of discrimination and ordered him to compensate the plaintiff for pecuniary damages based on the committed discrimination by paying EUR 3,897.03.

⁵⁰ Taken from: Jovanović, M. Trlin, D. „Istraživanje sudske prakse u području antidiskriminacijske zaštite," u: Suzbijanje diskriminacije: uloga pravosuđa, urednik Srđan Dvornik, Sarajevo: Heinrich Böll Foundation, the Office for Bosnia and Herzegovina, Albania & North Macedonia, p. 34-35.

Good practice example: [Judgement of the Basic Court in Skopje of 7 August 2014](#) which established a violation of the right to equal treatment and victimization of the plaintiff

The judgement established that the plaintiff had been returned to work after the court had already quashed a decision on the termination of his employment from an earlier lawsuit, and that he had been transferred to work for the defendant by the decision of the legal entity financing the defendant-employer. Upon returning to work, the defendant-employer violated the plaintiff's employment rights by failing to pay the plaintiff a salary and required benefit contributions. It was established in the proceedings that the legal representative of the defendant had not asked the legal entity financing the work of the defendant to transfer the funds representing payment of the plaintiff's salary to the plaintiff. According to the court's assessment, the reason for such an omission was the plaintiff's report to the Commission for Protection against Discrimination. The court concluded that in this case, the plaintiff had suffered harmful consequences, i.e., he had been put at a disadvantage due to taking action to protect himself against discrimination. Thus, in the court's opinion, victimization was carried out against the plaintiff, which is prescribed as a special form of discrimination by the Law on the Prevention of and Protection against Discrimination.

Good practice example: Strategic litigation of the Commissioner for the Protection of Equality due to discrimination on the grounds of sex, Appellate Court in Belgrade, [Gž. No. 5012/13, judgement of 19 July 2013](#)⁵¹

The Commissioner filed a lawsuit against a pizzeria chain due to a problematic advertisement at the pizzeria's locations: "You want to become a part of the C. team? Girls wanted for work at the counter." This advertisement was posted in the period from March to May 2012 at three locations. After the appearance of the problematic advertisement, situational testing was conducted at all three locations in Belgrade. A male tester who participated in the voluntary testing was informed that he could not be employed because the company's policy was to hire only women due to previous bad experiences with men, while a female tester was offered the job. The Commissioner stated in the lawsuit that by publishing the said job advertisement, the defendant directly discriminated against interested male

candidates. The defendant denied these allegations, arguing that women are the most vulnerable group in the labour market, and that in this way it "was conducting positive discrimination that cannot be sanctioned." The first-instance court rejected the Commissioner's lawsuit as unfounded (Judgement 63. P. 16956-12 of 7 March 2013), explaining its decision by stating that there had been no discrimination in this specific case because it was a well-known fact that men "had an incomparably higher number of available jobs, with employers choosing much more often to hire men due to women being conditioned by the natural reproductive function, and that the defendant didn't deny him (the man applying) the opportunity to get a job in its food production sector in this specific case."

The Appellate Court reversed this decision (Judgement Gž. No. 5012/13 of 19 July 2013) and found that the defendant had committed direct discrimination on the grounds of sex in the field of labour. According to the court, by publishing the problematic advertisement, the defendant had made a differentiation based on sex by offering employment only to women, thus committing an act of direct discrimination. The court did not accept the arguments that such treatment was justified. The court also did not accept the defendant's position that it was implementing special measures, because, in the court's opinion, these measures "cannot be taken by employers at their own discretion, but only in accordance with a specific public authority's document which defines the gender ratio or structure and their share of employment in certain jobs." Finally, the court particularly considered that the discrimination was committed by the very publishing of the job advertisement, which had been written in such a way to offer the job only to women. The defendant was prohibited from repeating in any way within the scope of their business activity the act of discrimination on the grounds of sex or any other personal characteristics when advertising jobs and hiring employees, and was ordered to publish the judgement in a daily newspaper with national circulation.

The Supreme Court of Cassation rejected an appeal against the judgement of the Appellate Court and upheld the second-instance judgement (Judgement of the Supreme Court of Cassation Rev. 872/2014 of 11 February 2015).

⁵¹ Taken from: Guidelines for Strategic Litigation, Belgrade; Commissioner for the Protection of Equality, 2018, p. 37-38

4.3. Internal protection within the defence systems

In every group of employees, relationships between people during professional work and everyday communication in the work environment are accompanied by various quarrels and conflicts, and actions that violate the rights of individuals and cause emotional and other forms of distress are not uncommon. The relationships between the employees in the armed forces are not spared this phenomenon either. Phenomena that cause particularly severe consequences for both individuals and the group are gender and other forms of discrimination and various forms of sexual harassment and abuse. To combat these phenomena, it is necessary to ensure adequate internal mechanisms for action within the system. This is achieved through the establishment of a system of internal protection. Experience shows that effective internal procedures have a preventative effect and over time lead to a reduction in all forms of gender-based discrimination, sexual harassment, and abuse.

In general, internal protection against gender-based and other discrimination, sexual harassment, and abuse in the defence systems of the Western Balkans countries consists of two types of procedures: 1) informal procedures, which are aimed at eliminating the violation, preventing further or repeated violation, remedying the consequences of the violation, and providing assistance and support to the individual who suffered the violation; and 2) formal procedures, which are conducted to determine disciplinary responsibility and impose adequate disciplinary measures (disciplinary procedures).

4.3.1. Internal protection mechanisms in the defence system of Bosnia and Herzegovina

In the Ministry of Defence and the Armed Forces of BiH, there is no possibility of informal resolution of cases of gender discrimination and sexual harassment. Any suspicion of elements indicating gender-based discrimination or sexual harassment, which may be reported by any person who believes that he or she is being sexually discriminated against or sexually harassed, by a third party (anonymously), or which may be observed by a superior are grounds for the competent authority to initiate procedures in accordance with the prescribed regulations.

There are three procedures used in cases of gender-based discrimination and sexual harassment: the mechanism for reporting the case to a contact person for gender equality, a procedure conducted by the Inspectorate General, and disciplinary procedure.

The mechanism for reporting the case to a contact person for gender equality is regulated by the Standard Operating Procedures for the Contact of Persons Appointed in the Armed Forces of Bosnia and Herzegovina for Gender Equality Issues (2017). Duties of the contact persons include conducting interviews, advising, monitoring, examining and conducting the procedure for determining a violation of rights in the field of gender equality, and proposing further measures within the competence of the commander. Upon learning or receiving a report of any type of harassment, contact persons for gender issues must immediately and without delay inform the commander, who must then conduct the relevant procedures in accordance with his/her competencies. In cases of gender-based discrimination, contact persons cooperate with the inspector, lawyers and psychologists, on-site or in the unit closest to them, and keep records of reported incidents related to violations of rights in the field of gender equality and measures taken. Responsibility for the consistent application of the relevant standards and operational procedures rests with the competent senior officers (battalion commanders, brigade commanders, and those in higher levels of rank) in the chain of command and control in the AF of BiH and the contact person himself/herself.

The Inspectorate General of the MoD of BiH is the body that ensures the implementation of the Code and Standards of Conduct for persons serving in the MoD of BiH and the AF of BiH. Its most important duties are to launch, conduct, control, and monitor interviews and investigations into allegations of misconduct by professional military personnel in the MoD of BiH and the AF of BiH, and to advise the Minister

of Defence of BiH on eliminating circumstances that damage the morale, efficiency, and reputation of the AF of BiH. Regarding protection against discrimination, of particular importance is the authority of the Inspectorate General to conduct preliminary and full investigations in the fact-finding investigative process. The investigative function of the inspector includes two methods of fact-finding:

1. An investigation conducted by the inspector to establish the facts concerning the allegations, problems, or unfavourable circumstances, so as to provide the ordering authority with a solid basis for decision-making and action. This type of investigation is approved by a written order from the Minister of Defence or the Inspector General of the MoD of BiH, or from the competent commander in the commands and units of the AF for inspectors in the commands and units;
2. A preliminary investigation, a less formal fact-finding process, which inspectors use to gather the information needed to verify allegations of misconduct against an individual. This procedure does not envisage the engagement of the ordering authority, but there are no obstacles for the ordering authority to order the launch of a preliminary investigation.

Anyone may file a complaint or request assistance from any inspector in the AF regarding matters of interest to the MoD and the AF of BiH. Persons filing complaints may directly contact the Inspectorate General of the MoD of BiH to request assistance or file a complaint, but they are certainly encouraged to first seek a solution from an inspector at a lower level.

To encourage the reporting of irregularities in the work of the MoD of BiH and the AF of BiH and to effectively combat them, the MoD of BiH was the first institution in BiH to establish an electronic communication channel, "Ethics Line," which allows every employee and other stakeholders to report any irregularities in the work of the MoD of BiH and the AF of BiH. The "Ethics Line" channel was established in 2013 and was the result of efforts to reform the internal system for reporting and resolving irregularities in the work of the MoD of BiH, as well as to establish effective control mechanisms that guarantee an adequate response to even the slightest irregularities. Data submitted through the channel cannot be removed or changed, and reports and evidence of abuse sent through the "Ethics Line" system are processed by the Inspectorate General of the MoD of BiH.

To improve the accessibility of the Inspectorate General of the MoD of BiH, the application "My Inspector" was launched and published on the website of the MoD of BiH in mid-2019. The aim of the application is to provide assistance, primarily to members of the AF of BiH, for reviewing the current regulations in the field of ethics and professional conduct, as well as other normative and legal standards in the MoD and the AF of BiH. The application enables the contacting of inspectors in the system of the MoD and the AF of BiH, as well as the accessing of information on the competencies and functions of the Inspectorate General of the MoD of BiH. The "My Inspector" application is currently available for mobile phones with the Android operating system. In order to ensure that as many regulations and procedures as possible are made accessible and realised, especially those which are the subject of interest of the largest number of members of the MoD and the AF of BiH, information and documents are published in all three official languages in BiH.

Disciplinary procedure is a procedure conducted in cases of violation of military discipline, in accordance with the Rulebook on Military Discipline and Disciplinary Procedure in the Armed Forces of BiH ("Official Gazette of BiH," No. 96/10). According to Article 6, paragraph 1 of the Rulebook, a disciplinary offence is an act that violates the dignity of subordinates or persons of lower rank or is discriminatory on the grounds of sex, race, skin colour, religion, or nationality, in particular sexual abuse or harassment, or any act that violates the rights to which these people are entitled according to the regulations. Abuse of official position or exceeding official authority is also qualified as a disciplinary offence, i.e., as inappropriate behaviour that damages the reputation of the Ministry of Defence of Bosnia and Herzegovina.

All members of the AF have the obligation to report disciplinary offences they have learned of or became aware of in any way. Upon receiving a proposal for launching the disciplinary procedure, the brigade commander or a commander of the same or higher rank shall, within seven days, issue a decision on launching the disciplinary procedure. The disciplinary procedure itself is strictly formal and transparent, based on standards of fair treatment, and the person being evaluated by the disciplinary procedure has precisely regulated rights and duties, including the right to a representative. A member of the professional military personnel shall be removed from duty during the disciplinary procedure if it is assessed that his/her staying in the service would be detrimental to the interests of the service. An appeal against a decision shall not stay its execution.

Good practice example: Successfully resolved case of gender-based discrimination in relation to the accommodation of female soldiers – Bosnia and Herzegovina

Six female members of the infantry battalion from the infantry brigade filed reports to inspectors from the system of inspectors of the MoD and the AF of BiH in relation to allegedly inadequate off-site accommodation conditions for female soldiers working on securing the location, i.e., on duty as guards. They referred to themselves as female soldiers from one of the infantry battalions who performed the same tasks as their male colleagues, but were seeking help from the inspector to determine the facts in relation to “whether the conditions for the guard duty at that location are in line with the prescribed conditions for women and men.” In the report, they stated that they could only use the bathroom and shower for personal hygiene by going through the men’s dormitory because this was the only off-site bathroom for all members’ use, even if just to wash face or hands or brush their teeth, and that they would go to the toilet or to shower only if they were sure that none of the male colleagues were using the toilet or shower. As guard duty at the location lasted for seven days in a row for all members of the infantry battalion from the infantry brigade securing the location, the complainants believed that the conditions for personal hygiene were not at a satisfactory level.

Based on the established facts, it was determined that their report was grounded. This was supported by the report of the brigade commander in charge of the unit providing security, who stated that the off-site conditions examined by the inspectors were less favourable for women compared to other off-site locations because their accommodation was separated from the guard post and female guards were forced to leave their dormitories to go to the toilet and bathroom. The commander was recommended to suspend the deployment of female soldiers until the conditions for the accommodation of female soldiers were created at the off-site location and to ensure that the necessary conditions would be created in the upcoming period through the chain of command. The inspector’s recommendations were approved by the commander from the higher level where the acting inspector was deployed, and were subsequently implemented. The investigation and successful coordination within the chain of command resulted in the provision of the relevant facility, a container with heating, hot water, including shower cabins, a toilet, and a washbasin, set up by the competent logistics units.

4.3.2. Internal protection mechanisms in the defence system of Montenegro

In cases of mobbing in Montenegro, the provisions of the Law on the Prohibition of Harassment at Work from 2012 (“Official Gazette of Montenegro,” No. 30/12 and 54/16) apply, along with the Rulebook on the Rules of Conduct of the Employer and the Employee for the Prevention of and Protection from Harassment at Work (“Official Gazette of Montenegro,” No. 56/12), where the MoD (public administration body) is the employer. In accordance with these regulations, in cases of mobbing, an employee in the MoD initiates the internal protection procedure by submitting a written request for initiating the protection procedure to a mediator, or the employer, if the mediator has not been determined. The mediator must initiate the mediation procedure within three days from the day of receiving the request. The mediation procedure must be completed within eight days from the day of initiating the procedure, in the following manner: by concluding a written agreement between the parties to the dispute, by the mediator’s confirmation of any failed mediation, and by a statement of the parties to the dispute on the waiver of any further procedure.

A trade union representative and an employees’ representative may participate in the mediation procedure. The mediation procedure is closed to the public and the information collected during the mediation can be communicated only to the participants in the procedure and the authorities responsible for protection against mobbing. If the employer has not taken temporary measures, the employee who is exposed to mobbing has the right to stop working until the end of the mediation procedure, if, in the opinion of the specialist doctor of the competent health care institution, there is imminent danger to his/her health or life.

An employee who is not satisfied with the outcome of the employer’s procedure of protection against mobbing may initiate a protection procedure with the Agency for Peaceful Resolution of Labour Disputes, as disputes initiated under this law have the nature of labour disputes, or may initiate proceedings with the competent court.

The procedure before the Agency for Peaceful Resolution of Labour Disputes is regulated by the Law on the Peaceful Resolution of Labour Disputes (“Official Gazette of Montenegro,” No. 16/07, 53/11, 11/15, 42/15 and 55/16). The conciliator or arbiter participates in the procedure of the peaceful resolution of collective and individual disputes.

Pursuant to the Law on Civil Procedure ("Official Gazette of the Republic of Montenegro," No. 22/04, 28/05 and 76/06, "Official Gazette of Montenegro," No. 73/10, 47/15, 48/15, 51/17, 75/17, 62/18, 34/19, 42/19 and 76/20), the court is obliged to inform the parties at the preliminary hearing, i.e., at the first session of the main hearing, if the preliminary hearing has not been held, about the possibility of resolving the dispute through mediation or other alternative dispute resolution options, with the Agency for Peaceful Resolution of Labour Disputes being one of the alternative options for resolving labour disputes.

The internal mechanism for protection against gender-based discrimination, including sexual harassment and sexual abuse against and by the employees of MoD and the AF of Montenegro, is a disciplinary procedure.

The Law on the Armed Forces of Montenegro governs the procedure for determining disciplinary responsibility for disciplinary offences. These offences include, among others, any conduct that offends the dignity of persons serving in the Armed Forces, in particular sexual abuse or harassment or any conduct that is discriminatory on the grounds of sex, race, skin colour, religion, or nationality or other personal characteristics – Article 157, paragraph 1, item 18.

A disciplinary procedure is initiated by a decision on initiating a disciplinary procedure, which is made by the immediate superior in the AF of Montenegro, i.e., the Chief of the General Staff for the immediate subordinates. The disciplinary procedure is conducted by a military-disciplinary commission, which, after the conducted procedure and review of the facts, shall propose a decision to the Chief of the General Staff, who is to make the final decision – Article 169. The rules of disciplinary procedure ensure that correct and lawful decisions are made, with full respect for the right to defence and other standards of fair treatment.

Depending on the assessed gravity of the disciplinary offence, a disciplinary sanction may be imposed on the person who committed the offence. The person subject to the disciplinary sanction has the right to appeal within eight days from the day of receiving the decision. The decision on this appeal is made by the Minister of Defence, and an administrative dispute may be initiated against the decision.

The Inspection Department of the MoD conducts internal control for all forms of unethical and illicit behaviour of employees of the MoD and AF of Montenegro, including the monitoring of measures taken in cases of mobbing.

4.3.3. Internal protection mechanisms in the defence system of the Republic of North Macedonia

The internal protection mechanism in cases of harassment at work of employees in the Ministry of Defence and the Army of the Republic of North Macedonia is regulated by the "Instructions for the Protection of Employees in the Ministry of Defence and the Army against Harassment at Work." These prescribe the manner of initiating and conducting the internal procedure for protection against harassment at work for employees and candidates for employment in the Ministry of Defence and the Army. The internal procedure does not exclude the possibility of initiating a disciplinary procedure or court proceedings.

A harassment report may be filed by any person who believes that he/she has been exposed to harassment or by a third party, with the consent of the person believed to have been exposed to harassment. A harassment report may be made in writing to the Minister of Defence, a person authorized by the Minister of Defence, or the immediate superior officer. The report can also be made on a special form, via e-mail, or by a phone call to the authorized person.

Prior to filing the report, the person who believes that he/she has been exposed to harassment should contact the person who has harassed them, directly (in person), in writing, or by phone, and inform him/her that his/her behaviour is unwanted, offensive, degrading, or affecting his/her work, and that he/she will seek legal protection if such unwanted behaviour doesn't stop immediately. Persons who believe that they are exposed to harassment are advised to record the time, manner, and content of any such communication.

If the person exposed to harassment does not want to contact the person who is harassing them or if such contact does not lead to the cessation of the unwanted behaviour, the internal procedure for protection against harassment may be initiated.

The internal procedure for protection against harassment includes informal and formal procedures.

Informal procedures consist of advice and assistance to the person who believes that he/she has been exposed to harassment in the barracks/military base, to be provided by the gender representative chosen by the authorized person or by the person who believes that he/she has been exposed to harassment. A total

of 36 gender representatives from the ranks of the MoD and the Army have been appointed. The gender representative is to advise and assist the person who believes that he/she has been discriminated against in identifying the type of harassment and provide him/her with information about filing a report of harassment at work.

Formal procedures within the internal procedure are conducted by an authorized person for protection against harassment at work in the MoD and the Army, who shall initiate the filing of the harassment report. The report can be filed within six months of the unwanted action, i.e., of the last occurrence of the unwanted action, if the harassment has been repeated continuously.

Based on the data from the report and the evidence, the authorized person shall assess how to conduct the internal procedure, and inform the parties about their rights and obligations, as well as about the procedure after the report. The authorized person must provide the person who filed the report with feedback on the undertaken activities within 30 days from the day of submitting the report and inform them that they can request assistance again if the harassment does not stop.

The authorized person must warn the reported person that the actions he/she has taken are undesirable for the person the actions were aimed at and request that he/she stops taking them, and keep as confidential the data and documents used in the internal procedure, which is closed to the public. They also must inform the reported person that he/she has the right to provide explanations regarding his/her behaviour.

Mediation is an integral part of the internal procedure, with the authorized person engaging both the person filing the report and the reported person and informing them that they may agree to appoint a joint mediator from the list of mediators within eight days from the day of receiving the notification.

If the person filing the report and the reported person choose a mediator and mediation is successful and the harassment is eliminated, the internal procedure will have been successfully completed. In any case in which the parties do not choose a mediator or mediation fails, the authorized person will inform both parties that protection from harassment may be sought from the court.

The finalization of the internal procedure is followed by monitoring, in which the authorized person continuously monitors the implementation of the guidelines, proposes measures, and keeps records of all relevant cases and files, including measures taken in accordance with regulations.

All employees and candidates for employment in the MoD and the Army are informed about the provisions contained in the "Instructions for the Protection of Employees of the Ministry of Defence and Army from Harassment at Work," as well as the provisions of the Law on Protection from Harassment at Work.

Sexual harassment and harassment at work of MoD and Army employees are subject to disciplinary responsibility. According to the Law on Service in the Army of the Republic of North Macedonia, the following acts are classified in the category of disciplinary offences: offensive or violent behaviour that causes or could cause consequences for property, persons, and services in the Army, as well as for the life and health of people and the environment; sexual harassment expressed through verbal, non-verbal, or physical behaviour of a sexual nature, which violates the dignity of military and civilian personnel, and which causes fear or creates an unpleasant, humiliating, or offensive situation; and psychological harassment at work (mobbing) – Article 131, paragraph 2, items 16 and 26. For these and other disciplinary offences, disciplinary measures prescribed by the law may be imposed – Article 132.

Disciplinary procedures are conducted in accordance with the provisions of the Law on the Service in the Army of the Republic of North Macedonia and the Rulebook on Initiating and Conducting the Disciplinary Procedure for Determining the Disciplinary Responsibility of the Military and Civilian Personnel Serving in the Army of the Republic of Macedonia and the Manner of Work of Commissions for Conducting the Procedure for Determining Disciplinary Responsibility ("Official Gazette of the Republic of Macedonia," No. 8/2013).

The initiative for launching a disciplinary procedure may be initiated by any person from the ranks of active military personnel or civilian personnel employed in the army. Disciplinary responsibility is determined at the corresponding hearing before the commission, and the person subject to the procedure is provided with the opportunity to comment on any allegations and evidence. In the event of a violation of military discipline which may culminate in a disciplinary measure of termination of employment, of termination of active military status, and/or of loss of rank, the disciplinary procedure shall be conducted by the Main Military Disciplinary Commission.

The proposal of the disciplinary commission is submitted to the person responsible for imposing disciplinary measures, who may accept the proposal of the commission or, in accordance with their legal mandate, issue an appropriate decision.

4.3.4. Internal protection mechanisms in the defence system of the Republic of Serbia

Internal protection within the Ministry of Defence of the Republic of Serbia includes informal procedures and the formal procedure that is conducted to determine disciplinary responsibility.

Informal procedures are procedures conducted by persons of trust and support persons.

Persons of trust are persons in charge of providing primary peer support in the form of counselling, mediation, and taking measures to resolve specific disputes in the field of gender equality within organizational units⁵². They are elected by members of the organizational unit of the MoD and the AF by secret ballot. The elected persons of trust must complete appropriate training to be able to perform tasks within their competence, and the organization of such training is the responsibility of the Advisor to the Minister of Defence for the Implementation of the NAP for the Implementation of UNSCR 1325 – Women, Peace and Security in the Republic of Serbia.

In resolving a specific issue in the field of gender equality and discrimination, the competent person of trust conducts interviews, offers advice, mediates, and takes concrete measures at the request of the person asking for help or on their own initiative, when they notice a specific issue related to the exercise of gender equality.

If the person of trust is unable to resolve the specific issue through counselling, they refer the person to the appropriate professional services of the MoD and the AF (psychological, legal, HR, etc.) or to other protection mechanisms in accordance with the law (Figure 5).

The person of trust must maintain the confidentiality of the information he/she has learned in the provision of assistance and support, except for the data relating to the commission of criminal offences. The person of trust may request assistance from the Advisor to the Minister of Defence for the Implementation of the NAP for the Implementation of UNSCR 1325.

52 Instructions of the Minister of Defence on the Election and Function of Persons of Trust, "Official Military Gazette" No. 1/18

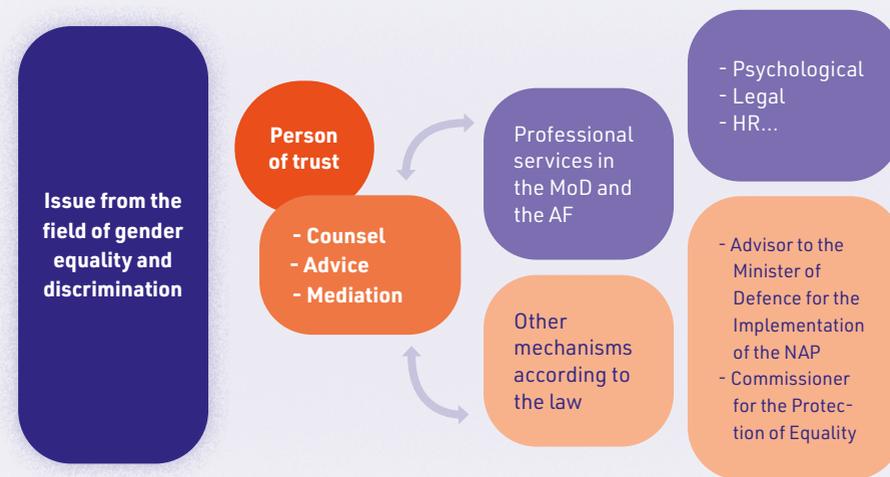


Figure 5: Actions of the person of trust

Principles of work of the person of trust: protection of the dignity, privacy, and autonomy of persons seeking their aid; professionalism in work (maintaining privacy, respecting the will of the person), preservation and constant upgrading of personal and professional integrity, reputation, and the trust of the military personnel; respect for diversity, not judging persons or lifestyles, knowledge of and respect for rules and regulations at work; tolerance, assertiveness, avoidance of conflicts of interest, impartiality, neutrality; combining theory and practice, continuous improvement and acquisition of new knowledge; availability to both male and female colleagues, dissemination of knowledge, pointing out irregularities, improving the implementation of the principles of gender equality and non-discrimination, etc.

Desirable knowledge, traits, and skills for persons of trust: counselling, mediating, and taking adequate measures; flexibility, recognizing and accepting diversity; assertiveness; empathy; communication skills – verbal and non-verbal (active listening, giving and receiving feedback); counselling – constructive problem-solving – without imposing ready-made solutions; mediation; conflict management, etc.

In addition to providing peer support and support for resolving issues related to gender equality, persons of trust have a significant preventive role in ensuring that equality is represented and important among military personnel, in working on the creation of a non-discriminatory work environment, with respect for gender equality and where discrimination is sanctioned, and in keeping personnel and managers informed on issues in the field of gender equality and prevention of discrimination. Another important role is contributing to collecting data, analysing reports, and pointing out possibilities for improving the situation in the field of gender equality and the prevention of discrimination.

Support persons are a mechanism designed to provide advice and support to a person that might be exposed to harassment at work. This mechanism is regulated by the Law on the Prevention of Harassment at Work from 2010 ("Official Gazette of the Republic of Serbia," No. 36/2010) and the Rulebook on the Rules of Conduct of Employers and Employees Regarding the Prevention of and Protection against Harassment at Work ("Official Gazette of the Republic of Serbia," No. 62/2010), which regulates in detail the employer's actions in cases of harassment at work.

An employee who believes that he/she has been exposed to harassment should, before filing a lawsuit in court, first seek protection from the abuse through the employer's procedure. However, this rule does not apply in cases of suspected harassment or sexual harassment by the competent superior officer, when the employee may file a lawsuit for protection against abuse without first initiating the employer's protection procedure.

An employee who believes that he/she has been exposed to harassment should contact the support person or the person designated by the employer (or another competent person of trust) to file a request for protection against harassment to present the problem(s) and get counsel on how to proceed and resolve the issue. The support person must listen to the employee, and give advice, guide him/her, inform him/her, and provide support for the resolution of the issue. If, after talking to the support person, the employee decides to do so, he/she can submit a reasoned request for initiating the procedure for protection against harassment to his/her immediate superior. This request may also be filed by a person authorized to file a request for protection against harassment, with the written consent of the employee who believes that he/she has been exposed to harassment. Before launching the procedure for protection against harassment, the employee who believes that he has/she has been exposed to harassment should, if this is feasible and possible in the specific case, make it clear to the person he/she believes to

have committed the harassment that such behaviour is unacceptable and that he/she will seek legal protection if such behaviour does not stop immediately.

Mediation is an integral part of internal protection from harassment at work and the employer has the obligation to propose it (Article 15 of the LPHW). If mediation fails, and there is a grounded suspicion that harassment has been committed, the employer must launch the procedure to determine the respective employee's responsibility for non-compliance with the work discipline, or for violation of work duties, which initiates the formal procedure. If he/she is not satisfied with the outcome of the mediation procedure or the procedure for determining the responsibility of the employee charged with harassment, the employee can file a lawsuit in court.

Another procedure with the nature of an informal protection mechanism is the procedure conducted by an authorized person – a person appointed by the decision of the Minister of Defence of the Republic of Serbia to receive information and conduct procedures in relation to internal whistleblowing. Whistleblowing is a disclosure of information regarding: violations of regulations, violations of human rights, the exercise of public authority contrary to the purpose for which it was entrusted, threat to life, public health, safety, of environment, and the prevention of large-scale damages. Authorized persons have the obligation to act without delay on the information disclosed by the internal whistleblowing and to take measures prescribed by the Rulebook on the Procedure for Internal Whistleblowing in the MoD and the AF, ("Official Military Gazette," No. 34/2015). The procedure on internal whistleblowing must be conducted without delay, while still obtaining all the evidence necessary for the proper and complete establishing of facts.

If the procedure launched upon an instance of internal whistleblowing establishes irregularities or harmful actions, or harmful consequences indicated by the whistleblower, the authorized person shall also prepare, as part of the report, proposed measures for their elimination. Starting with the measures proposed by the authorized person, the employer shall, in accordance with its authorizations, order the necessary measures to be taken in order to stop the harmful activity reported and eliminate its consequences.

The formal procedure is regulated by the provisions of the Law on the Serbian Armed Forces related to military disciplinary courts, and the Rules on Military Discipline ("Official Military Gazette," No. 9/2016 and 16/2016). Violations of military discipline can be minor (disciplinary infractions) or more serious (disciplinary offences). Disciplinary infractions are violations of military discipline prescribed

by the provisions of Article 148 of the Law on the Serbian Armed Forces, as well as violations of military discipline by soldiers serving in conscription, while disciplinary offences are violations of military discipline prescribed by the provisions of Article 149 of the Law on the Serbian Armed Forces.

One of the disciplinary offences prescribed in Article 149, paragraph 5 of the Law on the Serbian Armed Forces, is “acting in a way that violates the dignity of subordinate personnel, especially in terms of sex, religious beliefs, or nationality, or the violation of rights they are entitled to by law.”

In regarding first-instance procedures for disciplinary offenses, the superior officer is obligated, immediately upon finding out about the disciplinary offence of his/her subordinate, to initiate the procedure and resolve it within eight days at the latest. If the officer’s assessment is that a disciplinary offence requires a disciplinary measure he/she is not authorized to impose, he/she is obliged to refer the case with the necessary information to his/her superior officer to resolve it, no later than two days from the day of receiving the case. If the superior officer in charge of determining the disciplinary responsibility believes that a disciplinary offence has been committed, he/she has the obligation to act in accordance with the regulations on establishing responsibility for disciplinary offences.

The military disciplinary prosecutor is to submit the information to the first-instance military disciplinary court. Appeals against the decision of the first-instance military disciplinary courts are decided upon by the Higher Military Disciplinary Court, and the prosecution before the Higher Military Disciplinary Court is represented by the Higher Military Disciplinary Prosecutor.

4.4. Use of mediation within internal protection

In the defence systems of the Western Balkans countries, mediation is an integral part of the informal procedures used in cases of gender and other forms of discrimination, sexual harassment, and harassment at work. All the Western Balkans countries have established a legal framework for mediation, which is also relevant for mediation used within the internal mechanisms for protection against discrimination, sexual harassment, and harassment at work (Table 18).

BOSNIA AND HERZEGOVINA	MONTENEGRO	REPUBLIC OF NORTH MACEDONIA	REPUBLIC OF SERBIA
Law on Mediation “Official Gazette of BiH,” No. 37/2004.	Law on the Alternative Dispute Resolution “Official Gazette of Montenegro,” No. 77/20.	Law on Mediation “Official Gazette of the Republic of Macedonia,” No. 188/2013.	Law on Mediation in Dispute Resolution “Official Gazette of the Republic of Serbia,” No. 55/2014.

Table 18: Legal frameworks for mediation in the four Western Balkans countries covered by the Handbook

All the relevant laws on mediation regulate mediation as a procedure in which a third neutral person helps the parties to the dispute reach a peaceful resolution of the dispute through negotiations. It is an alternative method for the out-of-court resolution of disputes, the essence of which is that the parties, with the help of mediators, examine the problem in a more constructive way and present and negotiate various options as possible solutions in order to find a mutually acceptable solution. Unlike most other methods and techniques of alternative conflict resolution, the goal of mediation is not only to find a solution to the current problem, but also to preserve the relationship between the parties and prevent future conflicts and violations.

Mediation is an informal process and is therefore only broadly regulated through the prescribing of its basic principles, the most important of which are: voluntariness, confidentiality, privacy, the equality of parties and the neutrality, independence, and impartiality of the mediator.⁵³

Mediation initiated in cases of discrimination, sexual harassment, abuse, and other violations has certain specific elements, which make it different from standard mediation. Namely, standard mediation is intended for resolving disputes (conflicts). Such situations are instances of disagreement where the parties have certain mutually exclusive interests. In these situations, standard mediation is employed, in which the mediator helps the parties to consider their initial requirements, interests, and needs and search for possible solutions, based on which the mediator directs the parties to find a mutually acceptable solution.

In cases of injury/damage (emotional, social, physical, etc.) caused by discriminatory treatment, sexual harassment, abuse, etc., one individual/group has inflicted the injury on the other individual/group, so there is no presumption that the parties share the responsibility for the injury; rather, the responsibility is solely on the individual(s) who caused the injury. If standard mediation were applied in such cases, it would essentially lead to secondary victimization of the individual suffering the injury. Since dispute (conflict) and injury, as reasons for mediation, are different, just as the power relations of the parties involved in the respective types of mediation are different, so too are the mediation processes.

Mediation conducted in cases of injury has the characteristics of so-called restorative mediation, also referred to as "mediation between the victim and the offender." Restorative mediation is related to the concept of restorative justice. Unlike retributive justice, which seeks to provide the answer to the questions of which regulation has been violated, who has violated it, and how to sanction the offender, thus equating it with the punitive approach, restorative justice also focuses on the needs of the victim of an illegal act and is aimed at remedying the injustice done by eliminating the harmful consequences (loss restoration). While

53 For more information on mediation, as an alternative method, see: Paths of Mediation in Bosnia and Herzegovina (ed. Adnan Novo), Sarajevo: IFC, 2009; Pažin, Z. Đuranović, D. Lutovac, M. Božović, R. Martinović, N. Priručnik za obuku medijatora – posrednika, Podgorica: Centar za posredovanje Crne Gore, 2009; Sotiroški, Lj. Priručnik za obuku na medijatori, Skopje: Ministerstvo za pravda na Republika Makedonija, 2011; Džamonja Ignjatović, T. Medijacija, principi, proces, primena, Beograd: Centar za primenjenu psihologiju, 2014; Petrušić, N. Čuk Milankov, D. Despotović Stanarević, V. Džamonja Ignjatović, T. Jovanović, V. Priručnik za primenu medijacije u okviru službe Poverenika za zaštitu ravnopravnosti (ur. Dragana Đuk Milankov), Beograd: Poverenik za zaštitu ravnopravnosti, 2012.

retributive justice achieves retribution against the offender of a certain act, with the victim excluded and unable to say what he/she considers fair and what satisfaction he/she needs to remedy the injustice, restorative justice provides the victim with such an opportunity.

According to the concept of restorative justice, restorative mediation entails that the person alleged to have committed the violation accepts the responsibility for the committed violation and the consequences it has produced for the person who suffered the violation. Restorative mediation enables the victim and the offender to meet in the presence of a mediator, who is to guide their dialogue. In principle, the victim and the offender discuss the relevant violation, the consequences of it on their lives, and how they now feel about the committed act. The focus of mediation is on establishing a dialogue, on encouraging exchange, understanding, and empathy between the victim and the offender. Dialogue can also lead to a mutually acceptable agreement on how the offender shall compensate for the damage caused to the victim. Compensation can be monetary or symbolic; it can include an apology, volunteer work in the local community, or anything else that gives the victim a sense of justice.

Restorative mediation offers numerous benefits for both the person who suffered the injury and the person who inflicted it. Mediation provides the person who suffered the injury the opportunity to convey to the other person how they felt in that situation, to gain understanding, acceptance, and strengthen self-confidence, and to hear from the responsible party why he/she/they engaged in the act(s) that caused the injury, which is usually very important for the emotional recovery of victims. Correspondingly, the person who inflicted the injury has the opportunity to share relevant regrets with the person who suffered the injury, which can be very important for overcoming hard feelings. Restorative mediation provides an opportunity for people to renew or establish a relationship, which can be crucial in situations where people have to be in contact with each other in everyday life, as is the case, for example, with co-workers.

The differences between standard mediation and restorative mediation used in cases of injuries are summarized in Table 19.⁵⁴

54 Petrušić, N. Čuk Milankov, D. Priručnik za primenu medijacije u okviru Ministarstva unutrašnjih poslova Republike Srbije, Beograd: Ministarstvo unutrašnjih poslova RS, 2020.



РУБИТЬ В ЭТОЙ ЗОНЕ

ВНИМАНИЕ
ЭТОЙ ЗОНЕ
ОТКАЗЫВАЮТСЯ
ВНЕШНИЕ
ПОДЪЕМНИКИ
И ДР.

1

ИТЕЛ

5. MONITORING AND ANALYSIS OF THE SITUATION

ELEMENTS OF THE PROCEDURE	CONFLICT (STANDARD MEDIATION)	INJURY (RESTORATIVE MEDIATION)
Aim of the procedure	An agreement that satisfies the interests of both parties equally Focused on the causes of conflict	Restorative outcome – apology, elimination of the risk of injuries in the future, with or without an agreement on compensation for damages Focused on the consequences of the injury and the prevention of new injuries
Focus of the procedure	Conflict resolution – integrative “win-win” solution (positive outcome for both parties)	Recognition of the injury and the corresponding feelings and taking responsibility, apology, stopping discrimination
Nature of the needs and interests that are the focus of mediation	Cause of the conflict	Consequence of the injury
Position of parties	The parties are treated equally; equal contribution to the conflict, shared responsibility	Responsibility of the party that inflicted the injury
Role of the mediator	Neutral towards the resolution, impartial towards the parties	Not morally neutral in relation to the behaviour that led to the injury
Process	<ul style="list-style-type: none"> • Separate meetings are not mandatory • Who speaks first – doesn't matter, choice or balance • Mapping the unmet needs that caused the conflict 	<ul style="list-style-type: none"> • Mandatory separate preparatory meetings before the joint meeting • Who speaks first – the order is very important and is agreed upon in advance • Mapping the needs arising from the inflicted injury
Outcome	An agreement that involves the engagement of all parties	A restorative outcome that involves the offender taking action to eliminate the consequences of the injury

Table 19: Differences between standard and restorative mediation

The main precondition for the successful achievement of gender equality and an effective policy for combating gender-based discrimination is the systematic collection of gender-sensitive structural and functional data, as well as data on the scope, structure, and characteristics of gender-based discrimination cases. The analysis of collected data ensures the monitoring of upward or downward trends in various forms of gender-based discrimination, both in individual units and at the level of the entire armed forces system. The data and the insights gained ensure that the creation and evaluation of the effects of measures and activities in the field of preventing and combating gender-based discrimination are fact-based, as well as that the authorities in this field make informed decisions.

The defence systems of the Western Balkan countries have very fragmented and complex data collection and analysis systems, with action plans for the implementation of UNSCR 1325 significantly contributing to the situation.

5.1. Reporting system in the Ministry of Defence and the Armed Forces of Bosnia and Herzegovina

The Ministry of Defence and the Armed Forces of BiH maintain an electronic database of personal records, which includes the primary records of personnel, military records of duties, the records and personal files of employees, and the records of professional military personnel no longer in service, in accordance with the Rulebook on the Management of Personal Records in the Ministry of Defence and the Armed Forces of BiH. All data collected, recorded, and processed are sex-disaggregated.

The reporting on the status of gender equality in the MoD and the AF of BiH is focused on bodies and institutions both outside and within the defence system.

Reporting outside the defence system includes the submission of the following reports and information:

- An annual report on the implementation of programme activities of the MoD of BiH in the Work Programme "Monitoring, Analysis of the Situation, and Implementation of Activities in the Field of Gender Equality;"
- Submission of information to the Agency for Gender Equality for the drafting of the Annual Report on the Implementation of the Action Plan for the Implementation of UNSCR 1325 Women, Peace and Security, from the mandate of the MoD of BiH, and the Annual Report on the Implementation of the Gender Action Plan, from the mandate of the MoD of BiH;
- Annual analysis of personnel in the MoD, which, among other issues, presents and analyses activities in the field of gender equality;
- A report on the implementation of PG 0013 – Gender Perspectives, together with reports on the implementation of other PGs, submitted to the NATO Headquarters in Brussels; and
- A report to the NATO Committee on Gender Perspectives.

Regular reporting within the MoD and AF of the BiH system includes reporting by contact persons for gender issues appointed by the competent commanders down to the battalion level. Each contact person for gender issues submits reports quarterly every year (March 31; June 30; September 30; and December 31) to the contact person for gender issues on the immediate next command level, who further processes the reports. In this way reports are collected from the battalion level to the level of the Joint Staff of the AF of BiH.

The quarterly report consists of eight items, the first six of which are presented in figures and disaggregated into professional military personnel (PMP) and civilians, while professional military personnel data is disaggregated in the report by categories of professional military personnel (officers, non-commissioned officers, soldiers), with each of the categories presented in figures by personal rank. All items included in the report are disaggregated into men and women and include the following: 1) number of personnel in the unit (men and women); 2) education of members of the AF of BiH at home and abroad; 3) participation in peace support operations, UN peacekeeping missions, and military-diplomatic missions; 4) incentives and rewards; 5) promotions; 6) reported cases of discrimination, conducted disciplinary procedures, and imposed disciplinary measures and sanctions; 7) cooperation with international organizations and local communities; and 8) lessons learned.

Extraordinary reporting is carried out when it is necessary to collect data on specific phenomena.

5.2. Reporting system in the Ministry of Defence and the Armed Forces of Montenegro

The job description of the Gender Equality Coordinator at the Human Resources Directorate states that the Coordinator shall prepare and submit periodic and annual reports and recommendations for achieving gender equality. The gender advisor of the Chief of the General Staff of the AF of Montenegro also participates in the preparation of certain reports.

In the observed period, the gender equality mechanisms and organizational units for human resources submitted reports regarding:

- The implementation of activities from the Programme of Implementation of the Action Plan for Achieving Gender Equality in Montenegro;
- The implementation of the Action Plan for the Implementation of UNSCR 1325 – Women, Peace and Security (adopted by the Government in January 2019);
- The implementation of the gender equality policies of NATO, OSCE, and other organizations and initiatives, on an annual basis;
- The implementation of gender equality policy within the competence of the MoD and AF of Montenegro according to the Gender Equality Committee of the Parliament of Montenegro;
- The representation of women in the AF of Montenegro and the defence system, with statistical reports submitted to the Statistical Office;
- The implementation of gender equality policy for the needs of employee participation in meetings.

Reporting is centralized, meaning that all requests regarding gender equality are submitted and processed by the organizational unit for human resources, in cooperation with the mechanisms from the Armed Forces or independently.

Relevant data is retrieved from the Personnel Information System and often filtered by sex, and is used for various types of analysis and the drafting of reports and other documents prepared in the MoD and the AF of Montenegro.

The disaggregation of data by sex is a standard procedure, which is used for the registration of candidates who have applied for service in the Armed Forces, for education at military academies, for scholarship recipients, for soldiers in voluntary military service, for participants in projects, etc.

5.3. Reporting system in the Ministry of Defence and the Army of the Republic of North Macedonia

1. In the Ministry of Defence, the Coordinator and Deputy Coordinator for Equal Opportunities coordinate tasks within the competence of the Ministry of Defence and the Army of the Republic of North Macedonia with the aim of establishing equal opportunities. They are obliged to prepare and submit once a year, no later than March 31st of the current year, the Annual Progress Report on establishing equal opportunities for women and men in the previous year. The report must be published on the website of the [Ministry of Defence](#), which allows a clear and transparent public presentation of reporting at the state level on the topic of gender equality and gender mainstreaming in the Ministry of Defence and the Army of the Republic of North Macedonia.

2. The Body for the Coordination, Monitoring, and Evaluation of the Implementation of the Second NAP, established at the Ministry of Defence, each month organizes meetings and workshops to monitor activities and progress in the implementation of the operational plans of institutions, as well as to coordinate future steps. Twice a year (every six months) the Body must report to the relevant institutions in order to share information and confirm findings on progress. Once a year, the Body submits mandatory reports to all stakeholders. These reports are used to draft the analysis for the [Annual Progress Report](#), which is submitted to the Parliamentary Committee on Equal Opportunities for Women and Men, in order to conduct actual democratic oversight of activities.

3. The Working Group for Gender Mainstreaming, established by the Ministry of Defence and the Army of the Republic of North Macedonia, is tasked with mapping good practices and policies through reporting on concrete examples of gender mainstreaming in the defence system, developing mechanisms for improving the gender dimension, and informing the competent authorities on progress made in the field of gender mainstreaming in institutions, as well as on the cooperation with external partners in this field.

4. The Ministry of Defence and the Army of the Republic of North Macedonia participate in the [Regional Network of Certified Gender Trainers](#), which was established with support from UNDP SEESAC and is in the function of the Ministries of Defence

and Armed Forces of the Western Balkans countries. This network enables the exchange of experiences, information, and lessons learned, while also contributes to raising awareness of gender equality and to creating agreement on future steps for more successful gender mainstreaming through the training of employees of the MoD and the Army of the Republic of North Macedonia.

5. A person in charge of protection against harassment at work and their deputy are appointed at the MoD. There is a [list of mediators](#) for cases of harassment, gender representatives, or contact persons for gender issues in the MoD sectors, as well as in the commands and units of the Army of North Macedonia. They produce reports, analyses, and information related to their field of work.

6. In 2018, the Ministry of Defence joined the process of implementing gender-responsive budgeting for a period of 3 years (2018-2020), with the Budget Programme 6 – “Military Academy.”

To implement gender-responsive budgeting, a working group was formed, and the MoD initiated the inclusion of the gender component in the budget planning process. [Annual reports](#) on the implementation of activities are submitted to the Ministry of Labour and Social Policy, as well as to the Ministry of Finance.

7. Reporting on the progress in achieving gender equality is an integral part of the questionnaire completed by the MoD in cooperation with the Army of the Republic of North Macedonia which is then submitted to the NATO Military Committee (Summary of National Reports). This report is submitted to NATO every year.

5.4. Reporting system in the Ministry of Defence and the Armed Forces of the Republic of Serbia

Within the Ministry of Defence and the Serbian Armed Forces, data are collected by three mechanisms:

- The Advisor for the Implementation of the NAP;
- The Analytical Group for the Analysis of the Implementation of the NAP for the Implementation of UNSCR 1325; and
- Persons of trust, as a gender equality mechanism.

The obligation of the three mentioned mechanisms to [report](#) was established and derived from the goals and activities defined at the level of the Ministry of Defence by the National Action Plan. Data are collected and processed based on the indicators determined by the said plan (NAP).

The Advisor for the Implementation of the NAP reports on the implementation of the tasks assigned to her by decision of the Minister of Defence. She submits reports on the realization of these tasks to the Minister of Defence.

The Analytical Group of the MoD and the AF of Serbia conducts gender analyses and prepares regular bi-annual (every six months) and [annual reports](#). The regular bi-annual reports of the Analytical Group are published on the website of the MoD and the AF of Serbia, making them publicly available to all interested parties. Prior to their publication, the reports are subject to review by the Advisor for the Implementation of the NAP. Reports are prepared based on the data submitted by the following organizational units through the Office of the Gender Advisor’s:⁵⁵

The Sector for Budget and Finance submits data on planned and spent funds allocated by the budget for the implementation of activities in accordance with the legal obligation of gender-responsive budgeting.

The Personnel Department of the Human Resources Sector submits data expressed as a percentage of the share of women in the MoD and the AF in the

⁵⁵ Note: The periodic report of the Analytical Group of the MoD and the AF does not cover all the data submitted by organizational units, but it takes into account essential indicators and tries to ensure the comparability of data.

total number of employees in the MoD and the AF by: personnel categories; age and educational structure; command levels and the representation of PMP by rank, gender, and service; the representation of women from the MoD and the AF in the boards of directors of companies in the defence industry; and by the representation of women in councils in R&D activities in the MoD and the AF, as well as in the activities of gender equality trainers from the Ministry of Defence.

The Department for Tradition, Standards, and Veterans of the Human Resources Sector submits data on the number of reported and prosecuted cases of mobbing and violence against women in the MoD and the AF. The Military Duties Department of the Human Resources Sector submits data on the number and percentage of men and women in the voluntary military service in the Serbian Armed Forces.

The Legal Department of the Secretariat of the MoD submits information on amendments to normative documents within the mandate of the MoD and the AF, which has incorporated a gender perspective and measures for the protection of women employed in the MoD and the AF.

The International Military Cooperation Department of the Defence Policy Sector submits data on: the number of participants and gender structure of MoD and AF delegations at home and abroad that participated in international military cooperation activities; the number and percentage of women heads of the MoD and AF delegations who participated in international military cooperation activities; and on activities of international military cooperation related to gender equality.

All organizational units of the MoD, and the Cabinet of the CoGS of the AF for the Serbian Armed Forces as a whole, submit data on the number of reported and prosecuted cases of mobbing and violence against women.

The Human Resources Directorate (J-1) of the Serbian Armed Forces General Staff submits data on the share of women in the AF in the total number of the AF employees by: personnel categories; age and educational structure; command level; the share of civilian women by categories in the total number of civilian personnel; categories of employees in the AF; and by activities of gender equality trainers from the Serbian Armed Forces, as well as the undertaken activities of the Serbian Armed Forces General Staff for gender mainstreaming in the organizational units of the Serbian AF.

The Peacekeeping Operations Centre of the Operations Directorate (J-3) of the Serbian Armed Forces General Staff submits: data on the participation of women in

peacekeeping operations; data on cases of possible violations of women's human rights in multinational operations involving members of the MoD and the AF; a tabular overview of the evaluation of training in the field of gender equality with an overview of the topics, the number and percentage of persons (disaggregated by sex) who attended the training sessions, and the number and percentage of persons (disaggregated by sex) who conducted the training sessions.

The Training and Doctrine Directorate (J-7) of the Serbian Armed Forces General Staff submits data on the trainings planned based on the Instructions for the Training of Members of the MoD and the AF on Gender Equality in Commands, Units, and Institutions of the Serbian Armed Forces, as well as in Organizational Units of the MoD.

The CIMIC Department (J-9) of the Serbian Armed Forces General Staff submits data on realized activities of cooperation with civil society organizations and local self-government bodies related to gender equality.

The University of Defence submits data on the number and percentage of women: of those enrolled in all forms of education and training in the Military Academy, Military Medical Academy, and Military Gymnasium; and included by topic and number in organized education on gender equality in the Military Academy, Military Medical Academy, and Military Gymnasium.

In addition to regular reports, the Analytical Group of the MoD and the AF prepares extraordinary reports, as well as studies and analyses, at the request of the Cabinet of the Minister, the State Secretary, the Advisor for the Implementation of the NAP, the Government Operational Body, of Supervisory Bodies – Committees for Monitoring the Implementation of the NAP in the National Assembly of the Republic of Serbia and the Assembly of the AP Vojvodina, and of the Political Council of the Government.

As a mechanism for gender equality, persons of trust prepare regular bi-annual and, if necessary, extraordinary reports, which contain: the reason and description of the essence of the specific issue for the provision of primary peer support; the date, place, and time of the interviews conducted for mediation and counselling; the proposed and taken measures for resolving the issue; and proposals for improving the gender equality situation. Persons of trust submit their reports to the head of the organizational unit in which they are appointed, and, based on this report, the managers report to their superiors up to the level of the organizational unit of the MoD and the AF from item 3 of the Instructions on the Election and Function of Persons of Trust as a Gender Equality Mechanism in the MoD and the AF of Serbia.

AFTERWORD

This Handbook is the result of the combining of the knowledge and experiences of representatives of the Ministries of Defence from Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia, with the support of UNDP SEESAC through the regional project “Strengthening of Regional Cooperation on Gender Mainstreaming in Security Sector Reform in the Western Balkans.” All four countries are committed to promoting gender equality in the armed forces through the implementation of UNSCR 1325 and other resolutions contributing to the realization of the Women, Peace and Security Agenda.

The commitment to the goal of achieving gender equality, and thus eliminating gender-based discrimination, is not just declaratory. All four defence systems are actively working to promote gender equality, which is reflected in the increased participation of women in the armed forces, including more women in decision-making positions and leadership positions in the military. All four ministries of defence play a key role in the development and implementation of national action plans for the implementation of UNSCR 1325. Additionally, all four ministries of defence have established internal mechanisms for preventing and combating gender-based discrimination.

Yet despite visible progress and positive trends, gender-based discrimination remains a critical issue. Its importance is further increasing with the rising share of women in the armed forces and the more equal participation of men and women in various aspects of the armed forces. Gender-sensitive policies need to be supported by adequate education and training to ensure that competencies for effective gender mainstreaming exist and are maintained. The process is ongoing, but much still needs to be done to reach the goal. Fighting gender-based discrimination cannot wait, as it plays a crucial role not only in exercising human rights, but also in attracting and retaining members of the underrepresented sex in the armed forces and in creating a modern institution where all employees, both men and women, can reach their full potential. People in charge of preventing and sanc-

tioning discrimination in the military often face specific challenges, such as how to assess individual cases correctly and how to improve the procedure for reporting discrimination, because the number of reported cases in all four defence systems remains relatively low, meaning that the number of prosecuted and adequately sanctioned cases also remains low.

The Handbook is designed to help identify and respond to gender-based discrimination. It is intended for people who deal with the phenomenon of discrimination in the ministries of defence and the armed forces in their work. It is written with the intention of being a text that can be referred to again and again, as it contains practical advice and information that should contribute to enhancing approaches to and practices in preventing, identifying, reporting, and sanctioning gender-based discrimination. By reading this Handbook, readers should have a heightened comprehension of the relevant legal frameworks, both international and national, and of basic legal terms and definitions, which should enable them to distinguish gender-based discrimination from other illicit or socially undesirable behaviours. The fictitious examples of discrimination, as well as the examples of good practice from the four defence systems covered by the Handbook, are intended to more thoroughly illustrate the full scope and range of this complex issue, and in doing so engender the greatest possible understanding of this pivotal topic.

The Handbook should introduce the concept of gender-based discrimination to all persons working in the defence system, both uniformed and civilian personnel, and demonstrate that they all have a role to play in eradicating it. Zero tolerance of discrimination contributes to gender equality, which is an important part of security system reform and a precondition for the readiness of armed forces to respond to the complex security challenges that humanity is facing, and will continue to face, in the 21st century and beyond.

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CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

305-055:355.08(497)
331.104.2-055.1/.2(497)

PREVENT and Respond : regional Handbook on Preventing and Responding to Gender-Based Discrimination, Sexual Harassment and Abuse / [translation Dušan Miljković]. - Belgrade : UNDP SEESAC, 2021 (Belgrade : Cicero). - 179 str. : ilustr. ; 21 cm

Na nasl. str. mesta izdavanja: Sarajevo, Podgorica, Skopje, Belgrade. - Tiraž 100. - Napomene i bibliografske reference uz tekst. - Bibliografija: str. 173-179.

ISBN 978-86-7728-315-5

а) Родна равноправност -- Војска -- Балканске државе б) Посао -- Сексуално узнемиравање -- Балканске државе в) Посао -- Сексуална дискриминација -- Балканске државе

COBISS.SR-ID 49824521

Funded by:



Norwegian Ministry
of Foreign Affairs



MINISTRY
OF FOREIGN
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OF THE SLOVAK REPUBLIC