



**ILGA EUROPE Review of the Human Rights Situation of Lesbian, Gay, Bisexual,
Trans and Intersex people in Montenegro**
Contribution to the 2014 EC Progress report
In cooperation with Juventas¹ and based on the ILGA-Europe 2014 Annual review
16 May 2014

Introduction

Montenegro has over the last couple of years brought numerous commendable changes to its legal human rights framework. It has made advances in complying with the EU Fundamental rights acquis and with CM/Rec (2010) of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity. In its adopted resolution of April 2013², the European Parliament has welcomed positive developments in Montenegro, where the government has increased its work in favour of sexual orientation and gender identity, notably by engaging constructively with NGOs and neighbouring countries. But physical and verbal attacks were also deplored.

Enforcement of newly adopted laws is however faced with many challenges. Hate crime is now a part of Montenegro legislation but it lacks effective implementation at the level of the prosecutor's office. Employment protection against sexual orientation discrimination does not apply to gender identity. The armed forces are included in anti-discrimination provisions but compliance in areas like housing, family life, sport and asylum is weak. Lastly, the current Ombudsman has diminished efforts in respect to SOGI discrimination due to a lack of resources which impedes on its commitment to ensure protection of LGBT human rights.

Summary of developments since the last ILGA- Europe report

During the period under review, Montenegro has continued to demonstrate genuine willingness to advance and protect the rights of LGBTI people. Authorities have been condemning homophobic and transphobic violence; lending presidential and ministerial support to a Pride march in Podgorica; and adopted a five-year Strategy for improving the quality of life of LGBT persons under the auspices of Prime Minister Milo Đukanović (see section below).

¹ ILGA-Europe is grateful to Jelena Čolaković program director at Juventas for its report that informed the preparation of this submission. The report is available on request.

² European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Montenegro (2012/2860(RSP))



Another positive development at the level of the police was the participation of law enforcement authorities to training sessions organized by non-governmental organizations. This led to police handling cases of threats and violence against LGBTI people more professionally.

However numerous cases of bias-motivated speech and violence have continued to illustrate widespread and on-going animosity towards LGBTI people in Montenegro, a trend confirmed by opinion polls and numerous complaints filed with the police.

Non-discrimination

In 2013, Montenegro was reviewed during the UN Universal Periodic Review process and was asked by several States to take additional concrete steps, and effectively implement existing laws to combat discrimination based on sexual orientation and gender identity. The country was also encouraged to “establish effective mechanisms of dialogue with human rights defenders in the field of sexual minorities [sic]”.

In June, a senior adviser at the Ministry of Education and Sports published an article in a magazine red by culture, education and science professionals discussing societal homophobia. The article stressed the negative impact of homophobia, and highlighted the importance of building a society free of prejudice towards LGBT people.

Montenegro remained active in the Council of Europe’s LGBT Project, an opt-in programme to help governments develop cross-sectoral LGBT policies and combat discrimination on the basis of sexual orientation or gender identity. Among other positive outcomes, this project led to the opening of an LGBT social centre, and the nomination by the Ministry of Health of an LGBT contact person in every health institution nationwide.

Strategy and action plan for improving the quality of life of LGBT persons

On May 2013, the government of Montenegro adopted a five-year Strategy and action plan for improving the quality of life of LGBT persons (herein the strategy and action plan) under the auspices of Prime Minister Milo Đukanović. This was an important step illustrating the efforts of Montenegro in fostering better implementation of its legislation policies and practices for the protection of LGBT rights.



The Government of Montenegro has been building on the principles and measures contained in recommendation CM/Rec(2010)5 of Council of Europe to combat discrimination on grounds of sexual orientation or gender identity.

The Government of Montenegro stated that the purpose of the strategy was to *”eliminate any direct or indirect discrimination on the basis of sexual orientation or gender identity, reduce homophobia and transphobia in the society, continuously promote social acceptance of LGBT persons and improve conditions and quality of life of LGBT persons in Montenegro”*³.

The strategy set out strategic objectives, individual measures and indicators of success to improve the legal and policy framework in several sectors, including education, healthcare, law enforcement and social acceptance. The plan is being implemented by a “national team “and an institutional framework including; the Protector of Human Rights and Freedoms of Montenegro (ombudsman), the Committee on Human Rights and Freedoms and gender equality of the Parliament of Montenegro, The Ministry for Human and Minority Rights, the Council for Protection against Discrimination⁴ of the Government of Montenegro.

The plan also recognizes the important role played by the civil society in the implementation of the plan and the realization of LGBT rights in practice. However and while some LGBTI NGOs welcomed the strategy itself others criticized both the Preparatory process and the final document.

According to a report from the LGBT organization Juventas⁵, the implementation and monitoring of activities envisaged in the Plan have lacked transparency and inclusiveness. The Plan stated that the process of implementation would imply continuous consultations with *”authentic representatives of LGBT organizations”* while in practice the consultation and cooperation process has involved a limited spectrum of LGBT CSOs.

It has also proved difficult for CSO’s dealing with human rights of LGBT people but not members of the “Council for protection against discrimination” (herein “the Council”) to

³ Strategy for improving quality for of life of LGBT persons-2013-2018- Government of Montenegro Ministry for Human And Minority Rights- Podgorica, May 9, 2013

⁴ monitors and coordinate the activities of state authorities, state administration bodies and other competent institutions in the field of the protection against all forms of discrimination

⁵ Human rights of LGBT people –Juventas-May 2014



cooperate and participate in the activities envisaged in the Strategy and Action Plan; no pre-established procedures and criteria or public call were set up for the selection of implementing organizations.

Similarly, it was felt regrettable that the action plan failed to take stock of a number of activities of NGOs (which were not members of the Council) but very active on the ground and whose activities fitted very much with the scope and measures of the plan notably in the field of the education of social and professional workers, police training, or school education

Freedom of assembly and freedom of expression

In May, activists decorated a central bridge in Podgorica with rainbow-colored balloons, flags, and messages written by LGBTI persons on the occasion of the International Day against Homophobia. Although no incidents took place in the presence of activists, decorations were destroyed two hours later.

In July, the Pride Parade took place in Budva for the first time. LGBT Forum Progress indicated that police reports from the event mentioned 2,000 counter-protestors at the scene, including 500 who attempted to stop marchers from taking part by throwing “chairs, ashtrays and glasses”. No severe injuries were reported.

A second march took place in October in the capital Podgorica. President Filip Vujanović lent his explicit support to the Pride for the first time, and Minister of Human and Minority rights Suad Numanović took part and read a supportive speech. Violent groups of almost 1,500 opponents gathered according to LGBTI NGO Queer Montenegro, but thanks to early consultations between organizers and the police, none of the 200 participants were harmed. However, around 20 police officers were injured and 60 hooligans were arrested. On the day following the event, a participant was severely beaten up by about 20 hooligans; the investigation was still on-going by the end of the year.

Bias-motivated violence

In July, amendments to the Penal Code newly included harsher penalties for hate crime perpetrated due to the victim’s sexual orientation. (Also see Bias-motivated speech). Occurrences of bias-motivated violence were reported throughout the year, notably against LGBTI activists. In August, a group of homophobes yelled threats and derogatory statements outside an activist’s home. The same month, two activists were verbally assaulted on a bridge in central Podgorica by two passers-by. In October, homophobic



posters were plastered on the façade and in the elevator of an activist’s building. The same month, an activist was shouted at and attacked from behind while walking to work, and in central Podgorica another was shouted at by four men, whose attack was thwarted by police present at the scene. In December, another activist was verbally attacked by an employee at a gas station. All cases were reported to the police. In September, conservative groups held a protest against the Pride March planned the following month (see Freedom of assembly).

Participants shouted homophobic insults and threats, and nine minors were charged with misdemeanor. Four LGBTI activists were attacked following a meeting they organized in Kolasin. The police reacted quickly, and initiated misdemeanor procedures against two individuals.

Bias-motivated speech

The Penal Code was amended in July to punish bias-motivated speech based on the victim’s sexual orientation or gender identity. (Also see Bias-motivated violence).

In a July letter to NGOs, the Ministry for Human and Minority Rights expressly condemned homophobic and transphobic hate speech published in the media or voiced at public gatherings.

Recommendations

Montenegro needs to continue its efforts to ensure that its laws and policies protect all human rights of LGBTI persons in accordance with the existing international legal standards applicable at the level of the United Nations and the Council of Europe and the 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.

Montenegro needs to keep fully integrating EU fundamental rights acquis and notably laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU’s founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender Re Cast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims’ Rights Package (2011/0129).

At the national level, Montenegro should:

Strategy and action plan in respect to LGBT Human rights



- Ensure that the Council for protection against discrimination and that “national team” informs and encourages inclusive participation of all interested parties in the field of LGBT human rights;
- Encourage the Council for protection against discrimination and the National Team to publicize in a timely manner the work agenda of the Council towards all interested parties and show openness to initiatives, and suggestions coming from CSO’s that are not members of the Council or the National team.

Non-discrimination legal framework and mechanisms against homophobia and transphobia

- Works towards the full harmonization of the Montenegrin legal framework with the needs of LGBT community and international standards;
- Monitor of implementation of standards throughout court proceedings and available jurisprudence ;
- Bring amendments to the Criminal Code in order to introduce a definition of hate crime and hate speech;
- Amends Law on Civil Registry and Law on Central Registry in order to enable changing of the sex marks in the personal documents of transgender individuals
- Enable monitoring and documentation of violence based on sexual orientation and gender identity in schools;
- Ensure that the Law on Same Sex Partnership is adopted.
- Set up a system of free legal aid enabling better reporting of hate crimes by LGBT victims
- Examine the development of a Protocol on hate speech prevention in on-line media

Hate speech

- Organize awareness raising informational campaigns for the general public and address also various professionals involved in exercising and protecting LGBT rights (medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers)
- Encourage the promotion of national and international standards and good practices;
- Track and monitor results of the actions undertaken (systematic data collection,



aligned with commitments made by Montenegro to international institutions such as the Council of Europe or the OSCE;

- Strengthen the administrative and financial capacities of the Ombudsman of Montenegro;

Freedom of expression, peaceful assembly and LGBT human rights

- Guarantee the right to peaceful assembly as well as ensure adequate protection to LGBT persons and allies;
- Organize social change campaigns to decrease homophobia and promote the acceptance of queer identities and cultures;
- Encourage research in the field of human rights protection, sexuality and gender identity;
- Provide full health protection for transgender persons in (including the finalization of protocols related to gender reassignment surgery and other treatments for the persons who choose to undergo such procedures)
- Establish counselling service for families of LGBT persons;
- Conduct trainings for social workers on sexual orientation and gender identity;
- Sensitize employers in respecting LGBT human rights on the work place

Education

- Revisit the content related to sexual orientation and gender identity in school curricula and programs on all levels of education
- Conduct trainings for teachers in elementary and high schools, school psychologists and on sexual orientation and gender identity,
- Adopt an anti-bullying action plan⁶ and ensures its implementation throughout the Montenegrin educational system.

⁶Juventas' research (available on request) has shown that bullying affects 57.3% of high school students every day. 27.6 % are exposed to threats and 16.7% stated that students of their school are physically assaulted by other students; Security/safety of an LGBT young person or a person perceived as LGBT in school environment is very low. 63% of high school students stated that they had heard that a young person had been ridiculed for being gay/lesbian/bisexual/transgender; 53.3% heard that such a person had been exposed to insults, 22.7% - physical assault and 29.8% (one third) had heard that such a person had been exposed to threats.