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MONTENEGRO

Report

on the implementation of the Council of Europe
Committee of Ministers' Recommendation
CM/Rec (2010)5 on measures to combat
discrimination on grounds of sexual orientation
or gender identity

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I EXECUTIVE SUMMARY

Homophobia is deeply rooted in Montenegrin society. Lesbian, gay, bisexual and transgender (LGBT) people in Montenegro regularly experience discrimination, do not enjoy the same rights as heterosexuals, and are at a disadvantaged position in comparison to them. The high level of homophobia is a direct consequence of social norms, the lack of knowledge on sexuality and gender identity and an inadequate legal and institutional framework. Another cause of discrimination and violence towards LGBT people is the low capacity of institutions to protect the rights of LGBT people, which results in a significant lack of trust of LGBT people in institutions. This also results in the fact that violence and discrimination cases are rarely reported and documented.¹

The government has been changing its approach within the past three years, changing its policies from highly homophobic or ignorant to formally very cooperative. The most important document that governmental organisations and NGOs are working on in this moment is the National Strategy of Fight against Homophobia which is expected to be adopted in the near future. The baseline for this document has been provided through a project named “Montenegro a bright spot on a gay map”² implemented by Juventas. Nevertheless, ignorance and disputes are still present on the level of implementation of adopted standards and recommendations.

Montenegro is also making numerous changes to its legal framework but the protection of human rights hasn't yet reached international standards and good practices in all areas. Enforcement of newly adopted laws is faced with many challenges and very often it is far away from the level of implementation achieved in EU countries.

Montenegro has made advances in complying with the CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, but still has some way to go as regards gender identity.

The Constitution does not specifically mention SOGI discrimination, but there is a chapter on this in the 2010 Law on prohibition of discrimination. The Charter on Human and Minority Rights and Citizens Freedoms (so called “Small Charter”) which was enacted in the State Union of Serbia and Montenegro in February 2003, guaranteed the right to marriage without limiting this to persons of different sex.

¹ “No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

² From December 2009 to April 2011 Juventas implemented a project called “Montenegro a bright spot on a gay map” supported by the Delegation of EU to Montenegro. This project introduced a common agenda for human rights and democratic reform in the area of LGBT human rights within different sectors. It created a knowledge data-base (numerous surveys and analyses), a wide network of support by launching Coalition for LGBT rights, which included representatives of state institutions and CSOs, working together on drafts of strategic documents. After, official consultation between civil society and Deputy Prime minister, Government of Montenegro formed three working groups which took these drafts as a starting point for the future *National Strategy against Homophobia and Analysis of the institutional and legal framework for LGBT rights in Montenegro*. Working group in charge for the Analysis mentioned accepted the initial document with introducing small number of corrections.

Legal experts accentuated the fact that the rule of human rights implies that, once achieved, the level of human rights' guarantees cannot later be lowered. In this regard, it is necessary to raise the constitutional formulation of the Article 71 to the level of the constitutional guarantee which was in force before the adoption of the Montenegrin Constitution in 2007.

There do not appear to be effective remedies in the event of discrimination. Specific measures to implement the Recommendations are meagre.

Hate crimes are not outlawed, nor is hate speech, but the Montenegrin government has proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A group of NGOs has proposed qualified forms of criminal acts executed with a biased motivation in order to impose a firmer obligation on investigative bodies and courts to process them accordingly.

LGBT groups can operate freely and play a role with human rights organisations in working to prevent SOGI discrimination. Few of the other Recommendations have been implemented.

While there is some training for relevant officials (mainly by NGOs active in the area of promotion and protection of LGBT human rights), this is not systematic for employees in all relevant public sectors. There is employment protection against sexual orientation discrimination; but this does not apply to gender identity. However, the Law on prohibition of discrimination can be referred to in cases of employment-related discrimination based on gender identity. The armed forces are included in anti-discrimination provisions, but they receive no training on the issue. Compliance in areas like housing, family life, sport and asylum is weak or non-existent.

The issue of discrimination on gender identity grounds seems barely to have been addressed either by the legislation or by practice.

The current Protector of Human Rights and Freedoms actively works on SOGI discrimination, but it is necessary to emphasize their lack of capacity, both administrative and financial, which influences their full commitment to LGBT human rights.

II RECOMMENDATIONS TO MONTENEGRIN GOVERNMENT FOR PRIORITY ACTIONS

Recommendations related to institutional and legal mechanisms against homophobia and transphobia:³

- 1. The first recommendation of utmost priority is definitely the Adoption of the Strategy of Fight against Homophobia and Transphobia, the first comprehensive policy document in relation to LGBT human rights providing measures and activities that are to be implemented by GOs and NGOs.**
2. Networking of state institutions in the protection of human rights of LGBT persons.
3. Monitoring of implementation of standards throughout court proceedings
4. Initiatives related to amendments of the existing legislation, made according to LGBT community needs and international standards (Criminal Code, Law on prohibition of discrimination, Law on Civil Registry, Law on Central Registry, Law on Education) should be undertaken.
5. Continuous monitoring of harmonization of the Montenegrin legal framework with the needs of LGBT community and international standards should be conducted.
6. Initiatives related to enforcement of new legal documents, created according to LGBT community needs and international standards should be instigated (e.g. The Law on Same Sex Partnership)
7. Forming a system of free legal aid and strengthening LGBT persons to report violence and discrimination.

Recommendations related to hate crime and hate speech⁴:

1. The Criminal Code should be amended in a manner in which protected grounds in relation to violation of equality include actual or perceived sexual orientation and gender identity.
2. The Criminal Code should be amended in a manner which includes sanctions for incitement to violence and hatred towards sexual minorities and transgender persons.
3. The Criminal Code should be amended so that hate crimes against persons of homosexual orientation (homophobia) or transgender persons (transphobia), as well as other forms of hate crimes, would be considered as severe forms of criminal offence. This could be done thanks to the creation of an aggravating circumstance for offences committed with a bias motivation, including in the cases of homophobic or transphobic motivation. For the sake of example, the Croatian Criminal Code adopted in 2009 defines „hate crime“ as every crime done based on hate towards a person due to its race, skin, gender, sexual orientation, political or other belief, language, religion, national or social background, property, birth, education, social position, age, health condition or other characteristic (Article 89, point 36).
4. Educational and informational campaigns for the general population should be created and implemented.
5. Educational and informational campaigns should be launched to address various

³Draft of the National Strategy Against Homophobia and Transphobia, Working Group for elaboration of a program document for combating homophobia with Action Plan 2011

⁴ Ibid.

professionals: medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of the institutions that are involved in exercising and protecting LGBT rights.

6. Relevant national and international standards and good practices should be furthermore promoted.
7. The existing situation should be monitored and evaluated, as well as the results of the action undertaken to tackle it. This should be conducted by means of systematic data collection, conforming to the commitments made by Montenegro within international institutions such as the Council of Europe or the OSCE.
8. The administrative and financial capacities of the Institution of the Ombudsman in Montenegro should be strengthened.

Recommendations related to right to freedom of expression and peaceful assembly⁵:

1. Targeted actions should be implemented by local and national authorities, but also other governmental bodies, in order to allow practice and protection of human rights of LGBT people. In this context, Montenegrin government should guarantee the right to peaceful assembly as well as ensure adequate protection to LGBT persons and allies no matter how “popular” such actions are within the general public.
2. Clear public support of high Government officials should be obtained (e.g. public statements or their personal participation in the pride march).
3. LGBT activists should be included in the process of drafting and adopting policies focused on respect of human rights.
4. Campaigns to decrease homophobia and promote the acceptance of queer identities and cultures should be implemented.
5. Campaigns for promotion of human rights should be implemented.
6. Research in the field of human rights protection, sexuality and gender identity should be promoted and implemented.
7. NGOs and informal groups that are working on the protection and promotion of the human rights of LGBT people should be additionally supported.
8. Legal support service and empowerment of LGBT people in respect to violation of their rights should be established.

Recommendations related to respect for private and family life and access to health care⁶:

1. A continuous monitoring of application of the law and general liability rules should be conducted;
2. Supervision aiming to ensure consistent use of data protection regulation should be introduced;
3. Activities aiming to ensure implementation of the Law on medical records should be undertaken;
4. Educational trainings of employees in medical institutions on the obligations and

⁵ Draft of the National Strategy Against Homophobia and Transphobia, Working Group for elaboration of a program document for combating homophobia with Action Plan 2011

⁶ Ibid

- responsibilities related to collecting and processing data should be organized;
5. Activities related to the improvement of sexual and reproductive health of LGBT persons should be undertaken;
 6. Create campaigns aiming to unify attitudes of professionals in relation to SOGI according to internationally recognized and scientifically approved standards;
 7. Full health protection for transgender persons in Montenegro should be provided (including the definition of protocols related to gender reassignment surgery and other treatments for the persons who choose to undergo such procedures, and the expansion of the list of interventions that can be performed outside Montenegrin territory (by-laws and international agreements), forming a team of experts dealing with gender reassignment interventions and treatment.. Some of the best examples related to these issues are the current legislations from Germany, Argentina or Portugal.
 8. Establishing counselling service for families of LGBT persons;
 9. Conducting trainings for social workers on sexual orientation and gender identity;

Recommendations related to employment:⁷

1. Implementing activities aiming to sensitize employers in respect to LGBT human rights throughout the promotion of relevant legal solutions and campaigns among the employers;

Recommendations related to education:⁸

1. Designing and inclusion of expanded content related to sexual orientation and gender identity in school curricula and programs on all levels of education;
2. Implementing a research on students' attitudes in respect to sexual orientation and gender identity;
3. Conducting trainings for teachers in elementary and high schools, school psychologists and pedagogues on sexual orientation and gender identity, as well as domestic and international legislation defining LGBT human rights;

Recommendations related to housing:⁹

1. Implementing activities aiming to support emergency housing for LGBT persons experiencing extremely negative relationship with their families in their coming out;

⁷ Ibid

⁸ Draft of the National Strategy Against Homophobia and Transphobia, Working Group for elaboration of a program document for combating homophobia with Action Plan 2011

⁹ Ibid

III INTRODUCTION

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognized, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat” .¹⁰

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

¹⁰“Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”
<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

The purpose of this report

The purpose of this report is to assess what progress has been made by the [your country] authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation and secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which *Juventas* has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in *Appendix III* to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries to letters from *Juventas* listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures;
- Information from published sources, such as the reports on Montenegro commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe";
- Research and documentation assembled by *Juventas* and other non-governmental organisations;
- Information and documentation obtained from the Governmental working groups dealing with the draft of the National Strategy against homophobia: Working Group for elaboration of a program document for combating homophobia with Action Plan , Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro, Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights;
- Montenegrin electronic and printed media reports;

IV FINDINGS

Recommendations

The operative text of the recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the appendix to the recommendation.

Within the period of two years (2011 and 2012) two Analysis of legal framework in respect to sexual orientation and gender identity have been done in Montenegro. The first one, done by Montenegrin CSOs, considered conformability of Montenegrin legislation with international standards in respect to LGBT rights, and for the first time gave recommendations for the improvement of the existing Montenegrin laws in relation to sexual orientation and gender identity. The second came as a result of the Governmental Working group for elaboration of legal regulations analysis from the LGBT rights point of view formed out of GOs and NGOs representatives working together on a larger scale document called Strategy of Fight against Homophobia. Beside the fact that they had to find out whether sexual orientation and gender identity are included in the Montenegrin legislative framework and in what manner, the task of the previously mentioned working group was also to identify laws in which changes can be introduced and recommend bringing of amendments and new regulations into force. In this moment the second Analysis serves as a valuable recourse mostly to NGOs that use its recommendations in order to improve legislative framework related to SOGI as only three laws explicitly mention sexual orientation and only one gender identity. Legal framework that provides protection against discrimination (3 legal documents including the constitution out of 4) considers SOGI to be in the category of “other grounds” or tackles them in general provisions of the respective text.

According to our knowledge there are no effective procedures to make victims aware of, and able to access, legal remedies, even where a violation is committed by a person acting in an official capacity. Research done in the LGBT community implies that most discrimination cases remain unreported due to significant lack of trust of the LGBT community in state institutions.

The Government took some steps in promoting Recommendations and its appendix (by organizing conferences and round tables), but we still can't find the translation of the Recommendations nowhere on the website of the Government or respective Ministries. On the other hand, the translation has been done by Juventas and thanks to good networking with European partners this translation has been made official by the Council of Europe. The only web page where the translation can be found and downloaded is www.montenegro-gay.me.

Appendix to Recommendation CM/Rec(2010)5

i. Right to life, security and protection from violence

a. "Hate crimes" and other hate-motivated incidents

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

Survey results on perception and attitudes toward homosexuality, carried out among 245 police officers coming from all regions of Montenegro by the NGO Juventas, in cooperation with the Police Department of Montenegro in May 2012, showed the necessity of constant education of police officers on human rights of LGBT people. The Ministry of justice provided information on trainings done, but didn't give any information on how many police officers, judges and prosecutors have been educated. We also can't come to conclusion on what is the actual percentage of these professionals trained in comparison to those who haven't received any sensitivity training. Juventas and LGBT Forum Progress in cooperation with other NGOs and GOs did sensitivity trainings for police officers and legal practitioners and provided education to around 220 persons. Good cooperation with GOs enabled these trainings to be implemented even in 2013.

There are some independent mechanisms existing to investigate crimes allegedly committed by law enforcement and prison staff especially in respect to corruption and violation of human rights and freedoms. It is interesting that the Police Directorate doesn't consider these bodies to be independent as they even negated the existence of such departments in their answers.

Homophobia or transphobia- in the sense of hatred toward a person of homosexual orientation or transgender person, does not constitute a motive mentioned among aggravating circumstances. However, the Ministry of Justice proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation, also regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A group of NGOs proposed qualified forms of criminal acts executed with a biased motivation in order to make it a firmer obligations for investigative bodies and courts to process it accordingly.

Pursuant to Article 33 of Law on prohibition of discrimination the Ministry of Justice and Human Rights elaborated Guidelines on contents and methods of keeping record on cases of reported discrimination, which means that the state authorities and institutions coming in touch with cases of discrimination are obliged to keep precise records on such cases and submit them to the Ombudsman. In this way, these records become an integral part of his/her Special Report on discrimination in Montenegro, submitted to the Parliament of Montenegro. Apart from being a unique database of discrimination cases, these records make it possible for the Protector of human rights and freedoms to gain an immediate access to the data, since the records are kept electronically. Thus, discrimination toward LGBT persons becomes visible and transparent.

b. "Hate speech"

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Hate speech against LGBT persons (on grounds of sexual orientation and gender identity) is not explicitly prohibited. As mentioned before Ministry of Justice proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation, also regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A group of NGOs proposed amendment of the Article 443, *Racial and other discrimination* in a way it prohibits the propagation of other forms of hatred and discrimination (based on sex, disability, gender identity, sexual orientation or other personal characteristics) in addition to the only one explicitly mentioned in this Article (racial).

Article 23 of the Law on Media prohibits "publishing of information and opinions that instigate discrimination, hatred or violence against persons or groups of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation", but not gender identity. The Law on Electronic Media stipulates that by the means of audiovisual communication it is forbidden, *inter alia*, to violate human dignity and promotion of discrimination on grounds of sex, race, nationality, religion or belief, disability, age or sexual orientation. According to pieces of information coming from the Agency for Electronic Media, which among the rest performs supervision of the implementation of this Law, experiences and lessons learned from a 10-year period of work have shown that mistakes and failures in the work of electronic media are almost always a result of lack of knowledge, information and without deliberate intention. The Agency specially dealt with discrimination and hate speech against LGBT persons in October 2010 when reacted on the content of a TV show called "Glamour noir" broadcasted on a local television Atlas TV. In this particular case the Agency issued a recommendation to the Atlas TV and other electronic media in Montenegro to pay maximum professional attention to addressing all the aspects of sensitive issues related to exercising human rights and to avoid dangers coming from promotion or incitement of intolerance or hate (speech). *However, we must say that according to our opinion this activity of the Agency hasn't been publicly promoted as it should have been.*

The presence of LGBT topics in printed media in Montenegro was considerably lower before 2010, especially when it comes to those publications treating these topics in the local context. The presence of texts dealing with LGBT community in the local context considerably increases in 2011, following many important events.

Hate speech on the internet is covered by the Law on Public Peace and Order as this Law recognizes violations that disturb public peace and order as actions done throughout networks of electronic communication as well. On the other hand, internet service providers haven't been encouraged by the state to take measures to prevent dissemination of homophobic and transphobic material threats and insults. If they have such an activity hasn't been promoted in public. Furthermore, all the reported cases of violence spread

throughout especially social networks showed that police seriously lacks capacities in respect to cyber-crimes.

The most serious examples of hate speech came from government and church officials. Former Minister for human and minority rights in the Government of Montenegro, Ferhat Dinosa, during 2009, 2010 and 2011 several times publicly spoke using hate speech against LGBT persons in Montenegro. Some of his best known statements are that he “would not be happy if that (=homosexuality) existed in Montenegro”, that the Government of Montenegro is not obliged to promote protection of LGBT rights, that sexual and national minorities should not be made equal, that he simply follows the “moral code” of the Montenegrin society in his statements. No official sanction has ever been imposed against Ferhat Dinosa by the Government of Montenegro for his statements. His duty of Minister for human and minority rights ceased when the part related to human rights was annexed to the Ministry of Justice and he later became ambassador of Montenegro in Albania. Metropolitan of the Metropolitanate of Montenegro and the Littoral of the Serbian Orthodox Church, Amfilohije Radović, has been known from before for his hate speech and spreading intolerance directed to (but not only) LGBT persons in Montenegro and Serbia, continued to openly spread hatred and intolerance during 2011. There has been no reaction by the official state authorities in these cases. On the other hand, Prosecutor’s office reacted in case of his hate speech related to ethnicity i.e. in a case when the Metropolitan “cursed and insulted citizens’ national feelings.

No guidelines for state officials in respect to hate speech directed toward LGBT persons have been developed.

ii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

Organizations whose publicly stated purpose is to work for the well being of LGBT people, whether for their human rights, or in other ways have not been prevented from gaining official registration.

Freedom of association may be restricted solely if the organization of an assembly is directed “towards forceful destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, and religious and other hatred and intolerance”¹¹.

¹¹ Art. 55, paragraph 1 of the Constitution

The organizations Juventas and LGBT Forum Progress dealing with promotion and protection of human rights of LGBT persons in Montenegro can operate freely in our country and are able to access public funding.

Organizations mentioned have been provided with protection from hostility and aggression whenever requested which usually includes structured community based activities (e.g. gatherings closed for public).

iii. Freedom of expression and peaceful assembly

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

The right to freedom of expression, guaranteed by the Constitution, may be limited only by the right of others to dignity, reputation and honor and if it threatens public morality or the security of Montenegro (Art. 47 of the Constitution).

The law envisages that in the context of encouragement of pluralism in the media, production of commercial broadcasters and preservation of diversity of electronic media in Montenegro, funds are provided out of a part of incomes from games of chance for supporting the production of programs by commercial broadcasters with public interest, being important, *inter alia*, for: promotion of prevention of all kinds of discrimination, encouragement and promotion of exercise and protection of human rights; encouragement of awareness raising concerning gender equality. *This phrase can include sexual orientation and gender identity, but we are not aware of authorities doing anything encouraging SOGI awareness in the media. Furthermore, they haven't provided any data on such activities for this report.*

In 2011 there has been an attempt for the Montenegrin Pride to be organized for the first time, but this activity was delayed due to lack of support by high Government officials which significantly influenced the domain of participant's security. The first larger gathering of LGBT community in Montenegro, a concert organized for IDAHO 2011, showed weaknesses in the police managing the security of a higher risk public event and indicated their inability to cope with larger scale happening like Pride March. This case (which still has no legal epilogue) resulted in a growing suspicion within LGBT community in relation to the will of the institutions to protect and promote human rights of all Montenegrin citizens.

iv. Respect for private and family life (excluding specific transgender issues) (Section IV, paras 18, 19, and 23 – 27 of the Appendix)

These paragraphs of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Homosexual act (male homosexual act to be exact) is decriminalized back in 1977. “Women homosexual act” was of no interest to the lawmakers, therefore it never was or became the subject of legal documents in the territory of Montenegro.

There is no difference in the age of consent.

Article 9, point 7 of the Law on Personal Data Protection defines a separate category of personal data referring to racial or ethnical background, political opinion, religious or philosophical belief, membership in trade union organizations as well as health condition or sexual life.

Sexual orientation represents a special category of personal data. Therefore, data related can be processed only in cases defined by the Law (e.g. with an explicit consent of the person in question; when it is necessary for employing purposes according the law which defines employment, whereby they must imply adequate protection measures; when it is necessary for disease detection, prevention, diagnostics or treatment, as well as during the process of managing health services, and only if data in question are being processed by a medical worker or any other entity obliged to keep it a secret; when it is necessary for protection of people’s lives, vital interests of an entity the data in question are referring to or another entity, in a case when this entity is disabled to give consent, but also all other situations defined by law; when an entity made its personal data available in an obvious way or their processing is necessary for exercising or protection of legal interests of this entity in front of a court or other institutions)

Special categories of personal data are specially labeled and protected against unauthorized access. Manner of labeling and protection of personal data is defined by the ministry in charge for the public administration affairs.

Montenegrin legislation does not recognize same sex partnerships.

The institution of Ombudsman, Protector of human rights and freedoms in Montenegro has submitted the initiative to adopt the Law on same-sex unions to the Parliament of Montenegro. We do not have available information that the Parliament of Montenegro has considered the submitted initiative.

There was also another initiative submitted to the Constitutional Court of Montenegro in relation to the amendment of the Article 12 of the Family Law by Mr. Jovan Kojicic (Later on became Prime Ministers’ Adviser for Discrimination) and independent human rights’ researcher Mr. Sasa Zekovic. According to the Montenegrin law the Constitutional Court had no obligation to reply to this initiative. Nevertheless, the response arrived and contained the following sentence: "The provision is not representing an obstacle for same sex partnership to be legally defined with bringing a new legal document into force. The lawmaker acted upon constitutional provisions. Even the major argument¹² for opposing this provision, doesn’t provide enough basis for the estimation of constitutionality to be done."¹³ The initiative submitted was not accepted.

¹² The major argument was that “the provision disables same sex couples to enjoy any right that comes from marriage, which indicates the existence of discrimination and violates provisions of international law and practice of international court.”

¹³ <http://www.montenegro-gay.me/component/content/627.html?task=view>

In November 2012 during Out on the Street summit on LGBT global workplace rights in London, Deputy Prime Minister and Minister of Justice and Human Rights Duško Marković said:

“To that end the government will launch a strategy to fight homophobia and will launch a project to improve the legal status of same-sex couples in society.”¹⁴

So far LGBT community in Montenegro has declarative support for improvement of the legislation in respect to same sex unions, but real changes haven't happened yet.

Family Law provides the possibility of children adoption by a single person no matter its sex but it does not consider sexual orientation or gender identity. On the other hand, the law distinguishes two kinds of adoption – full and partial¹⁵. Full adoption is practically made possible to heterosexual persons only, i.e. spouses and consensual partners¹⁶. Since unmarried persons can partially adopt, in specially justified cases, an LGBT person would have the legal possibility to a partial adoption¹⁷.

The competent ministry confirmed that there is no prohibition for an LGBT person to adopt a child pursuant to the provisions of the Family Law or the provisions of other laws¹⁸.

A person who “does not provide sufficient guarantee that he/she will perform parental care in a proper manner” may not adopt, which shall be assessed by the center for social work in each particular case¹⁹.

There have been no registered cases so far of an LGBT person submitting a request for adoption, i.e. that this right has been denied to someone for the reason of being an LGBT person²⁰.

On the other hand Article 11 of the Law on treating infertility with assisted reproductive technologies explicitly defines that right to treatment includes men and women who live in a consensual union or are married, or a woman who is not married and doesn't live in a consensual union marriage (it is important to mention that consensual union is limited to opposite sex couples).

v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36))

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender

¹⁴ <http://www.gaystarnews.com/article/montenegro-promises-gay-pride-and-some-marriage-rights131112>

¹⁵Family Law, Art.144, 145, 148. Through full adoption all legal links between children and parents cease to exist, while through partial adoption the adopter and the child establish the relationship between parents and child in terms of law, but the relationship of the adoptee with regard to his/her natural parents does not cease completely.

¹⁶ Art. 132 of the Family Law.

¹⁷Art. 134, paragraph 2, of the Family Law.

¹⁸ Ministry of Labor and Social Welfare, Decision No. 01-27, 12 January 2010.

¹⁹ Art. 127, paragraph 1, paragraph 4 and Art. 134 of the Family Law.

²⁰Data of the Ministry of Labor and Social Welfare and media reports.

reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

According to available information, for a legal recognition of gender reassignment it is necessary to perform gender reassignment surgery which also implies sterilization.

Procedures and protocols ensuring full legal recognition of a persons' gender reassignment are not fully and precisely defined.

The change of these data is possible but it is not thoroughly defined by the legislation which would make possible to do it in a quick, transparent and accessible way. *The gender mark in the unique master citizen number, birth certificate, i.e. personal documents, can be subject to changes after completing the procedure of gender reassignment and providing a proof thereof.*

According to the available information, the *change of name* is performed upon personal request, it is not conditioned by gender reassignment, and the sole limitation concerning the change of name is the protection of public safety and rights and freedoms of others.

Procedures ensuring corresponding changes in key documents originated by non-state actors, such as diplomas, certificates of employment, and insurance or banking documents are not officially defined.

The right to marriage and the rights on the basis of marriage or consensual union are conditioned by the fact that spouses or consensual partners are of different sexes²¹. Therefore, it implies that transgender persons can marry a person of the sex opposite to their reassigned.

The official standing point of the Montenegrin Government implies that in developing medical capacities of Montenegro, it has been concluded that it is not rational to build up highly sophisticated services for a small number of patients, so the capacities of other centers from the region have been used. The Law on Health Insurance provides the possibility of gender reassignment surgery for medical reasons at the expense of obligatory health insurance.

To our knowledge, amendments to the Law on Health Insurance came into force on 15 March 2012, according to which transgender persons are provided and covered 80% of the costs of gender reassignment²². However, it is not possible yet to use this right in practice,

²¹"No more no less: Equal Rights for All", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

²²Amendments of the Law on Health Insurance proscribe the following: "From the fund for mandatory health insurance insured persons are provided with 80% of coverage for health services for:

...
- gender reassignment surgery for medical reasons;

....
The difference between the full price of the health service and the reimbursement provided according to paragraph 1 of this article (here and after: supplement) is paid by the insured person when using the health service.

For persons insured in additional health insurance, the supplement is provided by the Fund or insurance company.

The health service provider is obliged to give a receipt to the insured person, which must contain data on the amount that is provided by the mandatory health insurance fund and on the supplement amount given by the insured person.

because the deadline for determination of protocols and procedures which will enable its use is March 15th 2013.

vi. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Ministry of Labour and Social Welfare was the only state institution that hasn't answered any of the questions, which suggest their ignorant and inactive attitude in respect to LGBT human rights.

According to the available information²³, the Labor Law²⁴ explicitly designates sexual orientation as a prohibited ground for discrimination. The Labor Law prohibits sexual harassment as well (Article 8). *This Law doesn't explicitly prohibit discrimination on grounds of gender identity.*

The Law on Armed Forces of Montenegro governs general admission conditions to the Armed Forces of Montenegro, among which there is no prohibition to military service to persons of different sexual orientation. The Law on Civil Servants and State Employees, as well as the Labor Law, which are applied accordingly to the persons in the military service too, does not impose the mentioned obstacle, the basic principle for employment being equal opportunities concerning work positions, or formation positions for all candidates. In the opinion of the Ministry of Defense of Montenegro, this principle impedes any form of negative selection or discrimination on any grounds. In the regulations of the Ministry of Defense on special admission conditions and method of examination of candidates' health capability for military service, this kind of prohibition is not prescribed.

Although they mention prohibition of discrimination based on gender, race, skin color, religion, or nationality and other personal characteristic regulations tackling Armed Forces of Montenegro (The Law on Armed Forces of Montenegro , The Code of Military Ethics) do not mention directly the prohibition of discrimination on grounds of sexual orientation and gender identity.

According to our knowledge, The Law on prohibition of discrimination (including Armed Forces) can be referred to in cases of employment related discrimination based on gender identity.

The criteria for verification of medical reasons for gender reassignment surgery are defined by the state institution in charge for health issues (here and after: Ministry).” (Full Text of the Law available on: http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Zakon%20o%20izmjenama%20i%20dopunama%20zakona%20o%20zdravstvenom%20osiguranju.pdf).

²³No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

²⁴ The Labor Law, Official Gazette of Montenegro, No. 49/2008 and 26/2009.

vii. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

The General Law on Education dealing with prohibition of discrimination, prescribes that “no physical, mental and social violence is allowed in an institution; molesting and neglecting children and students; physical punishment and personal insulting, i.e. sexual misuse of children and students or employees and any other form of discrimination, in the sense of Law” (meaning – Law on Prohibition of Discrimination).

There are no equality and safety policies, codes of conduct and handbooks for educational staff to ensure LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion and other forms of discriminatory and degrading treatment. Ministry of Education and Sports plans a range of project activities which will be designed and implemented by selected schools’ counseling services but haven’t answered respective questions in a manner that would explain whether their activities aim to combat homophobia and transphobia. The only recourse available for school staff implies guidelines developed by Juventas for psychologists in their work with LGBT persons, and the only homophobia and transphobia targeting activities also come from the Montenegrin civil sector (“We teach no discrimination” project²⁵, implemented by Juventas).

Working group for carrying out the analysis of representation of LGBT human rights within the education system of Montenegro came to the conclusion that Montenegrin text books don’t have negative content in respect to sexual orientation and/or gender identity, but tend to ignore the subject. This analysis considered text books in primary and secondary schools. University books (basic obligatory literature) are still to be analyzed as according to our knowledge some these have been outdated and contain incorrect and discriminatory pieces of information (e.g. textbook of Forensic Medicine, Medical Faculty, University of Montenegro).

²⁵ Main goal of the project is: Safe and tolerant school surrounding for LGBT persons. Objectives of the project are: 1) Increased level of knowledge and sensitivity of high school students about human rights, sexual orientation and gender identity 2) Increased level of knowledge and sensibility of teachers in respect to human rights, sexual orientation and gender identity 3) Increased representation of fact based LGBT issues along with modern methods appliance. Results of the project will be measured throughout quantitative and qualitative indicators achieved. Quantitative indicators imply: number of young people actively involved in project activities, reached in workshops, printed and electronic media coverage related to media and promotional campaign, printed materials distributed. Qualitative indicators would be: change in informational level, evaluation of workshops done by participants, analysis of media coverage related to media and promotional campaign and its message, quality of cooperation with relevant stakeholders (high schools, relevant Ministries), analysis of feedback given by target and general population, recommendations received. Project is supported by the American Embassy in Podgorica.

viii. Health - other than transgender specific health issues (Section VII of the Appendix paragraphs 33, 34,)

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity

According to pieces of information at our disposal Montenegrin health workers act upon the ICD 10 list and in a manner corresponding to the fact that homosexuality is not a disease.

The Law on health protection from 2004 is based on citizens' equality in exercising of right to health protection, without discrimination based on any ground. This general provision found its reflection in the Law on Patients' Rights dating from 2010. The only health related policy that recognizes the need of preventive interventions in the population of MSM (men who have sex with men) is the Strategy of fight against HIV/AIDS.

Indicative research on perception and attitudes toward homosexuality, carried out among health workers in Montenegro (CSO), showed high level of homophobia and the necessity of constant education of health workers on human rights of LGBT persons. Health workers' education on LGBT rights is implemented only by one CSO in Montenegro (Juventas) not by the state and depends on funds this organization disposes of. Juventas also established a counselling centre for LGBT persons in which a psychologist and a physician provide counselling services and represent an intermediate between a client and health state institutions where a person can use its right to full health protection. The only guidelines developed for medical workers and psychologists related to LGBT human rights and good practices in work with LGBT persons are the ones developed by civil society organizations (Juventas).

It is important to note that the Law on Patients' Rights defines the right of a patient to choose a person that can be fully introduced with his/her medical condition, without discrimination.

ix. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

As told before Ministry of Labour and Social Welfare was the only state institution that hasn't answered any of the questions, which suggest their ignorant and inactive attitude in respect to LGBT human rights. Many questions related to housing therefore remained unanswered. Pieces of information provided come from CSOs' sources, work or knowledge.

Montenegro does not have provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity. The only state shelter that exists in our country is the shelter for women who are victims of trafficking. Other shelters, in possession of women NGOs, have ensured this non-discriminatory access for LGBT persons. One example is the shelter of Safe Women's House, located in Podgorica, which provided emergency accommodation and medical assistance to two lesbian women who were attacked and beaten up by unidentified group of men during their vacation in Montenegro.

On December 1st2011 LGBT Forum Progress, LGBT organization from Podgorica, opened its very own shelter for LGBT persons in conflict with their families and evicted from their homes. Nevertheless, it is important to mention that this shelter also provides housing for LGBT persons whose physical and mental wellbeing is endangered in their surroundings.²⁶

Again, social services of this kind are provided by CSOs not state institutions.

x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

The Law on Sport, dealing with availability, emphasizes that sport is available to all, regardless of age, physical capability, disability, gender, race, language, religion, national affiliation, social origin, political belief, property status or other personal characteristic. However, this Law does not explicitly mention sexual orientation and gender identity. Article 8 defines measures concerning application of sports rules. According to this Article, sports subjects are obliged to respect and apply sports rules of national and international sports federations, Montenegrin Olympic Committee and International Olympic Committee. Practicing sports activities is governed by sports rules adopted by the National Sports Association, i.e. sports organization.

Homophobic and transphobic chanting at or around sports events hasn't been made a criminal offence, and relevant provisions of the European Convention on Spectator Violence and Misbehavior at Sports Events, the European Sports Charter and ECRI's General Policy Recommendation No.12 in respect of sexual orientation and gender identity haven't been implemented. There are no specific measures to put an end to the exclusion of transgender persons from sports activity or competitions, remove the obstacles encountered by them in participating in sport (dressing room access), and recognize their

²⁶For more on LGBT Forum Progress' shelter for LGBT persons see: <http://lgbtprogres.me/2011/12/sigurno-mjesto-za-lgbt-osobe/>

preferred gender. Also there are no information on have any steps been taken to encourage dialogue with, and support for sports associations and fan clubs in developing awareness-raising activities or condemning homophobic and transphobic behavior during and in connection with sports events. If we are to conclude according to what we still witness the answer is that no activities have been undertaken in this field.

As far as support to LGBT sport clubs is in question, LGBT Forum Progress' members (a CSO) as well as other individuals from Montenegrin LGBT community took part in Eurogames 2012, the biggest LGBT sport event *thanks to the support of Montenegrin Government.*²⁷

xi. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

Ministry of Internal Affairs provided no information on questions related to asylum, so all information come from CSOs sources and knowledge.

The right to asylum, guaranteed by the Constitution, may be requested by “a foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs²⁸”.

The Law on Asylum prescribes that the asylum shall be given to foreigners in need of international protection in accordance with the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and other ratified international agreements and universally accepted rules of international law, pursuant to this Law²⁹.

Neither the Constitution nor the Law on Asylum explicitly mention sexual orientation or gender identity, but they do mention “affiliation to a group” as a ground for a reasonable fear from persecution and a justification for request of asylum³⁰.

According to the provisions of the Law on Asylum, discrimination in the asylum procedure is prohibited on any basis, and in particular on the basis of race, color, sex, citizenship, social origin or birth, religion, political or other opinions, country of origin, economic

²⁷ Please find more information by following the link: <http://lgbtprogres.me/2012/07/crna-gora-po-prvi-put-na-lgbt-eurogame-su-u-budimpe%C5%A1ti/>

²⁸ Constitution, Art. 44, paragraph 1

²⁹The Law on Asylum, Art. 2, paragraph 2, Official Gazette of Montenegro, No. 45/2006.

³⁰ Constitution, Art. 44, paragraph 1 and Law on Asylum, Art. 2, paragraph 3.

status, culture, language, age, or mental or physical disability (Article 7). Accordingly, it is to conclude that if in the country of origin there is a reasonable fear of persecution due to affiliation to a certain group, as for example LGBT community, the request for asylum is to be approved.

Article 12 separately emphasizes that an asylum seeker shall be treated in a gender-sensitive manner at all the stages of the asylum procedure. Since the position of transgender persons is not explicitly defined by this Law, there is no guarantee that competent officers would respect the gender identity of a transgender person and that they would insist on a treatment in accordance with the gender mark in the personal documentation of the person in question.

As we haven't been provided with most answers among which ones related to trainings for staff responsible for processing asylum requests in the specific problems encountered by LGBT asylum seekers we justifiably presume that no activities have been implemented by the state in this area. The same goes for other questions related to asylum seekers and requests.

xii. National human rights structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

The Law on Prohibition of Discrimination, as the basic anti-discrimination law, stipulates prohibition of discrimination, concrete protection from discrimination and it also arranges mechanisms of protection.

Pursuant to the Law on Prohibition of Discrimination: "Anyone who considers that he/she has been discriminated by an act, action or failure to act of an authority and other legal and natural persons, can address the Protector of Human Rights and Freedoms by a complaint."

The complaint referred to may be addressed to the Protector also by organizations or individuals engaged in protection of human rights, with the consent of the discriminated person or group of persons. The Protector shall act upon complaints of citizens or on his/her own initiative, and he/she gives opinions to draft laws and other legal acts aiming at their harmonization with international human rights standards. He/she also initiates the amendment and adoption of laws (e.g. Law on same-sex union).

Pursuant to the provisions of the Article 23 paragraph 1 of the Law on Prohibition of Discrimination, the Protector of Human Rights and Freedoms submits to the Parliament of Montenegro the Annual Report on work, informing the Parliament in a special part of the Report on identified cases of discrimination and undertaken activities as well as recommendations and measures for elimination of discrimination. The Report contains a separate part dealing with discrimination on grounds of gender identity and sexual orientation.

The display of cases of discrimination in the Report is based on complaints, court reports in Montenegro, authorities dealing with offenses, inspections, as well as on conversations with citizens, surveys conducted by other authorities and non-governmental organizations and other sources of information, including the participation of the Protector's representatives in round tables, conferences, television and radio programs.

The fact is that current Protector of Human Rights and Freedoms actively works on SOGI discrimination, *but is necessary to emphasize their lack of capacities, both administrative and financial, which influences their full commitment to LGBT human rights.*

APPENDIX I

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
(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground 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, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. "Hate crimes" and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

B. "Hate speech"

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex

and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence,

bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this

respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination

on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

APPENDIX II

Glossary

CSO is the abbreviation for “civil society organizations”

Gender identity refers to a person’s deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, “gender expression”) such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as “transgender” persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

Gender reassignment treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one’s preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

Hate crime towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Homophobia is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

Intersex people are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term

“hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

LGBT people or LGBT persons is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple discrimination describes discrimination that takes place on the basis of several grounds operating separately.

NGO is the abbreviation for “non-governmental organisation”.

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

Transphobia refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

APPENDIX III

Monitoring Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

DOCUMENTATION REPORT MONTENEGRO 12/2011

[The following report format includes three elements: the text of the Recommendation and its Appendix (**bold**); checklists of actions required to implement the measures set out in the individual paragraphs of the Recommendation and its Appendix, derived either from the text of these documents, or from the associated Explanatory Memorandum (*italics*); and information sources which can be used in documenting whether or not national authorities have carried out the actions listed (highlighted in colour).]

Recommendation

- 1. examine existing legislative and other measures, keep them under review, and collect and analyze relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**
 - i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*
 - ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

Montenegro has achieved progress in development and establishment of a stable normative and institutional system for exercising, protection and improvement of human rights and freedoms. The process of state-building, after restoring independence on 21 May 2006, included a comprehensive program of legislative reforms and establishment of institutions which followed the process of country's approaching to the European Union. As a result, and among others, a confirmation of the achieved progress in setting up the rule of law, respect of fundamental rights and political criteria for membership, Montenegro started the negotiation process on 29 June 2012 for full membership in the EU. The negotiation process will lead to further progress in the application of the required standards of the EU and the UN, by harmonization with the *acquiscommunitaire*, application of the normative framework and a regular monitoring of practice in respecting human rights and freedoms.

The Ministry of Justice and Human Rights has an important role within the Government in terms of creation and implementation of the policy of human rights protection and exercise. Several working bodies/authorities for monitoring and control of implementation of protection policies and exercise of human rights and freedoms: Council for protection from discrimination, Working Group for elaboration of a program document for combating

homophobia with Action Plan³¹, Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro, Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights. Representatives of state authorities, NGOs and international organizations/agencies take part in the activities of the bodies. Apart from monitoring the concrete policies and implementation of strategies in the their scope of work, the working bodies are in charge of following the recommendations of the Council of Europe and the European Union and following the implementation of the United Nations Conventions.

Other information provided by the grantee:

Previous paragraphs mean that one of formed bodies (Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights) already have reviewed Montenegro's existing laws in order to find out whether sexual orientation and gender identity are included in the Montenegrin legislative framework and in what manner. The task of the previously mentioned working group was also to identify laws in which changes can be introduced and recommend bringing of amendments and new regulations into force.

Such an analysis has already been done in 2011³² when it considered conformability of Montenegrin legislation with international standards in respect to LGBT rights, and most importantly gave recommendations for the improvement of the existing Montenegrin laws.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

Not thoroughly.

The Constitution of Montenegro prohibits infliction or encouragement of hatred or intolerance on any grounds, as well as direct or indirect discrimination on any grounds. The Constitution guarantees equality to all before the law, regardless of any particularity or personal feature. The Constitution guarantees to all the right to equal protection of their rights and liberties. Sexual orientation and gender identity are not explicitly mentioned in the Constitution. In addition to that, the Constitution defines marriage as a union between a man and a woman, thus leaving no possibility for a legal solution of the same-sex marital union.

The general anti-discrimination law was adopted on 27 July 2010. The Law precisely defines the term of discrimination, as well as the terms of direct and indirect discrimination. It provides the basis and mechanisms for protection from discrimination on

³¹ **Other information provided by the grantee:** Hereinafter this document is named *National Strategy of Fight Against Homophobia*

³² "No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011

grounds of any personal characteristic, and a special article of the Law regulates prohibition of discrimination on grounds of sexual orientation and gender identity. Incitement to discrimination is characterized as discrimination, and protection of persons who report discrimination is also defined. The Law also contains provisions which represent protection from victimization. In order to make the overall system for protection from discrimination complete, besides the protection provided by the institution of the Protector of Human Rights and Freedoms, court protection from discrimination is also defined, the role of inspection services as well as penalty measures.

The Law defines also special forms of discrimination, with emphasis on severe forms of discrimination. In addition to the mentioned forms of discrimination, the Law includes those which are considered, from the point of view of the legal system, i.e. moral standards, as particularly severe violations of the principle of equality among people and the purpose of their mentioning is, primarily, to denote and qualify those prohibited acts deemed to be particularly dangerous for the social community. In this sense, discrimination on grounds of sexual orientation and gender identity is specially emphasized.

The explicit designation of sexual orientation as a prohibited ground for discrimination is included in the Labor Law and the Media Law, besides the Law on Prohibition of Discrimination. Direct and indirect discrimination of persons seeking employment, as well as the employed persons on grounds of sex and sexual orientation is prohibited, pursuant to the Labor Law. The Labor Law prohibits sexual harassment as well, while the Media Law forbids publicizing information and opinions that instigate discrimination, hatred or violence against persons or a group of persons based on their sexual orientation.

The Criminal Code of Montenegro defines a criminal offense – Infringement of equality – stating that a person who – due to national affiliation or affiliation to an ethnic group, race or confession or due to the absence of such an affiliation or differences in terms of political or other beliefs, sex, language, education, social status, social origin, property status or other personal characteristic – denies or restricts the human rights or freedoms of others prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, shall be sentenced to three years of imprisonment.

On 29 July 2011, the Parliament of Montenegro adopted the Law on Protector of Human Rights and Freedoms of Montenegro (“Official Gazette of Montenegro”, No. 42/11, from 15 August 2011). This Law defines the institution of Protector as an institutional mechanism for protection from discrimination and as a national mechanism for protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment. The Protector, based on internal arrangement of tasks, focuses, above all, on the protection of persons deprived of their liberty in order to prevent torture and other forms of inhuman or degrading treatment or punishment, protection from discrimination, protection of minority rights, protection of the rights from the area of labor and employment, child protection, protection of persons with disability, protection of LGBT persons and gender equality. One of the Deputies shall also deal with the protection from discrimination. The Protector, with the consent of the discriminated persons, proceeds and undertakes measures for protection from discrimination, pursuant to this Law and a special law which regulates prohibition of discrimination. When he/she deems necessary, the Protector initiates the court proceeding for protection from discrimination or may join the discriminated person as intervener. The provisions of this Law are applied in the proceedings of the Protector in cases of discrimination by a natural or a legal person.

Other documentation assembled by grantee:

As you could read in the above text, the Labor Law and the Media Law generally forbid discrimination on grounds of sexual orientation. However, in Montenegrin language these laws use the term “opredjeljenje” (=commitment, belief; decision, choice) instead of the term “orijentacija” (=orientation). The term used in these laws is discriminatory since its signification implies that sexual orientation is changeable and that it is possible to choose it. These laws do not explicitly prohibit discrimination on grounds of gender identity.

Law on prohibition of discrimination³³ - The Law on prohibition of discrimination should be amended with an article named “meaning of terms used in this law”, which would give a definition to terms “gender identity” and “sexual orientation” in order to make the appliance of the law easier.

Law on treating infertility with assisted reproductive technologies³⁴ - Article 11 of the Law on treating infertility with assisted reproductive technologies explicitly defines that right to treatment includes men and women who live in a consensual union or are married, or a woman who is not married and doesn't live in a consensual union marriage (it is important to mention that consensual union is limited to opposite sex couples). This article should be amended in a manner which gives same sex female partners the same right, which is according the point 28 of the Recommendations of Council of Europe Committee of Ministers.

Law on pension and invalidity insurance³⁵- Articles 42 and 43 of the Law on pension and invalidity insurance, which regulate the right to family pension, should be amended in a manner that provides same sex partner the right to family pension. According to this law at the moment only marital partners and children are defined as sole family members who have been provided with this right.

Law on patient's rights³⁶ - Law on patients' rights should be amended in a manner that provides the possibility, in case of a citizen unable to identify persons that can be informed about his/her illness and unexpected outcome, for a same sex partner to have the right to information, beside other family members. The only complete solution is that family members are defined especially for this law so as to include a same sex partner.

General Law on Education³⁷- General Law on Education should provide the obligation for the respective Ministry to keep record on all cases of violence in school, especially violence motivated by hate based on sexual orientation or gender identity, in order to follow the trend of such a violence and take measures in preventing it. Respective legal documents and bylaws should provide the introduction of information to familiarize children with principles of prohibiting discrimination based on sexual orientation and gender identity. Such information would contribute to all children recognizing discrimination and learning how to live freely with their sexual orientation and gender identity and respecting

³³“No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

identities of others. This is according to points 31 and 32 of the Recommendations of the Council of Europe Committee of Ministers.

Law on tax on physical entities' income³⁸ - Terms "family" and "close family" related to earnings which don't imply tax on physical entities' income should be defined in a manner which includes same sex partners.³⁹

- ii. *Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behavior within the general public and correcting prejudices and stereotypes, been implemented?*

The activities of the Ministry of Justice and Human Rights related to education and promotion of anti-discrimination have a long-term character and are marked as *continuous* in the work of the Ministry, with the aim of including general population in this kind of knowledge and awareness raising, respecting all human rights, creating a more supportive and more tolerant environment and respecting the differences of others.

Currently ongoing education is intended primarily for professionals and all those who encounter, in any way, cases of discrimination, while promotion is related, above all, to media campaigns and is headed toward awareness rising of the overall Montenegrin public, particularly with respect to the most vulnerable categories of population.

Last year, important activities were planned and carried out in the implementation of the Law on Prohibition of Discrimination, which include the Education Plan and the Plan of media promotion of anti-discriminatory behavior. These are continuous activities in the work of the Ministry, and in 2011 primarily marginalized social groups were included, i.e. those facing notably visible discrimination and homophobia.

The second quarter of 2011 was marked with activities of carrying out the trainings and the promotion of anti-discrimination with the objective to strengthen the awareness and sensitivity of the state administration, police, legal system, but also general Montenegrin public. The Plan on Education of civil servants, judiciary representatives and employees of other independent authorities and organizations in the field of providing protection from discrimination envisaged a set of workshops dealing with key aspects of discrimination in the society, out of which one was dedicated to the protection of LGBT rights. The first workshop was held in May 2011 within the Educational Program, entitled "General legal framework of prohibition of discrimination". After this workshop, which was conceived as generally informative, the Educational Plan envisaged three more workshops dealing with

³⁸ Ibid

³⁹ Law on physical entities' income, *Official Gazette of Republic of Montenegro no. 26/2001*, last amendments *Official Gazette of Republic of Montenegro no. 86/2009*, Income that don't imply taxpaying, Article 5a:

(2) Tax on income is not paid on earnings based on:

...

- 4) An indemnity for a life separate from family up to 100 per month;
- 5) A solidarity in case of employed family member death, close family member death and death of employed member retired, up to 1.500;
- 6) A solidarity in case of severe illness, rehabilitation, medicine provision and treatment for an employed family member or its close family member up to 1.000

basic forms of discrimination in the society respectively (discrimination on grounds of sexual orientation, handicap, i.e. physical disability and gender identity).

The second workshop was held on 22 and 23 June, where participants engaged in the issues of discrimination of LGBT population, with an overview of practices in the region. One of the topics of this workshop was also the analysis of the practices of the European Court in terms of LGBT rights.

This was the first phase of education, concluded in November 2011, which primarily aimed at professionals in providing protection from discrimination. The second cycle of education started in May 2012 and encompassed the local level in the struggle for protection of human rights of the most vulnerable groups. The attendants of this second cycle are representatives of all regional units and police offices in Montenegro, as well as representatives of municipal secretariats for administration and social affairs.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

- i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

Legal framework that provides protection against discrimination based on any ground includes:

Montenegrin constitution, which forbids evoking or instigation of hatred or intolerance, as well as immediate and intermediate discrimination based on any ground. The constitution guarantees equality of all before the law, no matter individuality or personal characteristic. The constitution also guarantees the right to equal protection of one's rights and freedoms.

Law on antidiscrimination was adopted on July 27th 2010. The law gives a precise definition of discrimination, as well as immediate and intermediate discrimination. It also provides the basis and mechanisms for protection from discrimination based on any ground, and a special provision of the Law defines prohibition of discrimination based on sexual orientation and gender identity. Instigation to discrimination is characterised as discrimination, and this legal document also provides protection of persons reporting discrimination. The law contains provisions enabling protection from victimization. In order to make the whole system for protection from discrimination complete, beside the protection made available by the Montenegrin Ombudsman, the law defines the area of judicial protection from discrimination, the role of inspection departments as well as penal measures.

The Law on antidiscrimination also defines special forms of discrimination, taking special account on especially severe ones. Among many of the forms mentioned, the Law contains ones that from the perspective of the legal classification, i.e. moral standards, prove to be especially serious violation of the equality principle. To distinguish those means to qualify illicit acts which are considered especially dangerous to the society. In this sense, it emphasizes discrimination based on sexual orientation and gender identity.

Montenegrin **Criminal Code** defines two felonies within **Article 159** (Infringement of equality) and **Article 443** (Racial and other discrimination), which incriminate different forms of discrimination, among which discrimination based on sex or any other personal characteristic. The Criminal Code gives the opportunity to the court to consider the purpose of sentencing, to take into account the sentence to be lower or higher, extenuating or aggravating circumstances, level of guilt, actuations influencing the crime committed and severeness of violation of a protected good. Therefore, when biased criminal offences are committed the court pays attention on actuations which influenced the crime, whether hate or hate speech were involved as aggravating circumstances.

Previously presented makes the legal framework which provides protection against discrimination in general, but on the basis of sexual orientation and gender identity as well.

The Law on public peace and order also provides a fine or prison time for an individual that publicly humiliates another individual, threatens citizens' safety with his/her behaviour, causes citizens' disturbance and disapproval or acts impertinently in any other way. This also stands for the ones who publicly and rudely insult another, endanger citizens' safety, causes sense of endangerment or behaves in a most impertinent, shameless or abusive manner.

Other information provided by the grantee:

All the provisions named in the previous text haven't been sufficient for the respective institutions (e.g. Police Directorate) to act in an adequate manner in the case of the tear gas bomb described under the section **A. "Hate crimes" and other hate-motivated incidents** and heading **Cases of inadequate reactions of police officers/Case of tear gas bomb thrown during the IDAHO 2011 concert**.

Currently, the Ministry of Justice proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation, also regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A coalition of NGOs proposed qualified forms of criminal acts executed with a biased motivation in order to make it a firmer obligations for investigative bodies and courts to process it accordingly.

The Constitution and the Constitutional Court Act provide for a constitutional complaint that may also be used as a remedy in case all other prove ineffective.

- ii. *Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*
- iii. *Are the remedies effective, proportionate and dissuasive?*
- iv. *Do the remedies include, where appropriate, adequate reparation for victims*

Victims may seek protection of their rights and recovery of damage at any time before the court. In a regular court procedure victims may demand recovery of material and non material damage and call upon responsibility in case of physical trauma.

Other information provided by the grantee:

According to our knowledge there are no effective procedures to make victims aware of, and able to access, legal remedies, even where a violation is committed by a person acting in an official capacity. Most discrimination cases remain unreported due to significant lack of trust of the LGBT community in state institutions (a result of in depth interviews done in 2010 and 2011 among the LGBT community in Montenegro)⁴⁰. Juventas developed a brochure which informs LGBT persons of their possibilities when legal means are concerned, but this represents just a drop of water in the land of drought. LGBT Forum Progress in their report estimates that judicial practice proves to be inconsistent, especially when related to regional offices for misdemeanors. Namely, in cases of verbal violence and insults directed towards LGBT persons, verdicts made imposed high fines up to 800 Euros or prison sentence of 10 to 15 days. On the other hand, in cases of physical abuse and endangerment of LGBT persons' safety the decision implied probation sentence, fines out of 250 Euros or acquittals due to changes in legislation.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

Beside all efforts put and constant communication with the Ministry of Justice and Human Rights we did not manage to obtain the answer to this question.

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

- i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

The Ministry of Justice and Human Rights (former Ministry for Human and Minority Rights) organized in 2011 and 2012 three conferences (out of which one was on a high international level), mostly dedicated to the implementation of Recommendation CE (2010)⁵.

The Government of Montenegro, in cooperation with International Academic Conference "Justice in the Balkans: Equality for Sexual Minorities"; Williams Institute of the University of California School of Law, Los Angeles (UCLA), USA; Sociology Department of the University of Lund, Lund, Sweden; European Commission on Sexual Orientation Law (ECSOL), organized an international conference "Toward Europe, Toward Equality" on 2-5 September 2011. The organization of the conference was financially supported by the Embassy of the Kingdom of the Netherlands in Belgrade.

⁴⁰ **Results of the in depth interviews published in the publication:** No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

The conference gathered prominent international experts, scientists and human rights promoters from Europe, United States of America and Canada, as well as high officials of the Montenegrin Government and diplomats. The objective of the conference was improving human rights of the LGBT population and combating discrimination by an effective application of anti-discrimination laws and policy and awareness raising of the managing structures and general public in this subject matter.

Another conference/round table with similar topics was organized in the beginning of 2012 – on that occasion, the LGBT Project of the Council of Europe (Montenegro being its beneficiary) was presented by the representatives of the Council of Europe, while the round table addressed the issue of following the Recommendations CE (2010)5.

The representatives of the following Government authorities and institutions, besides representatives of the competent Ministry, attended the conference/round table: Ministry of Health, Ministry of Education and Sports, Ministry of Labor and Social Welfare, Ministry of Interior, Ministry of Foreign Affairs and European Integration, Police Department of Montenegro, Office for Fight against Trafficking in Human Beings and Employment Agency of Montenegro, as well as the most important non-governmental organizations, whose work has proven commitment in solving these issues so far.

Each representative of the authority/institution gave a presentation from the point of view of their institution concerning the situation of human rights of LGBT persons, definition of problems, concrete activities, objectives and future challenges.

The international high-level conference called “Together against Discrimination”, supported by the Prime Minister Igor Lukšić, was held in March 2012. Its principal goal was promotion of the Recommendations of the Council of Europe Committee of Ministers (CM/Rec(2010)5) on measures for combating discrimination on grounds of sexual orientation and gender identity.

The conference gathered high officials from the countries of the Region and South Eastern Europe, which was the occasion, according to the Prime Minister’s statement, to exchange opinions and confirm a common readiness to work on building up of a modern concept of human rights and freedoms. The conference sent the message of joint commitment in undertaking concrete activities in order to achieve and improve protection of LGBT persons and their visibility.

ii. Have the Recommendation and its appendix been translated?

Yes.

Other information provided by the grantee:

An unofficial translation of the Recommendations was made in 2010 by the NGO Juventas and it was distributed to state institutions and non-governmental organizations throughout all activities (seminars, conferences, trainings...) implemented by our organization. The unofficial translation has been sent to the Council of Europe and is now official thanks to the good cooperation with ILGA Europe.

According to our knowledge this translation hasn’t been taken by the state, published on their web site or disseminated.

- iii. *Have they been disseminated:*
- *within the lesbian, gay, bisexual and transgender communities?*
 - *throughout public administration?*
 - *throughout law-enforcement structures, including the judiciary and penitentiary system?*
 - *to national human rights protection structures (including equality bodies)?*
 - *throughout the educational system?*
 - *throughout the health-care system?*
 - *to representatives of public and private sector employees and employers?*
 - *to the media?*
 - *to relevant non-governmental organizations?*

The NGO Juventas distributed the Recommendations to representatives of media and state institutions. The Ministry of Justice and Human Rights distributed the recommendations to the services of the public administration.

Other information provided by the grantee:

The recommendations were distributed to LGBT persons through activities implemented by the NGO Juventas during seminars and trainings organized for LGBT persons. The translation of the Recommendations is available at the web portal www.montenegro-gay.me⁴² to LGBT persons as well as to the general public.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. "Hate crimes" and other hate-motivated incidents⁴³

- 1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**

⁴¹http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Preporuke%20Savjeta%20Evrope%20o%20mjerama%20borbe%20protiv%20diskriminacije%20zasnovane%20na%20seksualnoj%20orijentaciji%20i%20rodnom%20identitetu.pdf

⁴²http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Preporuke%20Savjeta%20Evrope%20o%20mjerama%20borbe%20protiv%20diskriminacije%20zasnovane%20na%20seksualnoj%20orijentaciji%20i%20rodnom%20identitetu.pdf

⁴³See Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents

- i. *Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

Educational programs intended for police officers imply also stressing the need to invest special efforts while identifying homophobic and transphobic connotations in hate crimes.

Other information provided by the grantee:

Survey results on perception and attitudes toward homosexuality, carried out among 245 police officers coming from all regions of Montenegro by the NGO Juventas, in cooperation with the Police Department of Montenegro in May 2012, showed the necessity of constant education of police officers on human rights of LGBT persons. This survey preliminarily showed that 51% of the examinees consider homosexuality as a disease, 68.6% think that homosexuality is not natural, 45.5% that it is immoral, 10.2% think that verbal abuse against homosexuals is justified and 5.7% of the examinees approve of physical violence toward homosexuals. 54.5% consider that raising children by homosexual persons would boost homosexuality of the children; 66.7% would feel as unsuccessful parents if their child turned out to be a homosexual. On the other hand, 53.7% of the examinees find that homosexual persons have the right to express publicly their sexuality (holding hands, kissing in the street), 69.8% would not feel threatened if they saw two men or two women expressing publicly their sexuality, 86.5% would react to prevent violence over homosexual persons, 53.5% of the examinees do not support the organization of Gay Pride in Montenegro, while 23.7% does support the organization of such an assembly. On the other side, 73.1% of the police officers who took part in the survey find that police should protect the participants of Gay Pride, while 21.2% stated that they would like to be hired to protect the participants. 67.8% think that police officers are ready to secure the Gay pride in Montenegro.⁴⁴*These results are still to be presented to the Police Directorate.*

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

No. At the Police Department level, there is no independent and effective machinery for receiving and investigating hate crimes, allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives. However, the Law on prohibition of discrimination offers a basis for combating discrimination on any grounds and it is applied at the level of the Police Department of Montenegro, taking records on the number of criminal offenses in accordance with Article 30 of the Law, stipulating the obligation of the authorities to take special records on cases of discrimination and submit it to the Protector of human rights and freedoms.

⁴⁴ Indicative research done within the framework of the project „Improvement of the quality of services for LGBT persons“ supported by the British Embassy Podgorica, implemented by Juventas

Other documentation assembled by grantee:

According to our knowledge there are some independent bodies that could receive and investigate reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff. These bodies are not formed to process exclusively cases where sexual orientation or gender identities constitute one of the motives. These bodies are: **Council for the Civil Control of the Police** and **Internal Control**.

Article 3 of the Rules of Procedure of the Council for the Civil Control of the Police sais:

“Council for the Civil Control of the Police is an independent body that performs citizens’ control of the police work.

Within its jurisdiction the Council evaluates the application of police powers in order to protect human rights and freedoms”⁴⁵

The Council has its own web site www.kontrolapolicije.me and makes its reports public via the same.

The **Internal Control Department** within the Police Directorate performs the following tasks: undertaking operative measures and actions aimed at detecting and combating all forms of criminal behavior of police officers (*especially the ones regarding corruption and human and citizens’ rights and freedoms*) and other offenses that are prosecuted ex officio; collecting data and evidence as well as conducting adequate checks; conducting regular and ad hoc control of the police organizational units’ work legitimacy; control of police authorization legitimacy; proceeding upon complaints and petitions from individuals and legal entities; proposing measures to eliminate illegal and unprofessional actions, conduct and behavior of police officers; monitoring of internal discipline and professional ethics; control the performance of counterintelligence protection of police and police officers by enforcing preventive safety measures, actions and resources; identification of structures, facilities, and other security interesting goals that may be the subject of research and attack; analyzing the quality of security measures and proposing measures for improvement of existing as well as introduction of new measures of security protection; control of the implementation of measures for classified information protection; improvement of methods in the field of counterintelligence protection, keeping proper records; preparation and analytical, informational and other materials; performing other control important for the legal work; performing other tasks.⁴⁶

Cases of inadequate reactions of police officers:

Case of tear gas bomb thrown during the IDAHO 2011 concert

Night before the International Day against Homophobia, May 16th 2011, NGO Juventas organized a concert of a Croatian band „Lollobrigida“. The concert was attended by approximately 600 persons, and represents the biggest event dedicated to the fight against homophobia in Montenegro so far. This event, happening on the roof top of the Cultural and Informational Centre „Budo Tomović“ in Podgorica, was invitations/tickets only, as well as secured by a private security service and a significant number of police officers.

⁴⁵ <http://kontrolapolicije.me/images/biblioteka/dokumenti/poslovnik.pdf>

⁴⁶ Work program of the Ministry of Internal Affairs for 2012, www.mup.gov.me

Twenty minutes before the concert end, i.e. around 23:30h, an unidentified person threw a tear gas bomb in the mass, in the near proximity of police officers. For a couple of minutes the concert was interrupted and then continued as planned. In the very place where the concert was held there were no records of people being injured, while the Institute for Emergency Medical Assistance made reports on people complaining about tear gas induced health problems. Immediately after the tear gas bomb was thrown, a group of young men flung a lit torch in front of the entrance of the same building where the concert was happening. According to the statements of the eyewitnesses, police officers who were securing the entrance told these persons to leave the area without taking any other necessary official measures within the given circumstances.

During the preparation of the event, organizers kept constant communication with the assigned representatives of the Police Directorate. This communication resulted in the following: 60 police officers were engaged to protect concert participants when coming to and leaving the concert by keeping constant supervision of the wider city centre around the concert venue, but also by having four police officers in uniforms, and nine police officers in civilian clothes⁴⁷.

Morning after the concert, i.e. on May 17th, Police Directorate issued a public announcement which attributed the organizers direct responsibility for the incident and stated that there was „no real life threatening occurrence“, there were no clear indications of who might have been the perpetrator(s), but also gave the assumption that someone from the people present at the concert threw the tear gas bomb. Quite opposite to this public announcement within the report made by the private security service one can find the information that the tear gas bomb was thrown from the roof top of the football stadium which is located just near the concert venue.

Concert organizers filed criminal complaints against the unidentified person(s) for creating the incident and enclosed material evidence that had in their possession. A day later, on May 18th, assigned officers within the Police Directorate gathered official information on the event from same persons and made official reports.

18 months after the complaint has been filed (present day included), the concert organizers have no official information given by the Police Directorate on measures and actions undertaken for the perpetrators to be identified and held responsible, on the course or results of the investigative processes, or even information on whether the Prosecutor's office qualified this criminal act.

Case of three men beaten in the center of Podgorica

In September 2012 three young men have been beaten due to their open support to LGBT population. Namely, the director and the actor in a video made to promote LGBT rights (*Mi smo dio ekipe* (We are part of the team)) and their friend have been attacked in the center of Podgorica. LGBT Forum Progress filed a complaint against the attackers for reasonably

⁴⁷ Public announcement given by NGO Juventas– May 18th 2011 / Public announcement by the Police Directorate

doubting that they committed multiple criminal offences: exposure to danger, injury, violation of equality and threat to security.

The three men attended a concert organized for the “Main Art Street” festival, happening within the Cultural Summer of Podgorica in the center of Podgorica. During the concert, a group of football fans calling themselves “the Barbarians” made a series of derogatory words and insults, but also lit a torch near one man’s head. It caused in three men feeling of anxiety, but they did everything to avoid conflict and incidents by being silent and avoiding adverse reactions

After midnight and after the concert finished the three men left, but later on attacked in one of the center streets not far away by the members of the named football fan club. In beating the three men, the attackers yelled that they will kill them and “kill all the fags”. Upon seeing one of the victims bleeding severely they ran away. The victims managed to call a taxi, check into the ER and notify the police. The ER medical staff noted their bodily injuries. The main eyewitness of the event was a journalist of the local television “Vijesti”, who during this whole time rejects to disclose the names of the attackers despite the fact that she is under the suspicion of knowing them personally (This television gave a public announcement in which they said the journalist is suspended and facing a disciplinary action and emphasized that recognition and protection of human rights, especially the rights of minorities, is one of the fundamental principles of their editorial policy)⁴⁸. Even if the police claims to know the identity of perpetrators all of them are still not apprehended.

An interesting fact in this case is that no police officer or private security worker was present during this public event which raises the question whether respective authorities did all in their power to ensure security to all concert attendants.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

- i. Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognize (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents ?*

Montenegrin Criminal Code doesn’t contain provisions defining “hate speech” and “hate crime”. As told before it defines defines two felonies within Article 159 (Infringement of equality) and Article 443 (Racial and other discrimination), which incriminate different

⁴⁸ For more information please see:

<http://www.vijesti.me/vijesti/marunovic-nijesu-uspjeli-da-nas-zastrase-clanak-91071>

<http://www.vijesti.me/vijesti/vujosevic-dijana-drobnjak-pokusava-da-izbjegne-sopstvenu-odgovornost-clanak-91159>

<http://www.vijesti.me/vijesti/jos-jedno-hapsenje-zbog-napada-marunovica-vujosevica-boskovica-clanak-91356>

forms of discrimination, among which discrimination based on sex or any other personal characteristic. Qualified form of a criminal offence Racial and other discrimination provides penalizing ones who perform prosecution of organizations or individuals for their equality advocacy work.

The Law on public peace and order also provides a fine or prison time for an individual that publicly humiliates another individual, threatens citizens' safety with his/her behaviour, causes citizens' disturbance and disapproval or acts impertinently in any other way. This also stands for the ones who publicly and rudely insult another, endanger citizens' safety, causes sense of endangerment or behaves in a most impertinent, shameless or abusive manner.

Other information provided by the grantee:

According to the information at our disposal⁴⁹, the Criminal Code imposes sanctions on instigation of national, race or religious hatred (Art. 370), i.e. promotion of race hatred or race discrimination (Art. 443, paragraph 3), but not on causing and instigating hatred against sexual minorities and transgender persons, which does not provide consistent application of constitutional prohibition of causing or instigating hatred on any grounds.

The Criminal Code imposes sanctions on maltreatment and treatment "in the manner that is humiliating" (Art. 166 a, Maltreatment) and causing severe pain or suffering, whether physical or mental "from some other motives grounded on any form of discrimination" (Art. 167, Torture).

Homophobia or transphobia – in the sense of hatred toward persons of homosexual orientation or transgender persons, does not constitute a motive mentioned among aggravating circumstances, although in the application of the Law it could be interpreted as a "base motive", representing a serious form of certain criminal offenses, such as, for instance, grave types of murder. Currently, the Ministry of Justice proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation, also regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A coalition of NGOs proposed qualified forms of criminal acts executed with a biased motivation in order to make it a firmer obligations for investigative bodies and courts to process it accordingly

The Law on Public Order and Peace imposes sanctions on breaching public order and peace by fines or imprisonment up to 60 days. **This Law also provides the following:**

Article 7

"Whoever insults another in a public place or practices insolent behavior, shall be imposed a fine ranging from 100 to 400 Euros or imprisonment for up to 30 days.

Whoever grossly insults another in a public place or otherwise behaves in a particularly brazen, obscene or offensive manner, shall be imposed a fine of 250 to 1000 Euros or imprisonment for up to 60 days."

⁴⁹No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

Article 8

“Whoever causes a feeling of vulnerability of another, threats to attack the life or body of another or a person close to him, shall be imposed a fine of 250 to 1500 Euros or imprisonment for up to 60 days.”

LGBT Forum Progress in their report estimates that judicial practice proves to be inconsistent, especially when related to regional offices for misdemeanors. Namely, in cases of verbal violence and insults directed towards LGBT persons, verdicts made imposed high fines up to 800 Euros or prison sentence of 10 to 15 days. On the other hand, in cases of physical abuse and endangerment of LGBT persons’ safety the decision implied probation sentence, fines out of 250 Euros or acquittals due to changes in legislation.

- ii. *Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

In a part called General rules on sentence determination and Article 42 Montenegrin Criminal Code proscribes that the perpetrator will be given a sentence in accordance to boundaries set up by the law. In respecting this the court also has the obligation to consider the purpose of sentencing, to take into account the sentence to be lower or higher, extenuating or aggravating circumstances and especially determine: level of guilt, actuations influencing the crime committed and severeness of violation of a protected good, conditions in which the crime has been committed, previous life of the perpetrator and his personal situation, his attitude after committing the crime, and especially his attitude towards the victim as well as other facts related to perpetrator’s personality. These rules refer to all perpetrators, among which perpetrators influenced by hate, actuations or prejudices in relation to sexual orientation and/or gender identity.

Other information provided by the grantee:

As mentioned above, homophobia or transphobia – in the sense of hatred toward persons of homosexual orientation or transgender persons, does not constitute a motive mentioned among aggravating circumstances, although in the application of the law it could be interpreted as a “base motive”, representing a serious form of certain criminal offenses, such as, for instance, grave types of murder. Also Ministry of Justice proposed amendments to the Criminal Code that would oblige the Court to take into account biased motivation, also regarding sexual orientation and gender identity, and in case of such, decide on a harsher penalty. A coalition of NGOs proposed qualified forms of criminal acts executed with a biased motivation in order to make it a firmer obligations for investigative bodies and courts to process it accordingly

However, there are no example which would show that homophobia would be interpreted as such in practice, or that it would be considered that an act motivated by homophobia would lead to “agitation of citizens”, which is, for instance, a condition for a qualified form and more severe punishment of a criminal act “endangering the safety” (Art. 168).

The initiative proposed by a group of NGOs implies the following:

1. Introducing hate crime

In order to ensure stringent punishment for perpetrators of crimes which occur in practice as the most common manifestations of crimes motivated by hate, we propose defining of qualified forms for the following crimes that have taken place as hate crimes: Light bodily injury (Article 152), Rape (Article 204), Robbery (Article 241), Destruction and damage to the property of another (Article 253), Coercion (Article 165), Compromising security (Article 168), Causing general danger (Article 327), Abuse (Article 166a) and torture (Article 167).

In addition, we propose that a murder committed as a hate crime should be considered as a Severe murder (Article 144) or a theft committed as a hate crime, a Severe theft (Article 240).

To prevent a recurrence of a long definition of a "crime committed out of hatred" in a number of articles of the law, we suggest that, under Article 142 of the Criminal Code "Definitions in this Code", after paragraph 30, a paragraph 31 is added, which reads:

"(31) Hate crime is any criminal offense committed out of hatred against any person because of its race, colour, sex, sexual orientation, gender identity, political or other opinion, language, religion, ethnicity, or national or social origin, property, birth, education, social status, age, health, disability or any other personal characteristic. "

2. Changes and amendments to the Article 443, Racial and other discrimination

NGOs propose for the Article 443, Racial and other discrimination, to prohibit the propagation of other forms of hatred and discrimination (based on sex, disability, gender identity, sexual orientation or other personal characteristics) in addition to the only one explicitly mentioned in this Article (racial).

3. Introducing violation of freedom of expression of sexual orientation and gender identity

According to the model of a criminal offence named Violation of freedom of expression of national or ethnic origin (Art. 160) and Violation of freedom of religion and the performance of religious rites (Art. 161) the Criminal Code should sanction violation of freedom of expression of sexual orientation and gender identity, i.e. compulsion to declare yourself on sexual orientation and/or gender identity (bearing in mind Art. 19 of the Law on prohibition of discrimination, which declares the rights and prescribes the ban, but does not provide for any sanctions for their violation)

By prescribing the offense of Violation of the freedom of expression of sexual orientation and gender identity, Criminal Code would provide penalties for violation of Article 19, paragraphs 2 and 3, of the Law on prohibition of discrimination, and show clear commitment of the Montenegrin authorities to ban discrimination against LGBT people.

4. Changes and amendments to the Article 159, Violation of equality

NGOs are of the opinion that sexual orientation and gender identity should be introduced as grounds for discrimination named in this Article.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?⁵⁰*

No. The definition of “hate crime” is not presented through the website of the Police Department.

Other information provided by the grantee:

Definition of “hate crime” still doesn’t exist in our legislation, but should be introduced soon in the Criminal Code throughout amendments to this Law as described in the text above.

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

At the level of the Police Department of Montenegro the educational programs are generalized and, when they are specialized for particular aspects, they are intended for a small number of police officers.

Judicial Training Centre of Montenegro, in cooperation with international organizations and non-governmental organizations organized a set of workshops having the subject of discrimination and human rights protection of the LGBT community, but also in relation to sex and gender. These workshops have been organized within the *Plan of education of state officials, judiciary and other independent institutions providing protection against discrimination*. All workshops and seminars have been attended by judges, prosecutors, counsellors and other judicial institution representatives. We will single out some of them:

May 5th and 6th 2011- Judicial Training Centre of Montenegro organized a workshop in Budva named “General legal regime of prohibition against discrimination” in Budva in cooperation with Ministry of Human and Minority Rights, OSCE Mission to Montenegro, Centre for Democracy and Human Rights.

⁵⁰e.g. through police websites or leaflets distributed in the community.

June 22nd and 23rd 2011- Judicial Training Centre of Montenegro organized a workshop in Budva named "Prohibition of LGBT community discrimination". This training included: *Practice of the European Court of Human Rights-discrimination of the LGBT community; Prohibition of discrimination of the LGBT community in Croatia; Practice of the European Court of Human Rights-all forms of discrimination; detailed study of three cases in front of European Court of Human Rights related to LGBT community.*

November 24th and 25th 2011- Judicial Training Centre of Montenegro organized a workshop in Budva named: "Prohibition of discrimination on the basis of sex/gender". Subject covered included: *Prohibition of discrimination on the basis of sex/gender-international standards; Prohibition of discrimination on the basis of sex/gender-European Convention of Human Rights, Article 14 and Protocol 12; Family violence- European Convention of Human Rights and its appliance in Montenegro-focus on discrimination based on sex i.e. gender; Trafficking-respective international standards related to the solution of the problem; Trafficking-legislation and practice in Montenegro; Position of women in Montenegro-Roma women, **LBT women** and women with disabilities*

March 22nd and 23rd 2012 – Judicial Training Centre of Montenegro organized a workshop in Budva named: "*Antidiscrimination legislation and international and European standards- comparative experiences*". The aim of this seminar was to improve the knowledge of judiciary in the area of antidiscrimination legislation of the Council of Europe and judicial practice of the European Court of Human Rights as well as protection mechanisms and problems in the implementation of antidiscrimination legislation in Montenegro.

May 27th to 30th 2011- Five police officers from Montenegro, along with their colleagues from Serbia, participated on a training related to the work with LGBT population. The training was held under the auspices of an academic conference "Justice in the Balkans-Equality for Sexual Minorities". International Council of the conference decided to give a reward "Friends of the Justice" to the Montenegrin Police Directorate, having in mind their professional conduct and cooperation during the first LGBT conference in Montenegro in October 2009.

June 22nd to 23rd 2011-Ministry for human and minority rights organized the second workshop on the subject of homophobia and discrimination of LGBT population with a special review of the practice in the region.

September 2nd to 5th 2011-the Government of Montenegro organized an international conference "*Towards Europe-Towards Equality*". The conference was dedicated to human rights with a special emphasis on the development of legislation, national policies aiming to improve LGBT human rights situation, fight against discrimination, antidiscrimination laws and policies as well as necessity of awareness rising of public and governmental structures on issues important for the LGBT community in Montenegro. During the conference trainings and seminars have been organized having the subject of law implementation, judiciary and human rights for judges, prosecutors, law implementers, human rights protectors and civil society.⁵¹

⁵¹ **Other information provided by the grantee:** No information, but photographs were posted on the web site of the Government: <http://www.gov.me/en/search/108060/International-Human-Rights-Conference-Toward-Europe-Toward-Equality-Photo.html>

Other information provided by the grantee:

With respect to all information provided above the Ministry of Justice and Human Rights hasn't provided us with the information on how many police officers, judges and prosecutors have been educated. We also can't come to conclusion on what is the actual percentage of these professionals trained in comparison to those who haven't received any training.

Reward "Friends of the Justice" given to the Montenegrin Police Directorate, for their professional conduct and cooperation during the first LGBT conference in Montenegro in October 2009 came in a quite inopportune moment i.e. just ten days after their unprofessional conduct and disregard of the incident which happened on May 16th 2011 (previously described under the section **A. "Hate crimes" and other hate-motivated incidents and heading Cases of inadequate reactions of police officers/Case of tear gas bomb thrown during the IDAHO 2011 concert**).

As Juventas was involved in the organization of the first Conference on LGBT rights in Montenegro and was a local partner for the implementation of the project "Justice in Balkans-equality for sexual minorities", we got the opportunity to be a part of training for police officers held in Toronto, Canada and Los Angeles, California which was in one part supported by the Police Directorate and Ministry of Human Rights (Now: Ministry of Justice and Human Rights).

"LGBT sensitivity training" aimed to educate police officers from Montenegro in issues concerning persons of different sexual orientation and gender identity. The first part of the training was held in Toronto, Canada. The training was given by Toronto police and especially liaison officer in charge for the relationship between LGBT community and the police. Participants had the possibility to find out more about a number of topics related to LGBT population:

- **Sexuality, Homophobia, Heterosexism**-within this part the participants had the opportunity to meet the terminology, but also definitions which represent the basics of knowledge on problems that LGBT persons encounter.
- **Education and awareness of the police**- the second subject considered legislation and regulations in force in Canada and state of Ontario, which are related to public policy of the police towards people of different sexual orientation and gender identity. Also, Toronto police officers shared all experiences which concerned phases of police development and principles of education based on tolerance and respecting of differences.
- **Hate speech and hate crime**-This part discussed definitions and statistic concerning police response regarding hate speech and hate crime, categories still undefined by our law.
- **RHVP (Report Homophobic Violence, Period!)**-The participants also had the opportunity to meet the program which represents a very successful form of cooperation between the police and LGBT community. Programs name is „Report Homophobic Violence, Period!“ and it focuses on education and awareness of youth between 13 and 25 years old. RHVP is being implemented on the initiative of Toronto police and LGBT community.
- **Transgender issues**-this subject considered all issues of transgender persons within the community and their relationship with police and general population.

All training participants also had the opportunity to be present and participate during the Pride Parade in Toronto that gathered two and a half million people.

Upon finishing the first part of LGBT sensitivity training in Toronto further education continued in Los Angeles. In America the host was Williams Institute, and participants visited UCLA, Gay and Lesbian Center, West Hollywood Sheriff's Department, Los Angeles Police Department (LAPD), but also LA County Jail.

In all institutions mentioned police officers and Juventas' representative had the possibility to meet with not only staff and management but most importantly the work they do. For example within the Gay and Lesbian Center which is considered the biggest in the world the participants of LGBT sensitivity training visited several departments like the research center where perennial researches related ARV therapy have been done.

It is important to mention that in Los Angeles training participants had practical work organized by West Hollywood Sheriff's Department which implied day and night patrol activities. All lectures were done in police premises where, beside police officers, LGBT activists shared their experience and knowledge in working with the police.

Present existence of the liaison officer for the LGBT community in the police is a direct result of this training as one of police officers participating was chosen to have this responsibility.

In 2010, 2011 and 2012 Juventas organized more sensitivity trainings attended by 70 judiciary and police officers. Topics covered the information on sexual orientation and gender identity, identities and sexual orientation as a human right, existing legal framework for protection of the LGBT people in Montenegro, professional ethics and standards in the work with LGBT people. These trainings primarily aimed at raising level of knowledge and capacity of professionals working in the area of rule of law.

In 2012 police officers' training have also been done by the Centre for Civic Education and LGBT Forum Progress in cooperation with Human Recourses Management Authority.⁵²

Since October 2012 LGBT Forum Progress along with the institution of Ombudsman (Protector of human rights and freedoms) and Human Recourses Management Authority perform continuing education of police and state officials two times per month in three different Montenegrin regions (southern, central and northern). Good thing about these trainings is that now they represent a part of the official educational program of Human Recourses Management Authority for years 2012 and 2013. According to the estimation of

⁵² "The main functions i.e. competencies of this state authority are aimed at management and development of human resources in the Montenegrin state administration authorities, as well as the maintenance of a personnel information system for human resources management and development in these authorities. Considering the above mentioned principal functions of the Human Resources Management Authority and the objectives of the public administration reform of this country, which are defined by the **Public Administration Reform Strategy in Montenegro**, it can be said that the general mission of the Human Resources Management Authority is the improvement and promotion of the human resources management system in state authorities, as well as an increase of professional capacity of their personnel. A higher level of qualification of the personnel is an essential prerequisite for our state administration authorities to effectively deal with all challenges that await this country in its efforts to improve the living and working conditions of its citizens and to join the contemporary European and global economic and developmental trends.

Recognizing the significance of its function, the Human Resources Management Authority set as its most important task the provision of conditions for modern human resources management in state authorities and their permanent development in accordance with the principal European standards in this domain." (**More on Human Rights Management Authority can be found by following the link:** <http://www.uzk.co.me/>)

Forum Progress about 150 persons received education on LGBT rights and this number continues to grow.

Furthermore, it is important to note that Montenegrin NGOs issued a statement at the time of Conference "*Towards Europe-Towards Equality*" (we give the statement in full length):

NGOs do not participate at the conference "Towards Europe - Towards Equality"

The Government of Montenegro organizes an international conference and training entitled "Towards Europe - Towards Equality" within the period between 2nd to 5th September this year. The undersigned organizations will not take part at this conference. In this way, we further protest against the relation of the Government towards domestic civil society and the lack of track record in improvement of the situation of LGBT population.

In recent years, civil society and independent media have been extremely committed to LGBT rights. The Government's decision to ignore the civil sector when designing policies or activities aiming to improve the situation of LGBT persons raised additional concerns. In particular, we are taking into account that the Government has not adopted the initiated Action Plan of Fight against homophobia developed by the Coalition "Together for LGBT Rights", in whose drafting representatives of its ministries also took part. Action Plan, proposed in April this year, is fully in compliance with the Recommendation CM / Rec (2010) 5 of the Committee of Ministers of the Council of Europe to the member states on measures to combat discrimination based on sexual orientation and gender identity. Instead of initiating the work on implementing all or at least some of the proposed measures, the Government convenes a three day long conference in which important LGBT related issues are to be re-discussed instead of respective actions already undertaken.

We remind that during this year NGOs have organized several international and national events in which the situation of LGBT population was carefully considered and the position of the LGBT persons assessed. These events addressed to the accurate and constructive recommendations that the Government has not seriously considered.

Resistance of the Government to provide equal opportunities for the discriminated minority in our society is reflected in the fact that the acknowledgement of many of these recommendations did not require additional resources, but took a simple expression of political will, which lacked.

During this year, it was not possible to single out visible results of the state in establishing a sustainable antidiscrimination policy and practice aiming to improve human rights of LGBT persons. On the other hand, there are numerous examples in which the Government failed to support argument based needs and requirements. We remind that until this moment the Government has not adopted any strategic decision aimed at improving the position of LGBT population, despite the fact that several solution frameworks were offered on multiple occasions. The Government refused to appoint a representative from an appropriate political level in the Organizing Committee of the Pride Parade which should have happened and address the participants of Pride after the walk. Police did not identify person/persons who endangered 600 participants of the organized concert marking the International Day Against Homophobia. Prosecutor's Office has not prosecuted numerous examples of violence against

LGBT population and activists. For already a year legal proceedings against discrimination are pending even though the law treats these as priority.

Not a single textbook, although new edition is developed this year, has any sentence about the existence of LGBT rights and LGBT persons. There was also no support to a number of LGBT initiatives and programmes.

Minister for Human and Minority Rights continues to be a part of the Government despite repeated occasions in which he refused to affirm sexual minorities, contrary to the standards and recommendations of the Council of Europe and the European Union.

Our decision not to participate at this conference, and previously at the trainings organized by the Ministry of Human and Minority Rights, which by our opinion was prepared according to the principle of discrimination of prominent experts and activists for LGBT rights in Montenegro, is nothing but a reminder that the government needs to fulfil the obligations and promises to LGBT population, domestic and international standards and urge specific acts that demonstrate the readiness of the real improvement of difficult position of LGBT persons in Montenegro.

We note that the Conference and training represent the third phase of Government's operation for obtaining the positive opinion from the EC, upon the formation of the Council for Fight against Discrimination and appointment of special advisers against discrimination. It is obvious that in just one month, the Government is trying to demonstrate the political will before the international community without real concern for the discriminated group followed by a total absence of communication with them.

Our strong and intensive cooperation will be possible after the Government does the following:

- 1. Replaces the Minister of Human and Minority Rights Ferhat Dinosa;*
- 2. Adopts the Action plan against homophobia on the basis of the draft created by the coalition "Together for LGBT Rights" and provide the conditions necessary for its implementation in cooperation with the NGO sector;*
- 3. Provides political support for the organization of "Pride Parade" and meets the requirements for its organization (ensuring participation in the Pride and public speech of the Minister, Deputy Prime Minister or Prime Minister);*
- 4. Establishes institutional cooperation with NGOs involved in protecting the rights of LGBT people in Montenegro and provides assistance to their work;*
- 5. Prosecutes and punishes all examples of violence and hatred against LGBT population and disruption of social life of the LGBT community.*

Under these conditions, we publicly reaffirm our commitment to provide full support and partnership with the Government. The undersigned NGOs want principle based, effective and strategic-oriented cooperation, and refuse to help ignorance of facts, postponing of the decision and covering up the actual state of affairs for the sake of getting the date of negotiations.

Statement signed by:

For the "LGBT Forum Progress" - Zdravko Cimbaljevic, Executive Director

For "Juventas" - Ivana Vujovic, President of the Board of Directors

For the "Centre for Civic Education" - Daliborka Uljarevic, Executive Director
For the "Montenegrin Women's Lobby" - Aida Petrovic, Coordinator
For the SOS Hotline for Women and Children Victims of Violence Podgorica - Biljana Zekovic, Executive Director
For the " Human Rights Action" - Tea Gorjanc Prelevic, Executive Director
For the "Centre for Anti-discrimination" EQUISTA " - Milan Saranovic, Director
For "Expeditio" Kotor - Biljana Gligoric, Executive Director
For the "Centre for Development of NGOs" - Ana Novakovic, Executive Director
For the "Shelter" - Ljiljana Raicevic, Director
For the "Monitoring Center" - Mr. Zlatko Vujovic, President of the Board of Directors
For the SOS Hotline for Women and Children Victims of Violence Niksic – Nada Koprivica, Coordinator
For the "Institute Alternative" - Stevo Muk, President of the Board of Directors
For "Center for women and peace education ANIMA" Kotor – Ljupka Kovacevic, Coordinator
For the "European Movement in Montenegro" - Momcilo Radulovic, Secretary General
For the "Montenegrin Alternative Culture" - Maja Bakic, Executive Director
For the "Roma Scholarship Foundation – Institute of Social Inclusion" - Biljana Alkovic, Director
For the "Info Youth Montenegro", Milica Žigić, Director
For the „Forum MNE“ – Elvira Hadžibegović – Bubanja, Director
For the „Prima“ – Aida Perović, Executive Director
For the "Libertask", Neda Sindik, Director

After this boycott, the Government of Montenegro took the draft of the Action Plan of Fight against Homophobia into consideration and now it represents a very important document that will hopefully be adopted by the end of the year 2012. The Government formed three working groups previously mentioned: Working Group for elaboration of a program document for combating homophobia with Action Plan⁵³, Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro, Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights.

Ferhat Dinsa stopped performing the function of the Minister for Human and Minority Rights and has been assigned the position of Montenegrin Ambassador to Albania.

- iii. *Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

Partly. Educational program and Codes of conduct for police generally ensure that LGBT persons feel safe while reporting hate crimes, but they do not provide a thorough security since they are insufficient. However, a police officer shall respect fundamental human rights and freedoms of all citizens in carrying out his/her duties, regardless of differences in nationality, race, color of skin, religion, sex, education, social status or any other personal characteristic or particularity.

⁵³ **Other information provided by the grantee:** Hereinafter this document is named *National Strategy of Fight Against Homophobia*

Since 2006, when the reform of the police education started and especially since the Police Academy has been established (2006) until today, the Academy put an emphasis on human rights and gender equality in the process of defining educational programs.

Educational program for the profession of a police officer, published in the Official Gazette of Montenegro no. 32/2012, Educational program for the profession of a prison guard, published in the Official Gazette no. 1/2011, as well as previous programs dating from 2006, were written in a spirit of human rights and gender equality respect. The teaching program provides separate subjects like "Ethics and Human Rights" (54 classes), "Tactical communications" (36 classes), "Prisons and Human Rights" (54 classes) and "Ethics and Code of Conduct" (30 classes). All this includes LGBT persons, towards whom, all police officers and prison guards should behave in a non discriminatory way.

Beside the basic police education, in cooperation with the Police Directorate and many other international organizations dealing with education of police officers, expert and specialized training in the area of human rights, ethics, codes, etc. has been realized in continuity for many years now. Some topics covered are: Police and human rights- the influence of family violence on a police job; Technique of performing an informative conversation; Freedom of assembly and association; Ethics, code and anticorruption measures; Human rights with a special emphasis on ECHR Article 14 (ethnic minorities); Police work from the human rights perspective.

Representatives of Council of Europe also took active participation in organization and implementation of different educative specialized programmes from the beginning of the police education reform and have been involved in all Police Academy's activities ever since.

Other information provided by the grantee:

It is important to note that all previously mentioned trainings implemented by Juventas put a special emphasis on police officers' and judiciary's conduct in respect to non-discriminatory and respectful manner towards LGBT persons.

- iv. *Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

No. Units within the police are not specifically tasked with investigating crimes and incidents linked to sexual orientation and gender identity.

- v. *Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

Yes. Within the Police Department of Montenegro there is a liaison officer in charge for establishing and maintaining contacts with LGBT persons, as well as nominated police officers in charge of this as well.

Other information provided by the grantee:

It is a good thing that such an institute exists in Montenegro, but in order to work in a proper manner the LGBT community in Montenegro should be widely introduced to it. There are no promotional activities that could inform not only LGBT, but also general public on such a service enabled.

- vi. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

Yes. There is a system of submitting anonymous complaints, but citizens rarely use it according to the current statistics of the Police Department of Montenegro. Pursuant to the Law on prohibition of discrimination, offenses are collected and records are being taken on them.

Other information provided by the grantee:

Juventas developed a system of on line complaints related to discrimination, hate speech, hate crime and other hate motivated incidents. It was developed within the framework of the project "Step up"⁵⁴ supported by ILGA-Europe. This on line system, called "Report violence, not to happen again!" (= "Prijavi nasilje, da se ne ponovi!")⁵⁵, primarily communicates with the LGBT community in Montenegro and provides easy access to useful information related to discrimination, hate crime and other hate motivated incidents. What is most important, it gives a person the opportunity to provide information on a certain incident through the completion of an easy form containing a set of important questions.⁵⁶ Reporting is anonymous, unless the person reporting desires to disclose its real name. On the other hand, Juventas is obliged not to reveal this information to a third party.

Case of inadequate acting by police officers related to reporting of a case:

Physical violence in the city centre after the IDAHO 2011 concert

Just after the end of the concert organized for the International Day Against Homophobia, two persons (male and female) from Budva, concert participants, were physically attacked in Njegoseva street in Podgorica by five unidentified men from 25 to 30 years old.

According to victim's statements given to Juventas team in charge for documenting HR violation cases the assault happened ten minutes after midnight. The perpetrators first attacked the female person by hitting her with the fist in the neck from behind, after which she fell on the ground and received hits in the area of shoulders and chest. After she got up she called her unaware of the situation friend standing a couple of meters from her for help. In trying to help her, he received multiple hits in the head and left upper arm. While hitting both victims, unidentified men shouted "You came here to spread the disease!" and "Fags!" which clearly indicated their bias motive related to presumed sexual orientation of the victims. Together victims succeeded in escaping and sought shelter in the nearest café.

⁵⁴For more information on the project please see:

http://www.ilga-europe.org/home/how_we_work/developing/projects/step_up

⁵⁵For more information please see: <http://www.montenegro-gay.me/component/content/article/33/585.html>

⁵⁶For taking a look at the documentation form, please see: http://www.montenegro-gay.me/index.php?option=com_chronocontact&chronoforname=Dokumentovanje_fizickog_nasilja_nad_LGBTIQ_osoba

After telling the owner what happened, he called the police, after which two uniformed officers came and briefly interviewed the victims and guests present in the café. According to the statements of the victims, police officers haven't made official record during the interview, except taking ID pieces of information. *On victims insisting to take all possible immediate measures, police officers told that the case cannot be reported right away and that they should wait until tomorrow without giving precise or any details on where to report, to whom, and why is not possible to do it without delay.* At first the same police officers refused, and then after some time spent in persuasion, accepted to escort the victims to their car just in case they do not suffer any more attacks. The victims possess no medical records on their injuries.

Even beside victims wanting to report the case to the police as described, the case remained reported only to Juventas due to mistrust caused by police officers' illustrated behavior.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

- i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*
- ii. Are there effective measures to minimize the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*
- iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*
- iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

We do not have available information which could provide an insight to the situation concerning these questions.

We did not manage to obtain answers to these questions from the Ministry of Justice and Human Rights.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of

sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

- i. *Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

Yes. Research on hostile and negative attitudes of LGBT persons constitutes a part of the research entitled “RESEARCH ON DISCRIMINATION OF MINORITY POPULATION AND MARGINALIZED SOCIAL GROUPS” conducted by the NGO CEDEM for the needs of the Ministry of Human Rights. The Ministry initiated and financed this research in order to obtain a precise picture of the situation in the Montenegrin society concerning attitude toward the most vulnerable social groups. This was the pre-requisite to plan educational and promotional activities which will be directed to suppress negative attitudes and behavior.

Other information provided by the grantee:

The research of discrimination of minority population and marginalized social groups carried out by CEDEM⁵⁷ showed that 57% of citizens in Montenegro would not like to have a homosexual for a neighbor; 49.3% of the examinees think that discrimination toward same-sex oriented persons is pronounced, while 46.8% consider difficult being homosexual in Montenegro. At the same time, 44.3% of the examinees think that homosexuals do not have equal opportunities for employment, 21.2% that homosexuals are not treated equally in terms of receiving health care, while 22.2% think that homosexuals are not treated equally in lawsuits. This research showed that 61.7% of citizens do not support organizing Gay Pride, while 11.2% of them give their support to Gay Pride.

The survey “Homophobia in Montenegro”⁵⁸ was conducted in July 2010 by the Center for Monitoring – CEMI for the needs of Juventas, on a representative sample of 1049 examinees older than 18. It pointed out that homosexuality, in the eyes of Montenegrin citizens, is a sick, unnatural but also an immoral phenomenon. Approximately 2 thirds of the citizens agree on this homophobic attitude. Homosexuality is a disease for 68.5% of population, 63.9% consider it immoral. According to 77.7% of the examined citizens, homosexuality is and should remain a private matter of an individual, a not a subject of public policy; 68.7% think that homosexuality has existed since the beginning of time; 28% of population thinks that homosexual persons have right to freely and publicly express their sexuality, and 61.3% believe that they do not; 39.5% think that there should be places which would be public and accessible to homosexuals. 68.4% think that verbal violence toward homosexuals is unjustified, while 12% of population thinks that physical violence is completely justified. More than 80% of population thinks that LGBT persons should not be allowed to have marriage and adopt children. One person out of five knows an LGBT person.

⁵⁷ Research on discrimination of minority population and marginalized social groups, CEDEM, June 2011

⁵⁸ Research “Homophobia in Montenegro”, NGO Juventas, implementer: Center for Monitoring– CEMI, July 2010 (<http://www.montenegro-gay.me/files/publikacije/Knjiga.%20Ni%20manje%20ni%20vise!%20Ista%20prava%20za%20sve..pdf>)

A slight decrease of homophobia in Montenegro was noticed in February 2012, when a public opinion research was presented, conducted by the Center for Civic Education (CGO) and the LGBT Forum Progress⁵⁹ about tendencies of Montenegrin citizens to a discriminating behavior, primarily homophobia. This research showed that prejudices and negative attitudes toward LGBT population are more frequent in elderly persons, those having completed lower levels of education, living in the North-West and in rural areas of Montenegro. In other words, younger, urban, higher educated people and women turn out to be more tolerant.

The first association that LGBT people evoke is positive for 22.4%, neutral for 29.7% and negative for 47.8% of citizens. The research showed that 17% of population denies the existence of persons with homosexual orientation in Montenegro.

The fact that 60% of citizens consider homosexuality as a disease is very upsetting, although a progress is noticed since this figure was higher in previous polls, so it can be concluded that the level of homophobia in Montenegro is decreasing.

The results have shown that split attitudes toward homosexuals are reflected by the fact that 52% of citizens agree with the statement that LGBT persons have right to publicly express their sexuality, while 45% are against. Citizens have not displayed considerable differences when it comes to the feeling of threat caused by public expression of sexuality by two men or two women: the threat is caused by two men for 36% of population, and two women for 36%.

In spite of wide-spread prejudices and potential for discriminatory behavior, the fact that a very small percentage of citizens approve of verbal violence – 11%, and physical violence – 7% of citizens, is encouraging.

The research “European Values for Young People”⁶⁰, conducted for the needs for Juventas by the Center for Monitoring – CEMI, carried out in November 2011 among 3593 high-school students of the first three years coming from 32 high-schools in Montenegro showed data that cause concern when it comes to the level of homophobia among high-school students. 53% of high-school students do not agree with the statement that homosexual persons have full right to their sexual orientation, while 43% think that the State should work on suppressing homosexuality. The percentage of those who think that homosexuality is a disease is the same. For 43% of Montenegrin high-school students, sexual orientation is very important when making friends.

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

A survey on attitudes of citizens toward the most vulnerable social groups was conducted and their results were published in May 2011. These results were the starting point for further activities of the Ministry of Human Rights (now Ministry of Justice and Human Rights) in the field of implementation of the Law on Prohibition of Discrimination, bearing

⁵⁹ Research “Attitudes on discrimination and LGBT”, Center for Civic Education (CGO) and LGBT Forum Progress, February 2012 (<http://media.lgbtprogress.me/2012/02/Stavovi-o-LGBT-u-Crnoj-Gori.pdf>)

⁶⁰ Research “European Values for Young People”, NGO Juventas, implementer: Center for Monitoring – CEMI, November 2011 (<http://www.montenegro-gay.me/component/content/article/1-crna-gora/752-visok-nivo-homofobije-medju-mladima.html>)

in mind that the subject of the survey was discrimination toward LGBT population, persons with disabilities, Roma population, minorities and women.

The Work plan for the next year of the Ministry of Justice and Human Rights envisages re-conducting of such a survey in order to gain more data on possible changes with respect to discrimination of the most vulnerable social groups.

- iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

Pursuant to Article 33 of Law on prohibition of discrimination (“Official Gazette of Montenegro“, No. 46/10), the Ministry of Justice and Human Rights elaborated Guidelines on contents and methods of keeping record on cases of reported discrimination, which means that the state authorities and institutions coming in touch with cases of discrimination (courts, inspection services, authorities dealing with offenses), are obliged to keep precise records on such cases and submit them to the Protector of human rights and freedoms. In this way, the record files become an integral part of his/her Special Report on discrimination in Montenegro, submitted by the Protector to the Parliament of Montenegro. Guidelines have been published on 6th of May 2011 and authorities mentioned have been obliged to keep records on the cases of discrimination since 14 May. Apart from being a unique database of discrimination cases, these records make it possible for the Protector of human rights and freedoms to gain an immediate access to the data, since the records are kept electronically. Thus, discrimination toward LGBT persons becomes visible and transparent.

The Law clearly indicates offenses against which sanctions are imposed by this Law, considering that these offenses in exercising certain rights are defined by other laws, and criminal responsibilities are defined by criminal legislation.

B. “Hate speech” ⁶¹

- 6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

- i. *Do legislative measures penalizing “hate speech” on certain grounds exist? Do these measures penalize (a) homophobic and (b) transphobic “hate speech”?*

Montenegrin legislation does not know of a separate felony named “hate crime” and “hate speech”. Montenegrin Criminal Code defines two felonies within Article 159 (Infringement

⁶¹See Explanatory Memorandum for definition of “hate speech”

of equality) and Article 443 (Racial and other discrimination), which incriminate different forms of discrimination, among which discrimination based on sex or any other personal characteristic. Qualified form of a felony named *Racial and other discrimination* provides punishment of the one who performs prosecution of organizations or individuals for their equality for all activism.

Other information provided by the grantee:

Hate speech against LGBT persons (on grounds of sexual orientation and gender identity) is not explicitly prohibited.

According to the information at our disposal⁶², the Criminal Code imposes sanctions on instigation of national, race or religious hatred (Art. 370), i.e. promotion of race hatred or race discrimination (Art. 443, paragraph 3), but not on causing and instigating hatred against sexual minorities and transgender persons, which does not provide consistent application of constitutional prohibition of causing or instigating hatred on any grounds.

It is important to mention that the NGOs' initiative for amendments of the Criminal Code submitted to the Ministry of Justice implies amending of the Article 443, Racial and other discrimination in a way it prohibits the propagation of other forms of hatred and discrimination (based on sex, disability, gender identity, sexual orientation or other personal characteristics) in addition to the only one explicitly mentioned in this Article (racial).

The Law on Public Order and Peace imposes sanctions on breaching public order and peace by fines or imprisonment up to 60 days. **This Law also provides the following:**

Article 7

"Whoever insults another in a public place or practices insolent behavior, shall be imposed a fine ranging from 100 to 400 Euros or imprisonment for up to 30 days.

Whoever grossly insults another in a public place or otherwise behaves in a particularly brazen, obscene or offensive manner, shall be imposed a fine of 250 to 1000 Euros or imprisonment for up to 60 days."

Article 8

"Whoever causes a feeling of vulnerability of another, threats to attack the life or body of another or a person close to him, shall be imposed a fine of 250 to 1500 Euros or imprisonment for up to 60 days."

Cases of hate speech against LGBT persons by the state officials:

Hate speech of Metropolitan of the Metropolitanate of Montenegro and the Littoral of the Serbian Orthodox Church Amfilohije Radović

Metropolitan of the Metropolitanate of Montenegro and the Littoral of the Serbian Orthodox Church, Amfilohije Radović, known from before for his hate speech and

⁶²No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

spreading intolerance directed to (but not only) LGBT persons in Montenegro and Serbia, continued to openly spread hatred and intolerance during 2011.

Upon the conclusion of Gay Pride in Belgrade in 2010, Radović was using hate and intolerance speech during church service on the peninsula of Luštica, directed to LGBT persons who participated on the Gay pride, saying that:

„There, we have witnessed the stench poisoning and contaminating the capital of Belgrade, even more horrible than uranium. The biggest stench of Sodom, put on a divine pedestal by this modern civilization. This stench has polluted Belgrade, the city of the Holy Virgin Mary. Belgrade was hers throughout centuries, Her, who is chaste and immaculate, and the purpose of its existence was to be the city of Her who gave birth to Jesus Christ, our God, a christian city. And there, for the sake of some human rights, it was polluted yesterday. And you see, one violence, the violence of those perverse people deprived of God cause another violence. Now they are wondering whose fault it is and call these children hooligans. And those who allowed Belgrade to be contaminated by this stench are not wondering if they were the ones who contributed to this by letting that pestilence, that plague of Sodom to infect Belgrade, the same way it infected other European cities.“

In response to the hate speech and spreading intolerance, the Commissioner for Protection of Equality of Serbia, Nevenka Petrušić, determined in March 2011 that the Metropolitan has committed discrimination on grounds of sexual orientation and addressed a recommendation for him to publicly apologize to the participants of the Belgrade Gay Pride for giving a speech which breached the Serbian Law on Prohibition of Discrimination.

Radović declined to apologize and re-expressed his revised attitude in the media, referring to the fact that he has Montenegrin citizenship, although the Law on prohibition of discrimination of Serbia covers also persons not possessing Serbian citizenship who have committed discrimination toward citizens of Serbia.⁶³

At the time of using hate speech and spreading intolerance toward LGBT persons who participated on the Belgrade Gay Pride, the old Law on the Protector of Human Rights and Freedoms was in force in Montenegro which did not grant this Institution competences to react to this case, although Radović used hate speech in the territory of Montenegro, being its citizen.

Radović continued to spread intolerance and use hate speech toward LGBT persons during his sermon following a service in the Monastery of Cetinje, just before the announcement of the Belgrade Gay Pride 2011, calling it a “parade of shame“. On that occasion, Radović stated:

“The Word is from God, and the Word is the Truth to the man on Earth: ‘Be fruitful and increase in number; fill the earth’. This blessing is not intended for human kind only, but also for every plant.” He said that the man cultivates a plant for it to yield fruit, and every tree that does not bear good fruit “is cut down and thrown into the fire; so is the man, and every human being”⁶⁴.

⁶³Pobjeda, Society, 8 March 2011 – Amfilohije also against Serbia

⁶⁴ <http://www.cafemontenegro.com/index.php?group=22&news=201758>

On the same occasion, he also said:

“...A so-called Gay pride (=parade of pride) is being prepared in Belgrade today, and the Patriarch Irinej was right to have named it “the parade of shame”. Why “shame”? Because in using natural forces in that way, the man makes those divine gifts which are a part of him senseless”⁶⁵.

A lawsuit was initiated against Radović in 2011 for hate speech, but not in relation to discrimination on grounds of sexual orientation and gender identity. It was stated in the charge that his hate speech insulted *national and religious feelings of citizens* during a speech that he made on the occasion of setting a church made of tin on the mountain of Rumija above the city of Bar, when on Christmas Eve, he cursed the one who would dare to demolish the Holy Trinity Church on Rumija saying: „May God demolish him and his descendants, may the Cross be his judge“. **Prosecutor’s office reacted in case of his hate speech related to ethnicity** i.e. in a case when the Metropolitan “cursed and insulted citizens’ national feelings. “Judge of the Court for misdemeanors Larisa Begovic pronounced a judicial admonition to the Metropolitan for his hate speech in the period between January 6th 2011 and January 18th 2012, stating that the admonition will achieve the purpose of punishment.”⁶⁶ We should emphasize that the Metropolitan didn’t attend the trial, and his attorney left the court room before the verdict has been made stating that the offender and his defense has been denied the right to fair and lawful trial. **Such an act by the Prosecutor’s office showed inconsistency in practice related to the official reaction to public hate speech.**

The case of Slobodan Radonjić

Slobodan Radonjić, university professor, in a statement given to the daily newspaper „Dan“ in the text „The Parade of Deriding Montenegrin Pride“ published on 9 March 2011, openly used hate speech and spread intolerance toward LGBT persons in Montenegro, implying that homosexuality is an abnormal consequence of inadequate upbringing and education in family, i.e. school, and a distorted biological development. In this text, Radonjić openly called homosexuality a disease which is to be treated in different ways.

He called the organization of the Gay Pride in Podgorica, announced at that time, a “derision to the traditional Montenegrin pride“, urged mothers not to let their children to watch television on that day and said that general goals of family upbringing and school education should be the following: “indicating biological aspects of sexual relations, expressions and problems of homosexuality, developing a correct attitude toward relations of sexes, in order to prevent sexual abnormality and influence on offering young people healthy entertainment and soul food, where adults should be providing good examples“, explaining that a correct biological development leads to heterosexuality, while the incorrect development could be considered as one of basic causes of homosexuality.

Radonjić proceeded:

⁶⁵ Daily Newspaper Vijesti, Society, 3 October 2011 – “Zajednički ćemo da izaberemo pravi trenutak” (We will choose the right moment together)

⁶⁶ For reading full article please follow the link:

<http://www.vijesti.me/vijesti/amfilohije-govor-mrznje-dobio-opomenu-clanak-101148>

“Causes of manifestation of certain forms of homosexuality can be sought in improper upbringing (forbidding socialization or creating repulsion from the opposite sex), and less in living conditions (boarding-schools, army barracks, prisons, sport collective, ships). Then, why do we promote homosexuality in front of children? Why do we not look for causes of homosexuality and an adequate method of medical treatment? Not all methods of treatment can be applied to all homosexuals. Why not offer homosexuals help to break free from revolt, loneliness and find the possibility of living a beautiful natural and normal life? Homosexuality is a rare disease here or a vice or it is concealed. In the West, it is a real epidemic, so why should we conceal our pride? The participants of the “parade” have no addresses and they should be well protected, because one’s pride is to be protected and cared for. Alright, it is democratic to screen all of them, so that we know who they are and who is our ‘pride’”⁶⁷.

After publishing these views, the non-governmental organizations “LGBT Forum Progres” and the Center for anti-discrimination “Ekvista” filed a charge to the Basic Court in Podgorica against Radonjić for discrimination. The plaintiffs suggested that the competent court initiate emergency procedures and pronounce a sentence which will reflect violation of prohibition of discrimination on grounds of sexual orientation, preventing the accused of re-committing discrimination and oblige him to publicly apologize to all Montenegrin citizens of homosexual orientation in the daily newspaper “Dan”, within 15 days from the pronouncement of the sentence⁶⁸.

In spite of the clear facts mentioned in the text, Radonjić declared, in response to the charge, that his “views are not contradictory to any provision of the Resolution adopted by the United Nations Human Rights Council” and that he does not think that he has committed discrimination, as well as that “the statement mentioned in the charge, saying that I called homosexuality a disease, is false, because when the text is correctly interpreted, it can be concluded that this phenomenon was differently interpreted through the development of science and I mention, from the scientific point of view, some of the possible causes of homosexuality”⁶⁹.

The Podgorica Basic Court judge Dijana Radulović, in charge of this case, decided in April 2012 that she pronounced this charge withdrawn. The reason to such a decision was found in the fact that the director of the organization LGBT Forum Progress, which pressed charges against Radonjić, was two minutes late for the scheduled trial. The announcement to the public made by the organization LGBT Forum Progress on the occasion of such an action by the judge states that during trial Cimbaljević was not protected from the charged and the audience, “(Cimbaljević) being forced to take in his hands the copies of old textbooks instructing Montenegro that homosexuality is a disease”.

Graffiti containing homophobic messages in Podgorica:

⁶⁷ Dan, *Povodi (Causes)*, 9 May 2011. – “Parada ruganja Crnogorskom ponosu” (The parade of of Deriding Montenegrin Pride)

⁶⁸<http://www.portalanalitika.me/drustvo/vijesti/26429-lgbt-forum-progres-i-ekvista-tuileslobodana-radonjia.html>

⁶⁹ Dan, *Hronika (Chronicle)*, 11 December 201. – “Tužilac nije primio poziv” (The plaintiff did not receive subpoena)

In October 22nd 2011, the NGO Juventas filed a charge to the Supreme State Prosecutor⁷⁰ and Communal Police of Podgorica⁷¹ against unknown persons due to a justified suspicion that on the territory of the city, on different locations, they wrote messages containing hatred with the sole motive of insulting, humiliating, physical persecution and causing psychological pains to LGBT persons in Montenegro in June, July and September on the façades of buildings. Material evidence was enclosed to the charge – 14 photographs of the graffiti with homophobic messages (among which also those inciting physical destruction of LGBT persons), and the locations of the buildings where the graffiti were written. The Communal Police of Podgorica ordered removal of the graffiti and the majority of owners proceeded accordingly and repainted the buildings.

There is still no available information that the Supreme State Prosecutor has dealt with this case, i.e. considered the charge.

Graffiti containing homophobic messages in Danilovgrad

One day after the international conference on LGBT rights was organized by the Government of Montenegro, boycotted by 27 national non-governmental organizations, in September 2011, the graffiti “Smrt pederima! Za zdravu porodicu” (Death to faggots! For a healthy family!) was written in this city on the building of Pensioners’ Association. According to the Independent daily newspaper “Vijesti”, no one reported the existence of the graffiti to the police unit in Danilovgrad. According to “Vijesti”, flags with similar slogans were placed on the same day near the old pharmacy building in Danilovgrad, but were removed soon after⁷².

Hate speech on the Internet

During 2011 and 2012 several reports were filed to the Police Department of Montenegro due to threats received by activists of the civil sector for the promotion of LGBT rights via e-mail, the social network Facebook or in the form of comments to the news published at web portals⁷³. The media publications informed that the police arrested the persons sending threats and spreading hate speech via Facebook during the preparations for organizing the Gay Pride in Podgorica, for an informative conversation, but there was no information if charges were brought against any of the arrested persons or that lawsuits were continued and verdicts submitted.

- ii. *Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- *a culture of respect, tolerance and diversity, and*
 - *to avoid negative and stereotyped representations of LGBT people?*

⁷⁰ Criminal charge against unknown persons addressed to the Supreme State Prosecutor by the NGO Juventas

⁷¹ Criminal charge against unknown person addressed to the Communal Police of Podgorica by the NGO Juventas

⁷² Independent Daily Newspaper “Vijesti”, Society, 09 September 2011 – “Insults to the gay population”

⁷³ Charge addressed to the Police Department of Montenegro, regional unit of Podgorica, Ivana Vujović – president of Juventas, submitted on 7 March 2011 / Independent Daily Newspaper “Vijesti”, Society,, 23 April 2011 – “Police arrested administrators”

The Constitution of Montenegro guarantees the right to freedom of expression, and it is more precisely governed by media regulations at the level of standards prescribed by international documents on human rights and freedoms, such as the following laws:

The Media Law (Official Gazette of the Republic of Montenegro, No. 51/02 and 62/02), the Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro, No. 79/08), the Law on Electronic Media (Official Gazette of Montenegro, No. 46/10), the Law on confirmation of the European Convention on Trans-frontier Television (Official Gazette of Montenegro, No. 01/08).

The Media Law prohibits to publicize on media the information and opinions that instigate discrimination, hatred or violence against persons or groups of persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation (Article 23 of the Media Law). This Law stipulates that the State shall provide a part of the funding for realization of the citizens' right to information as granted by the Constitution and law without any discrimination whatsoever. In case of violation of the freedom of information, granted by the Constitution and law, the Media Law envisages judicial protection (Article 4).

The Law on Electronic Media governs, *inter alia*, rights, obligations and responsibilities of natural and legal entities producing and providing audiovisual media services (AVM services), who, pursuant to Article 48, are not allowed to encourage or facilitate the spread of hatred or discrimination based on race or ethnicity or color, sex, language, religion, political or other opinion, national or social origin, property status, trade union membership, education, social position, marital or family status, age, health, disability, genetic heritage, gender identity or sexual orientation.

This law stipulates that by the means of audiovisual communication it is forbidden, *inter alia*, to violate human dignity and promotion of discrimination on grounds of sex, race, nationality, religion or belief, disability, age or sexual orientation.

The Agency for Electronic Media (hereinafter referred to as: the Agency) is an independent regulatory body for the area of AVM services, which performs public competences, pursuant to the Law. The status and competences of the Agency are defined by the Law on Electronic Media (Official Gazette of Montenegro, No. 46/10). The Agency is an independent legal subject, functionally independent of any state body, and of all legal and natural persons performing activities of production and broadcasting radio and TV programs, or providing other AVM services and it acts in public interest. The competences of the Agency for Electronic Media are defined in the Article 12 of the Law, and *inter alia*, state that the Agency, within the scope of its competences, shall propose a Program for development of audiovisual media services sector; make decision on complaints and objections filed by the physical and legal person(s) regarding the work of AVM service providers; perform supervision over the implementation of this Law.

The Agency for Electronic Media, according to its method of work and acting, is entitled to impose repressive measures within the scope of its competences solely if this is inevitable and if all other options were previously exhausted. This is why direct communication with broadcasters, occasional working meetings and consultations are a form of work that the Agency considers as being more adequate to a regulator and which, in addition to this,

offers better results when the goal is removal of cause. According to the Agency, experiences and lessons learned from a 10-year period of work have shown that mistakes and failures in the work of electronic media are almost always a result of lack of knowledge, information and without deliberate intention.

The Agency specially dealt with discrimination and hate speech against LGBT persons in October 2010. We refer to the TV show "Glamour noir".

In October 2010, the TV show "Glamour noir", shown on Atlas TV, caused heated public reaction. The topic of the show was: *Seeking an answer to the question "Does a post-modern subject chase away the burden of freedom by violence"*, as it was formulated by the host of the show.

It can be concluded that based on the contents of the show, the topic was triggered by recent developments that took place one day earlier at the Gay Pride held in Belgrade – and that the actual topic was: freedom and rights of LGBT population in Montenegro.

On that occasion, the Protector of human rights and freedoms contacted the Broadcasting Agency of Montenegro requesting an official statement, since NGOs and representatives of the LGBT population addressed a complaint to that institution. The Protector of human rights and freedoms requested also the answer to the question if the broadcasting of this show caused violation of the law and the conditions laid out in the issued broadcaster's work permit – especially concerning program standards related to hate speech and treating children (minors) in the media.

In their response, the Broadcasting Agency stated that the show in question, "Glamour Noir", in its contents and approach in treatment of the issue, went in accordance with the provisions of the Law on Electronic Media and the Decision on minimum program standards in Electronic media and relevant European standards, in the atmosphere of a tolerant dialog, mutual respect of different views and that, in essence, it depicted the controversial social issue realistically.

Furthermore, the Agency pointed out that since a brave decision was made to enter into a debate on complex social problems after having the practice of light talks about celebrity trivia, a serious preparation for a debate requiring profound knowledge of the subject matter would have been indispensable, in order to carefully and skillfully avoid the risk of anyone being hurt on any ground in a public communication with several participants, even unintentionally. Since Atlas TV has had such shows on its program list, it would have been logical if they had kept the genre consistency. Still, even a choice like this falls within the editor's liberty and represents a legitimate choice.

The Broadcasting Agency concluded that this topic, as well as numerous very important social topics, is insufficiently and sporadically tackled in Montenegrin media and that the reactions of a part of unsatisfied general public to all so-called controversial topics are regular and generally vehement. Therefore, there is a probable danger that media start avoiding similar topics and turn even more to commercial and less "risky" contents. In this context, imposing carelessly any restrictive or penalty measures against the broadcaster, which would not be sufficiently justified or necessary, might have a discouraging effect on them – they would stop dealing with complex (or controversial) phenomena or processes.

This was the reason why the Agency concluded that in this particular case it was enough to issue a recommendation to the Atlas TV and other electronic media in Montenegro to pay maximum professional attention to addressing all the aspects of sensitive issues for exercising human rights and to avoid dangers coming from promotion or incitement of intolerance or hate (speech).

In this context, permanent communication with the editorial board of Atlas TV and hosts of the show was established and maintained in order to identify the omission and eliminate the possibility of it happening again.

There is a general practice in the Agency to organize consultations with broadcasters within public discussions on legal acts in the field of broadcasting. Besides exchange of opinions on normative solutions, current events and practice of changing program standards are almost always the focus of attention, especially questions of combating any kind of discrimination and violation of fundamental human rights.

During 2011 and 2012 the following events were held:

- Round table on Draft Rulebook on program standards in electronic media – 21 June 2011;
- Round table on Draft Rulebook on commercial audiovisual communication – 1 July 2011;
- Consultations on application of the Rulebook on program standards in electronic media and the Rulebook on commercial audiovisual communication – 15 September 2011;
- Consultations on Draft Rulebook on criteria/conditions for defining programs considered as own production – 25 January 2012.

The attendance of directors and editors of such meetings is always high, particularly when it comes to public services and commercial radio and TV stations with highest audience ratings.

All the mentioned and many other questions from the field of respect of program standards were addressed in these meetings as well. On that occasion, numerous useful explanations were given and experiences were exchanged, which contributed to familiarization with the standards, better understanding and a more successful application.

When estimated necessary, the Agency for Electronic Media contacts media and public in the form of announcements or statements pointing out and warning about problems and ways of solving them. This method too turned out to be justified and effective (several examples are available in the annex).

The Agency pays permanent attention to innovation of expertise and providing trainings for their staff members for fulfilling their tasks competently.

In cooperation with the OSCE Mission in Montenegro, a staff training was held in the Agency on 17 and 18 October 2011 where the director of the program sector of the General Audiovisual Council of France, Marise Brugier, presented normative solutions and practices of the French regulator, paying special attention to identification and imposing sanctions on hate speech and any form of discrimination.

In the scope of the same Project, a training of Agency's employees was carried out with Montenegrin experts on 4 and 7 November 2011, where special attention was paid to

analysis and importance of context in media messages and analysis of concrete media messages from the perspective of the existing Montenegrin legal and professional ethical framework.

The NGO Juventas organized a seminar in April 2012 “Role of professional media reporting in the protection of human rights of LGBT persons”. The seminar was attended by several employees of the AEM who directly deal with the subject matter.

Finally, the Agency and the Faculty of Political Sciences signed the Memorandum of Understanding on 8 May 2012. One of its integral parts is supplementing practical knowledge of students of journalism of final years on seminars and practical work within the AEM. In this context, we plan to deal particularly with issues of combating discrimination on grounds of sexual orientation and gender identity. Elaboration of the plan is in its initial phase.

The Agency thinks that an adequate education through the process of regular trainings is the best way to understand and apply in practice the standards in electronic media linked to the protection of human rights in general, and in addition to that, the rights linked to sexual orientation and gender identity.

Other information provided by the grantee:

Since 2010, the NGO Juventas has produced annual analyses of media publications with LGBT topics.

The presence of LGBT topics in printed media in Montenegro was considerably lower before 2010, especially when it comes to those publications treating these topics in the local context. Such a situation is a direct consequence of Juventas initiating one of the first projects directed at improvement of LGBT situation in Montenegrin society *Montenegro – a bright spot on the 'gay map'*. In addition to that, that was the year when the coalition *Together for LGBT Rights* was formed in Montenegro, and it was also marked with numerous homophobic reactions of the former Minister for human and minority rights Ferhat Dinosa to the first appearance of LGBT activism in Montenegro. Prior to 2010, the media showed almost exclusively LGBT topics from the regional or global context due to invisibility of the domestic LGBT community, as well as absence of LGBT rights in the human rights agenda

The presence of texts dealing with LGBT community in the local context considerably increases in 2011, following many important events. The total number of the analyzed media publications is three and a half times greater in comparison to the one in 2010 – Juventas media analysis for 2010 processed 221 topics, while 770 were processed in 2011. Some of the local events significant for LGBT community in Montenegro last year were the following: registration of LGBT organization and the first “coming out of the closet” in Montenegro; conflict relationships with the former minister Ferhat Dinosa which ended with the cessation of his ministerial duty; controversial developments during election of the advisor to the Prime Minister for human rights and NGOs’ boycott of the regional LGBT rights conference; dramatic consequences of broadcasting an LGBT campaign video “*Mi smo dio ekipe*” (We are part of the team); LGBT award for the police just a couple of months after canceling the Gay Pride and many other.

Undoubtedly, the most important event that had the most influence over the media representation of LGBT persons in Montenegro was the failed Gay Pride. After many years of lack of LGBT activism in Montenegro and with no visibility of the local LGBT community, within several months in 2011, the public gay activist showed up in public, registered an LGBT organization and started announcing Gay Pride in Podgorica. Even though the LGBT community in Montenegro remained invisible, LGBT topics were placed in the center of media interest thanks to one of its members. Due to lack of visibility of the LGBT community, the media attention turned to the State management, Gay Pride being canceled due to their refusal to recognize this as the most important event for the LGBT community. The changes in the position and visibility of LGBT persons in Montenegrin society lead to the changes of the context in which media wrote about these topics. Unlike 2010, when media wrote about this topic positively or neutrally, in approximately same percentage (42% of publications were positive, 50% neutral and 8% negative), there was no such large rate of positive publications in 2011 – they were mostly negative (16% of publications were positive, 79% neutral and 5% negative).

When it comes to sections where LGBT related text were published, largest number of articles were published within *Society* or similar sections during these two years. According to this parameter as well, the most significant change is visible in the number of publications under *World/Region*, considerably decreasing in 2011.

Last but not least is the fact that among topics reported by media during the mentioned two years, the Gay Pride was the most important one. While in 2010 the Belgrade Pride was the most covered topic besides other Prides in the region and in the world, in 2011 the media wrote the most about the failed Podgorica Gay Pride. It is interesting that the press wrote a lot about the Pride until the end of the year despite the fact that it was canceled, and invitations to reorganize it in the second half of the year came from the Montenegrin political elite and not from the LGBT community. This important development, as well as many others, significant for the local LGBT community, influenced the way media reported on them.

The Juventas media analysis for 2011 is more comprehensive in comparison to the one done in 2010, so it is impossible to follow completely all the changes which took places within this period. Still, there were certain specific features of the events significant for the LGBT community in Montenegro in 2011, which had an important impact on the media publications. One of them is the foundation of the first LGBT organization and the first public appearance of a gay activist in Montenegro. This event lead to a few interesting occurrences concerning media publications, primarily mentioning LGBT organizations and/or activists as sources of information in 2011 in the largest part of media publications (18%). This was perhaps the most important specific feature in comparison to 2010, when there were no domestic LGBT activists or organizations and no source of information in this category was available. This had an impact on the attitude of the source of information with respect to the LGBT community, which is positive in a high percentage (44%), but we have to have in mind that the majority as far as sources are concerned are LGBT and other NGOs.

As for the actors of the media publications, most writings are about LGBT population as a group (70%), LGBT organizations are somewhat less frequent as actors (22%) and even less – LGBT individuals (8%). It is also important to take into account the context of

Montenegro, where there is only one LGBT organization with only one visible representative, so these two categories could be made equal in the majority of cases. However, it is more correct to consider them separately since often LGBT persons not belonging to the context of Montenegro or LGBT activism appear as actors. Also, LGBT organizations from the regions are sometimes the actors of the media publications.

Finally, it is important to conclude that printed media in Montenegro in 2010 and 2011 reported generally in a correct manner on topics important for the position of the LGBT community and thus, they represent allies in strivings for improving the LGBT position in society. The used terminology is usually correct, there are very few publications choosing as sources of information those who are assumed to have negative attitude (church representatives, representatives of certain political parties etc.), and the context is generally neutral, which indicates the dominant objective journalism.⁷⁴

The analysis of media publications on LGBT persons for the first three months of 2012 showed that based on the overall picture of the LGBT community and relevant topics in the media, it can be concluded that the media in Montenegro constitute allies in the struggle for human rights and improvement of the position of this minority group. The media generally report neutrally, i.e. responsibly and professionally on LGBT rights and persons, without expression of journalist's views. Persons with positive views are generally chosen as sources of information. While showing negative views of different sources of information, journalists are generally distanced, and this is particularly expressed in the electronic media. LGBT topics are not any more in the category of "curiosities", they represent a question of human rights, that the state is obliged to protect. Media abundantly publish local activities important for the LGBT community in Montenegro, but rarely publish news related to LGBT topics from abroad.

The terminology used in media publications is exceptionally correct. Even when this is not the case, it is not done deliberately. For instance, incorrect terms such as "homosexuality" or "transsexualism" instead of "homosexuality" or "transsexuality" are still used relatively often, but generally there are no offensive terms. The use of the term "different sexual orientation" is also problematic because it is usually left incomplete, i.e. it is not explicitly defined as 'different from what'. So, the correct expression would be "different sexual orientation from heterosexual". Hate speech and offensive contents are almost exclusively to be found among readers' comments, something that especially on-line portals editors should pay attention to.

An important piece of information for the very end: there is a total invisibility of lesbians and their existence in the Montenegrin media. In addition to the fact that there is no single lesbian in Montenegro "out of the closet", one does not speak about them, so the full name of the community is almost never used; it is mentioned through the acronym LGBT instead. In the first three months of 2012, no text or TV report was produced mentioning the word *lesbian* at least once. Although lesbians exist in Montenegrin society in the same extent as the rest of the LGBT community, there is obviously no minimum willingness to support them to become visible⁷⁵.

⁷⁴ "Comparative analysis of LGBT persons and topics related press releases for 2010 and 2011", Marija Savic, Juventas, 2012

⁷⁵ Three month media analysis, Marija Savic, Juventas, April 2012

- iii. *Has legislation for criminalizing “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

Beside all efforts put and constant communication with the Ministry of Justice and Human Rights we did not manage to obtain the answer to this question.

Other information provided by the grantee:

Imposing sanctions on hate speech on the internet is covered in the Law on Public Peace and Order. **Article 4** of this Law says:

“Violations that disturb public peace and order are actions that illegally disturb peace, work or normal way of citizens’ life, create discomfort, dissatisfaction, distress or interferes with the movement of citizens on the streets or other public places, hinder the exercise of their rights and obligations, insulting moral, hinder state authorities and officials in the exercise of powers, endangers the general safety of people and property, as well as other actions herein.

Violations that disturb the public peace and order, as defined in paragraph 1 of this Article, are actions done throughout **networks of electronic communication as well.**”⁷⁶

This Law also provides the following:

Article 7

“Whoever insults another in a public place or practices insolent behaviour, shall be imposed a fine ranging from 100 to 400 Euros or imprisonment for up to 30 days.

Whoever grossly insults another in a public place or otherwise behaves in a particularly brazen, obscene or offensive manner, shall be imposed a fine of 250 to 1000 Euros or imprisonment for up to 60 days.”

Article 8

“Whoever causes a feeling of vulnerability of another, threats to attack the life or body of another or a person close to him, shall be imposed a fine of 250 to 1500 Euros or imprisonment for up to 60 days.”

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

Beside all efforts put and constant communication with the Ministry of Justice and Human Rights we did not manage to obtain the answer to this question.

Other information provided by the grantee:

⁷⁶ Text of the Law on public peace and order can be found on the following link:
http://www.skupstina.me/cms/site_data/DOC24/704/704-ZAKON.pdf

Service of providing internet access to final users is made available by the following companies: Montenegrin Telecom (T-com), Telenor, M:tel, Mnnews, Dasto Montel, M-Kabl and Cabling. Majority of these an average user couldn't remember, or isn't aware of their existence.

According to our knowledge these internet service providers haven't been encouraged by the state to take measures to prevent dissemination of homophobic and transphobic material threats and insults. If they have such an activity hasn't been promoted in public.

- v. *If there are incidents of "hate speech", are they publicly disavowed by leading public officials*

No.

Other information provided by the grantee:

Hate speech incidents haven't been publicly disavowed by leading public officials.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimizing such hatred or discrimination?*

Beside all efforts put and constant communication with the Ministry of Justice and Human Rights we did not manage to obtain the answer to this question.

Other information provided by the grantee:

Former Minister for human and minority rights in the Government of Montenegro, Ferhat Dinosa, during 2009, 2010 and 2011 several times publicly spoke using hate speech against LGBT persons in Montenegro. Some of his best known statements are that he "would not be happy if that (=homosexuality) existed in Montenegro", that the Government of Montenegro is not obliged to promote protection of LGBT rights, that sexual and national minorities should not be made equal, that he simply follows the "moral code" of the Montenegrin society in his statements.

Despite requests coming from the civil sector, he has never publicly apologized for his statements; on the contrary, he kept repeating them denying the fact that he was actually using hate speech.

The former Minister declined many times to directly meet executive director of the organization LGBT Forum Progress, Zdravko Cimbalević.

No official sanction has ever been imposed against Ferhat Dinosa by the Government of Montenegro for his statements. His duty of Minister for human and minority rights ceased when the part related to human rights was annexed to the Ministry of Justice and he later became ambassador of Montenegro in Albania.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organizations, political organizations and religious communities.

i. Has guidance been issued to public officials and state representatives in this respect?

No.

ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

n/a

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

i. Are organizations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

No.

Other information provided by the grantee:

In 2011 the organization LGBT Forum Progress was founded, gathering LGBT persons from Montenegro and working on the promotion and protection of sexual minorities' rights.

- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

n/a

- iii. *Are there examples of measures taken to:*
- *ensure that LGBT organizations can operate freely,*
 - *defend their interests when necessary,*
 - *facilitate and encourage their work?*

Other information provided by the grantee:

Based on the information we dispose of⁷⁷, pursuant to Article 52 of the Constitution, the peaceful assembly and association of citizens is free. A public assembly shall be with previous notification of the competent authority but with no necessary previous approval. However, an assembly may be temporarily restricted in order to prevent disorder or execution of a criminal offense, threat to health, morality or security of people.⁷⁸

The freedom of association may be restricted solely if the organization of an assembly is directed “towards forceful destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, and religious and other hatred and intolerance”⁷⁹.

The organizations Juventas and LGBT Forum Progress dealing with promotion and protection of human rights of LGBT persons in Montenegro can operate freely in our country. These organizations signed Memoranda of Understanding with numerous institutions which play a role in the protection of LGBT rights. *For example, this resulted in:* formal announcement of the Police Directorate and Ministry of Justice and Human Rights that they will protect Pride March in Montenegro, Police Directorate representatives engaged themselves in the implementation of Juventas’ research among police officers, Institution of Ombudsman is one of the members of the organizational Board of Pride March in Montenegro, Ministry of Justice and Human Rights financially supported LGBT Forum Progress’ participation in Euro Games 2012 in Budapest, the Government of Montenegro took an active part in the creation of National Program Document for Combating Homophobia (see answer to the question *i. Are LGBT organizations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?* under **Recommendation 11**). Also, representatives of institutions participate in seminars, trainings, round tables and conferences held by civil society organizations, while their representatives often speak at opening ceremonies of such events.

- iv. *Are LGBT organizations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

⁷⁷No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁷⁸ Art. 52, paragraph 2 of the Constitution and Art. 4 and 11 of the Law on Public Assembly, Official Gazette of Montenegro, No. 31/05

⁷⁹ Art. 55, paragraph 1 of the Constitution

Other information provided by the grantee:

Yes. Non-governmental organizations dealing with promotion and protection of human rights of LGBT persons are actively included in the creation of public policies concerning LGBT persons. They are members of the Council for protection from discrimination, Working Team for elaboration of a program document for combating homophobia with Action Plan, Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro, Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights.

The Draft Action plan for combating homophobia created by a coalition of non-governmental organizations, institutions and media “Together for LGBT Rights”, governed by the NGO Juventas, is a starting basis for creating the Program document for combating homophobia which will be adopted by the Government of Montenegro.

The institution of Protector of human rights and freedoms (“Ombudsman”), together with the organization LGBT Forum Progress, submitted the initiative to the Parliament of Montenegro in March 2012 for adoption of the Law on same-sex union.

After lobbying by the same organization at the Ministry of Health of Montenegro, an amendment to the Law on Health Insurance was adopted, arranging that the State shall provide and cover 80% of the costs for gender reassignment to transgender persons.

10. Access to public funding available for non-governmental organizations should be secured without discrimination on grounds of sexual orientation or gender identity.

i. Is public funding earmarked for NGOs accessible to LGBT organizations without discrimination?

Yes.

ii. Has such funding been made available to LGBT organizations?

Yes.

Other information provided by the grantee:

The organization LGBT Forum Progress, in partnership with the organization Montenegrin Alternative Culture (=Crnogorska alternativna kultura) received funds for a project on the public call of the Commission for distribution of part of incomes from games of chance in 2011. More information on the project “I see different ones”(= “Ja vidim različite”) can be obtained on the following links:

<http://lgbtprogres.me/2012/07/po%C4%8Deo-projekat-ja-vidim-razli%C4%8Dite/>

<http://lgbtprogres.me/2012/08/zavr%C5%A1en-projekat-ja-vidim-razli%C4%8Dite/>

Information on the decision of the Commission about the distribution of funds, along with the list of organizations which received the same can be found on the following link:

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

i. Does the state provide effective protection from hostility and aggression for LGBT human rights organizations?

Usually yes.

ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organizations, enabling them freely to conduct their activities, and promoting respect for their work?

Other information provided by the grantee:

The Police Directorate of Montenegro signed Memoranda of Understanding with the NGOs Juventas and Forum Progress which include cooperation in the field of promotion and protection of LGBT rights. The Police Department nominated a police officer in charge of contact with LGBT persons and solving cases of hate crimes against LGBT persons.

The institution of Protector of human rights and freedoms of Montenegro, Supreme State Prosecutor, Supreme Court of Montenegro, Ministry of Health, Institute for Public Health of Montenegro, Ministry of Justice and Human Rights signed Memoranda of Understanding with the NGO Juventas.

iii. Are LGBT human rights organizations able to work with

- national human rights institutions and ombudsmen,*
- the media,*
- other human rights organizations?*

Yes.

iv. Are they able to take part in training sessions, international conferences and other human rights activities?

Yes.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

- i. *Are LGBT organizations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

Yes.

Other information provided by the grantee:

The representatives of NGOs dealing with promotion and protection of human rights of LGBT persons are actively involved in the creation of public policies concerning LGBT persons. They are members of the Council for protection from discrimination, Working Team for elaboration of a National Program Document for Combating Homophobia with the Action Plan, Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro, Working Group for elaboration of analysis of legal regulations from the point of view of LGBT rights.

- ii. *Have there been such consultations regarding the implementation of this Recommendation?*

No.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

- i. *Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
- *activities that support the human rights of LGBT persons*
 - *publication of material*
 - *media coverage*
 - *organization of/participation in conferences*
 - *dissemination/access to information on safe sexual practices?*

Yes.

Other information provided by the grantee:

The right to freedom of expression, guaranteed by the Constitution, may be limited only by the right of others to dignity, reputation and honor and if it threatens public morality or the security of Montenegro (Art. 47 of the Constitution).

- ii. *Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

No.

- iii. *Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

The law envisages that in the context of encouragement of pluralism in the media, production of commercial broadcasters and preservation of diversity of electronic media in Montenegro, funds are provided out of a part of incomes from games of chance for supporting the production of programs by commercial broadcasters with public interest, being important, *inter alia*, for: promotion of prevention of all kinds of discrimination, encouragement and promotion of exercise and protection of human rights; encouragement of awareness raising concerning gender equality. (**Other information provided by the grantee:** this phrase can include sexual orientation and gender identity, but we are not aware of authorities doing anything encouraging SOGI awareness in the media. It is important to mention that they haven't given us data on such activities.).

The Law on Public Broadcasting Services of Montenegro governs rights and obligations of national public broadcasting services in the Montenegrin media system.

According to this law, the public broadcasting service is conceived in a way to meet and protect the interest of the general public on national and local levels in terms of its programs in the area of information, culture, education, sport and entertainment, by application of high standards of professional ethics and quality, without discrimination.

By adopting the Law on confirmation of the Convention on Trans-frontier Television Montenegro has accepted a legal framework extending the field of freedom of expression, pursuant to **Article 10** of the European Convention for protection of human rights and freedoms.

The Law on Free Access to Information (Official Gazette, No. 68/05) governs the method and the procedure for exercising rights of citizens to request, receive and use information in possession of public authorities. **The access to information in the possession of public authorities is free, and the right to access information is granted to national or foreign entities without discrimination.**

Such a legal framework, the provisions of which set standards in the area of audiovisual commercial communications and programs, acknowledges the role and the importance of media, in particular electronic ones, in the prevention and fight against intolerance and discrimination. This contribution is notably recognized by developing the culture of understanding among different social groups, with the aim of preventing hate speech and improving tolerance and understanding.

Through self-regulation, media arrange the media space and one of its mechanisms is the ethic code with standards which envisage elimination of prejudices and stereotypes.

Media entities and media associations formed the Media Council for Self-Regulation. The Parliament of the Media Council is composed of representatives of 20 Montenegrin printed, electronic and on-line media which harmonized and adopted the foundation acts of this body, which will monitor the application of professional and ethic standards in the Montenegrin journalism. In addition to that, the Self-Regulatory Council of local and periodical press of Montenegro and the Council for press were established as well.

The Ministry of Culture, through a partnership with the NGO sector and media associations, will give affirmation to principles and standards which eliminate all sorts of discrimination in terms of exercise of rights to freedom of expression and information.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

- i. *Have the authorities ensured freedom of peaceful assembly for LGBT people?*

Yes.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favor of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

- i. *If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

Other information provided by the grantee:

In 2011 there has been an attempt for the Montenegrin Pride to be organized for the first time, but this activity was delayed due to lack of support by high Government officials which significantly influenced the domain of participant's security. The first larger gathering of LGBT community in Montenegro, a concert organized for IDAHO 2011, showed weaknesses in the police managing the security of a higher risk public event and indicated their inability to cope with larger scale happening like Pride March. This case (which still has no legal epilogue) resulted in a growing suspicion within LGBT community in relation to the will of the institutions to protect and promote human rights of all Montenegrin citizens.

One day before the International Day against Homophobia, in 2012, the organization LGBT Forum Progress, supported by activists from the organization Juventas, held a peaceful protest in front of the Embassy of Turkey in Podgorica. The objective of the protest was to point out the negative attitude in relation to the murders of transgender persons in Turkey becoming more and more frequent. The protest was completed peacefully, without incidents, and the police protected the participants adequately.

- ii. *In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

Yes.

- iii. *Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

Yes.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

- No. *i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*
- No. *ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*
- iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*
- n/a

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

- i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly?*
- ii. Has there been encouragement to public authorities to condemn such interferences?*

There are no legal obstacles in practicing rights to freedom of expression and peaceful assembly. According to the answers from the Ministry of Justice and Human Rights, Montenegro will give full institutional support in order to create all the necessary conditions for public expression of sexual differences.

a. Have public authorities actually condemned such interferences?

n/a

iii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?

Yes.

iv. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?

Other information provided by the grantee:

Generally not. The answer is such due to the fact they haven't found perpetrators in the most severe case of hate crime (please see answer to the question: *i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate*

any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved? within the Recommendation 1 and Other information provided by the grantee). Therefore, it can be considered that they endorse hostility towards LGBT freedom of assembly events, by not acting according their authority and recourses given.

Former Minister for human and minority rights in the Government of Montenegro made several public statements directed against the right to expression and association of LGBT persons during 2010 and 2011. There has never been any adequate and public reaction and sanction in response to these statements, and the Minister's duty did not cease after a resignation or dismissal, but by his entering the sphere of diplomacy and the Ministry being reformed. The Government of Montenegro has never officially stated that the reason why these changes occurred were homophobic excesses of the former minister.

The Head of the Serbian Orthodox Church in Montenegro, Metropolitan Amfilohije Radović, continuously uses hate speech directed toward LGBT persons also in respect to freedom of association. His statements haven't been addressed by respective institutions.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

- i. Does legislation criminalize same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

No, the homosexual act (male homosexual act to be exact) is decriminalized back in 1977. "Women homosexual act" was of no interest to the lawmakers, therefore it never was or became the subject of legal documents in the territory of Montenegro.

There is no difference in the age of consent.

- ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?*

There aren't any criminal law provisions *which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity.*

- iii. If so, what steps are the authorities taking to remedy this situation?*

n/a

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?

The Law on personal data protection (Official Gazette of Montenegro, no 79/08, 70/09 and 44/12) proscribes that personal data can be processed in case there is a legal ground or a previously given consent by the entity the data are referring to. Such consent can be revoked anytime (Article 11).

The Law provides protection of personal data to all entities no matter their citizenship, place of residence, race, skin color, sex, language, religion, political or other belief, nationality, background, property, education, social status or any other personal characteristic (Article 4).

Article 9, point 7 of this Law defines a separate category of personal data referring to racial or ethnical background, political opinion, religious or philosophical belief, membership in trade union organizations as well as health condition or sexual life.

Sexual orientation represents a special category of personal data. Therefore, data related can be processed only in the following cases:

- 1) With an explicit consent of the person in question;
- 2) When it is necessary for employing purposes according the law which defines employment, whereby they must imply adequate protection measures;
- 3) When it is necessary for disease detection, prevention, diagnostics or treatment, as well as during the process of managing health services, and only if data in question are being processed by a medical worker or any other entity obliged to keep it a secret;
- 4) When it is necessary for protection of people's lives, vital interests of an entity the data in question are referring to or another entity, in a case when this entity is disabled to give consent, but also all other situations defined by law;
- 5) When an entity made its personal data available in an obvious way or their processing is necessary for exercising or protection of legal interests of this entity in front of a court or other institutions;
- 6) When it is done as a part of the legal work of a non-governmental organization, association or other non-profit organization having political, philosophical, religious or trade union goals, if these data are related to these organizations' members, persons maintaining constant contact with them or purpose of their work, and if the data are not published without the consent of persons described.

Special categories of personal data are specially labeled and protected against unauthorized access.

Manner of labeling and protection of personal data from paragraph 2 of this article is defined by the Ministry in charge for the public administration affairs (Article 23).

Manager of personal data collection is obliged to erase personal data of an entity upon its request, in case their processing is not according the law (Article 23)

In doing supervision work the Agency for personal data protection is authorized to:

- 1) Order for irregularities in personal data processing to be removed according to a deadline defined;
- 2) Temporarily forbid personal data processing in case its being done not according the law;
- 3) Order deletion of personal data collected without a legal basis;
- 4) Forbid making personal data public outside Montenegro or giving personal data to personal data users contrary to law;
- 5) Forbid entrusting of personal data processing to a person not fulfilling necessary conditions or the delegacy of work described is conducted contrary to this law (Article 71).

ii. What steps have the authorities taken to ensure that existing records are destroyed?

We do not have available information in this subject matter. We did not manage to obtain any answer to this question from the Police Department of Montenegro.

iii. Have these steps been effective?

Is there any evidence of:

- *the continued existence of such records*
- *the continuing collection of such data?*

We do not have available information in this subject matter. We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

i. Has a review of such prior requirements been conducted?

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights, but the answer to this question (provided by the grantee and according our knowledge) is: **A review of such prior requirements has not been conducted.**

- ii. *Are there still requirements which might be considered disproportionate or even abusive,⁸⁰*

such as:

- *irreversible sterilization,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights or Ministry of Health. According to the available information, for a legal recognition of gender reassignment it is necessary to perform the gender reassignment surgery which implies also sterilization.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

- i. *Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights, but the answer according to the information available to us is that the procedures and protocols are not fully and precisely legally defined and they do not mention explicitly gender identity.

- ii. *Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

Other information provided by the grantee:

Partly.

The change of these data is possible but it is not thoroughly defined by the legislation which would make possible to do it in a quick, transparent and accessible way. The gender mark in the unique master citizen number, birth certificate, i.e. personal documents, can be

⁸⁰ The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

subject to changes after completing the procedure of gender reassignment and providing a proof thereof.

According to the available information⁸¹, the change of name is performed upon personal request, it is not conditioned by gender reassignment, and the sole limitation concerning the change of name is the protection of public safety and rights and freedoms of others.

- iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
- *diplomas,*
 - *certificates of employment, and*
 - *insurance or banking documents?*

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights, but according to the information available to us, these procedures are not officially defined.

- iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

We do not have precise information in this subject matter at our disposal. We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognized in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

- i. *Is the right of a legally recognized transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Article 15 of the Family Law defines marriage as a legally regulated union of a man and a woman, which means that only persons of opposite sex can be married.

Other information provided by the grantee:

The right to marriage and the rights on the basis of marriage or consensual union are conditioned by the fact that spouses or consensual partners are of different sexes⁸².

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

⁸¹No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁸²Ibid.

- i. *Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

Rights and obligations in a consensual union of a man and a woman are regulated by the Family Law. These rights and obligations do not apply to same sex unions.

Other information provided by the grantee:

Both marriage and consensual union are defined in Montenegro as unions of a man and a woman. The result of such a solution is that partners in a same-sex union cannot exercise property and other rights recognized to heterosexual partners in a matrimonial or consensual union, such as right to support, right to the property gained by joint work of the spouses, right to legal inheritance, etc. contrary to the European standard⁸³.

On the other hand Article 11 of the Law on treating infertility with assisted reproductive technologies explicitly defines that right to treatment includes men and women who live in a consensual union or are married, *or a woman who is not married and doesn't live in a consensual union marriage* (it is important to mention that consensual union is limited to opposite sex couples).

24. Where national legislation recognizes registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

- i. *Does legislation recognize registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

No, legislation does not recognize same sex partnerships.

25. Where national legislation does not recognize nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

- i. *If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The Government of Montenegro will adopt a Strategy against Homophobia. The draft of this document is prepared. Furthermore, the Government will initiate a project and form a

⁸³ Ibid.

Commission in charge for drafting a proposal of the Law on Same Sex Unions. Such activity will improve the legal position of homosexual couples in the society and will be according to the European standards. In relation to that, the Government of Montenegro will previously initiate a project that is supposed to answer respective questions and make European experiences/standards familiar. Based on its results the Commission will continue the work on making the most appropriate proposal for the Montenegrin legal system.

Other information provided by the grantee:

The institution of Ombudsman, Protector of human rights and freedoms in Montenegro has submitted the initiative to adopt the Law on same-sex unions to the Parliament of Montenegro. We do not have available information that the Parliament of Montenegro has considered the submitted initiative.

There was also another initiative submitted to the Constitutional Court of Montenegro in relation to the amendment of the Article 12 of the Family Law by Mr. Jovan Kojicic (Later on became Prime Ministers' Adviser for Discrimination) and independent human rights' researcher Mr. Sasa Zekovic. According to the Montenegrin law the Constitutional Court had no obligation to reply to this initiative. Nevertheless, the response arrived and contained the following: "Judge Desanka Lopicic said that the lawmaker defined marriage and family relations with the Family Law and according to the constitutional authorization. She emphasized that the Court sought an opinion from the Government, in which it is induced that *although consensual union is not defined by the Constitution, framework for its legal definition is constitutional definition of marriage.*

"Opposed provision neither defines nor forbids the existence of same sex partnerships. This question shouldn't be a subject of the Family Law. The provision is not representing an obstacle for same sex partnership to be legally defined with bringing a new legal document into force. The lawmaker acted upon constitutional provisions. Even the major argument⁸⁴ for opposing this provision, doesn't provide enough basis for the estimation of constitutionality to be done. The initiative submitted is not accepted", said the judge."⁸⁵

In November 2012 during Out on the Street summit on LGBT global workplace rights in London, Deputy Prime Minister and Minister of Justice and Human Rights Duško Marković said:

"Our government will contribute the best to promoting the rights of LGBT persons in Montenegro, both by awareness raising of homophobia and the training of staff in institutions, especially the police and prosecutors' office and the protection the rights of these people. Our policy is clear, there should be nobody in Montenegro who should be living in fear and being invisible. To that end the government will launch a strategy to fight homophobia **and will launch a project to improve the legal status of same-sex couples**

⁸⁴ The major argument was that "the provision disables same sex couples to enjoy any right that comes from marriage, which indicates the existence of discrimination and violates provisions of international law and practice of international court."

⁸⁵ <http://www.montenegro-gay.me/component/content/627.html?task=view>

in society. In addition we are providing for all the pre-requisites for the first pride parade to be organized in Montenegro.”⁸⁶

It is also interesting to mention the existence of a provision within the Article 25 of the Charter on Human and Minority Rights and Citizens Freedoms⁸⁷ (so called “Small Charter”) which was enacted in the State Union of Serbia and Montenegro in February 2003, which guaranteed the right to marriage without limiting the circle of beneficiaries to persons of different sex.

“The rule of human rights implies that once achieved level of human rights’ guarantees can’t be lowered afterwards. In this regard, it would be necessary to raise the constitutional formulation of the Article 71 to the level of the constitutional guarantee which was in force before the adoption of the Montenegrin Constitution in 2007.”⁸⁸

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

No steps have been undertaken due to Family Law not providing such possibility.

- ii. In practice, are such decisions taken on a non-discriminatory basis?*

We do not dispose any of information concerning this question. We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

Family Law provides the possibility of children adoption by a single person no matter its sex.

⁸⁶ <http://www.gaystarnews.com/article/montenegro-promises-gay-pride-and-some-marriage-rights131112>

⁸⁷ For the full text of the Charter please see:

http://www.tuzilastvorz.org.rs/html_trz/PROPISI/povelja_o_ljud_i_manj_pravima_i_gradj_slobodama_lat.pdf

⁸⁸ „Legal Framework Analysis in respect to prohibition of discrimination“, OSCE Mission to Montenegro, Doc. Dr Sasa Gajin, July 2011

Other information provided by the grantee:

According to the available information⁸⁹:

The law distinguishes two kinds of adoption – full and partial⁹⁰. Full adoption is practically made possible to heterosexual persons only, i.e. spouses and consensual partners⁹¹.

Since unmarried persons can partially adopt, in specially justified cases, an LGBT person would have the legal possibility to a partial adoption⁹².

The competent ministry confirmed that there is no prohibition for an LGBT person to adopt a child pursuant to the provisions of the Family Law or the provisions of other laws⁹³.

A person who “does not provide sufficient guarantee that he/she will perform parental care in a proper manner” may not adopt, which shall be assessed by the center for social work in each particular case⁹⁴.

There have been no registered cases so far of an LGBT person submitting a request for adoption, i.e. that this right has been denied to someone for the reason of being an LGBT person⁹⁵.

ii. In practice, are such decisions taken on a non-discriminatory basis?

We do not dispose of any information concerning this question. We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

Other information provided by the grantee:

According to the available information⁹⁶, the assisted reproductive treatment is governed by the Law on Infertility Treatment with Assisted Reproductive Technologies⁹⁷, which does not mention any explicit obstacle for LGBT persons to access these services. However, the Law explicitly prescribes that man and woman who live in marital or extramarital community are entitled to the treatment, or an unmarried woman not living in a marital

⁸⁹No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁹⁰Family Law, Art.144, 145, 148. Through full adoption all legal links between children and parents cease to exist, while through partial adoption the adopter and the child establish the relationship between parents and child in terms of law, but the relationship of the adoptee with regard to his/her natural parents does not cease completely.

⁹¹ Art. 132 of the Family Law.

⁹²Art. 134, paragraph 2, of the Family Law.

⁹³ Ministry of Labor and Social Welfare, Decision No. 01-27, 12 January 2010.

⁹⁴ Art. 127, paragraph 1, paragraph 4 and Art. 134 of the Family Law.

⁹⁵Data of the Ministry of Labor and Social Welfare and media reports.

⁹⁶No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁹⁷Law on Infertility Treatment with Assisted Reproductive Technologies, Official Gazette of Montenegro, No. 74/2009.

community (Article 11). Should the competent Ministry of Health deny this right to a woman living in a same-sex union due to her sexual orientation, she could question such a decision before the Administrative Court and, as a final instance, before the Constitutional Court.

ii. In practice, is such access granted on a non-discriminatory basis?

We do not dispose of any information concerning this question. We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization.

i. Does legislation⁹⁸ exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

We did not manage to obtain any answer to this question from the Ministry of Justice and Human Rights and the Ministry of Labor and Social Welfare.

Other information provided by the grantee:

According to the available information⁹⁹, the Labor Law¹⁰⁰ explicitly designates sexual orientation as a prohibited ground for discrimination. The Labor Law prohibits sexual harassment as well (Article 8). However, in Montenegrin language this law uses the term “opredjeljenje” (=commitment, belief; decision, choice) instead of the term “orijentacija” (=orientation). The term used in these laws is discriminatory since its signification implies that sexual orientation is changeable and that it is possible to choose it. This Law doesn't explicitly prohibit discrimination on grounds of gender identity.

ii. Does it cover:

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimization?*

⁹⁸ Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a particular sexual orientation at a particular disadvantage compared with other persons"

⁹⁹No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

¹⁰⁰ The Labor Law, Official Gazette of Montenegro, No. 49/2008 and 26/2009.

Yes, it covers all of the above.

- iii. *Have the authorities promoted other measures to combat discrimination, harassment and victimization, in both the public and private sectors, for example:*
- *adoption of codes of conduct for both employers and employees;*
 - *training and awareness raising programmes for both employers and employees;*
 - *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
 - *recruitment efforts directed at LGBT persons;*
 - *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
 - *co-operation with and support for employee groupings of LGBT persons?*

We do not dispose of any information concerning this question. We did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

- iv. *Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

In a letter sent by the Ministry of Defense of Montenegro, it is stated that this Ministry and the Military of Montenegro are dedicated to affirmation of all values protected by the community *acquis* of the Council of Europe, in particular human rights and freedoms and fight against all kinds of discrimination, including the one on grounds of sexual orientation and gender identity. The Ministry of Defense thinks that setting up and establishing the corresponding measures which provide an effective protection from discrimination on grounds of sexual orientation or gender identity should be in function of strategic strivings of the Government of Montenegro to exercise human rights and freedoms of LGBT persons, having as guidance the principles and measures included in the Council of Europe Recommendation.

The regulations related to employment in the Military of Montenegro do not impose any legal prohibition which would prevent LGBT persons from being employed. However, the prohibition of discrimination on grounds of sexual orientation and gender identity is not directly mentioned in the legislation and regulations currently in force.

The Law on Armed Forces of Montenegro governs general admission conditions to the Armed Forces of Montenegro, among which there is no prohibition to military service to persons of different sexual orientation. The Law on Civil Servants and State Employees, as well as the Labor Law, which are applied accordingly to the persons in the military service too, does not impose the mentioned obstacle, the basic principle for employment being equal opportunities concerning work positions, or formation positions for all candidates. In the opinion of the Ministry of Defense of Montenegro, this principle impedes any form of negative selection or discrimination on any grounds. In the regulations of the Ministry of Defense on special admission conditions and method of examination of candidates' health capability for military service, this kind of prohibition is not prescribed.

The Law on Armed Forces of Montenegro guarantees the application of principles of transparency, justice and equal rights to all persons applying for admission to military service, without discrimination on any grounds and that the Minister ensures that these principles are obeyed (Article 52 of the Law).

In answering the questions asked for the needs of elaboration of this Report, the Ministry of Defense stated that, within the scope of its competences, together with other responsible entities and partners, give full support to all the activities related to the implementation of the proposed Council of Europe Recommendations on measures for combating discrimination on grounds of sexual orientation and gender identity in terms on employment and vocation, which would provide equal treatment of LGBT persons in the process of employment and vocation, through legal and sublegal solutions from the defense system.

We did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

- v. *Specifically in relation to the armed forces:*
- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
 - *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

Direct measures for the protection of LGBT persons were not implemented.

The Law on Armed Forces of Montenegro qualifies as a grave disciplinary violation, *inter alia*, any behavior insulting dignity of subordinates, and especially sexual harassment or harassment or other discriminating behavior on the basis of gender, race, skin color, religion, or nationality and other personal characteristic (Article 128, paragraph 1, item 18).

The Code of Military Ethics prescribes that a person serving in the Armed Forces shall, *inter alia*, respect the personality and dignity of superiors, subordinates and other persons serving in the Armed Forces and fulfill duties without discrimination and prejudices on grounds of gender, race, religion, age, marital status, property and any other difference of the person in question (item 5, sub-item 2). These regulations do not mention directly the prohibition of discrimination on grounds of sexual orientation and gender identity.

- vi. *Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

We did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare, but the answer to this question (provided by the grantee) is “no”. **According to the available information, gender identity is not explicitly mentioned in the Labor Law.**

- vii. *Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

We do not dispose of any information in the subject matter. We did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare. According to our knowledge the answer to this question is: No, *employment programmes focusing specifically on employment opportunities for transgender persons have not been developed.*

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

- i. *Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

We do not dispose of any information in the subject matter. We did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

- i. *Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

The General Law on Education (Official Gazette of the Republic of Montenegro, No. 64/02, Official Gazette of Montenegro, No. 49/07, 45/10, 40/11 and 45/11), Article 9a, dealing with prohibition of discrimination, prescribes that “no physical, mental and social violence is allowed in an institution; molesting and neglecting children and students; physical punishment and personal insulting, i.e. sexual misuse of children and students or employees and any other form of discrimination, in the sense of Law” (meaning – Law on Prohibition of Discrimination).

The Ministry of Education and Sports actively participates in the Country Coordinating Mechanism (CCM) for HIV/AIDS. Within this Body, the Ministry gives its full contribution and support to achieving key pre-requisites, in particular in relation to sensitive groups, LGBT population being listed among them.

The Ministry supported the Coalition “Together for LGBT Rights”, in the form of a *friend of the Coalition*.

Other information provided by the grantee:

According to our knowledge codes of conduct or handbooks that have been issued to teachers and counselors in schools and colleges so that they can ensure a safe environment do not exist.

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
 - a. *treat their LGBT pupils and students with respect*
 - b. *be able to detect, analyze and effectively respond to and combat discrimination on these grounds in schools?*

In “Educational Work” (=“Prosvjetni Rad”), magazine for professionals working in the field of education, culture and science, the text entitled “Improving the quality of services for LGBT persons” was published, presenting the attitude of the Ministry of Education and Sports which promotes anti-discrimination, respect of human rights, primarily rights to life, health and personal security and gives guidelines for support and treatment of LGBT persons.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

For the school year 2012/13, a range of project activities were planned which will be designed and implemented by schools’ counseling services (psychologists, school pedagogues) of the selected schools, which are primarily intended for high-school student population.

Other information provided by the grantee:

We did not manage to obtain additional pieces of information related to this question from the Ministry of Education and Sports which would explain weather these planned activities aim to combat homophobia and transphobia.

It is important to mention that Juventas is now implementing a project called “We teach no discrimination” a first of its kind in Montenegro. **Main goal of the project is:** Safe and tolerant school surrounding for LGBT persons. **Objectives of the project are:** 1) Increased level of knowledge and sensitivity of high school students about human rights, sexual orientation and gender identity 2) Increased level of knowledge and sensibility of teachers in respect to human rights, sexual orientation and gender identity 3) Increased

representation of fact based LGBT issues along with modern methods appliance. Results of the project will be measured throughout quantitative and qualitative indicators achieved. **Quantitative indicators** imply: number of young people actively involved in project activities, reached in workshops, printed and electronic media coverage related to media and promotional campaign, printed materials distributed. **Qualitative indicators would be:** change in informational level, evaluation of workshops done by participants, analysis of media coverage related to media and promotional campaign and its message, quality of cooperation with relevant stakeholders (high schools, relevant Ministries), analysis of feedback given by target and general population, recommendations received.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

i. Is information on

- a. sexual orientation*
- b. gender identity*

provided in school curricula and sex and health education classes?

Sexual and reproductive health and equal rights topics are treated in the following curricula:

Primary education:

1. Biology for year 9 of primary school;
2. Nature for year 6 of primary school;
3. Civic education for years 6 and 7 of primary school;
4. Elective course Healthy lifestyles for years 8 and 9 of primary school. For the elective course Healthy lifestyles the Montenegrin Authority in charge of school textbooks and means of teaching prepared "*Healthy lifestyles, textbook for years 8 and 9*".

High schools:

5. Biology for year 3 of gymnasium;
6. Sociology for year 4 of gymnasium;
7. Civic education, elective course for years 1, 2, 3 and 4 of gymnasium;
8. Civic education, elective course for year 4 of vocational schools;

9. The Bureau for Education Services prepared a curriculum for the elective course *Healthy lifestyles* and it was adopted by the National Education Council. The elaboration of a textbook for this subject by the Authority in charge of textbooks and means of teaching is in progress.

Other information provided by the grantee:

“Montenegrin text books don’t have negative content in respect to sexual orientation and/or gender identity, but tend to ignore the subject.”¹⁰¹ This analysis in which such a conclusion can be found considered text books in primary and secondary schools, but not university books (basic obligatory literature) some of which according to our knowledge are outdated and contain incorrect and discriminatory pieces of information.

- ii. *Is it provided in a respectful and objective manner?*

Yes.

- iii. *Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

We did not manage to obtain the answer to this question from the Ministry of Education and Sports.

- iv. *Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

We did not manage to obtain the answer to this question from the Ministry of Education and Sports.

VII. Health

- 33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.**

- i. *Do*
- a. *the design of national health plans,*
 - b. *health surveys,*
 - c. *suicide prevention programmes,*

¹⁰¹ Working Group for carrying out the analysis of representation of human LGBT rights within the education system of Montenegro

- d. *medical training programmes,*
 - e. *training courses and materials*
 - f. *the monitoring and quality assessment of health-care services*
- take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

The Law on health protection from 2004 is based on citizens' equality in exercising of right to health protection, without discrimination based on any ground. This general provision found its reflection in the Law on Patients' Rights dating from 2010. Without being familiar with examples of discrimination in the process of health protection provision, strategies, plans as well as programs coming from such documents haven't recognized needs related to sexual orientation and gender identity. The only exception is the Strategy of fight against HIV/AIDS which, understandably, recognizes the need for special interventions aiming to protect the LGBT population.

Other information provided by the grantee:

Survey results on perception and attitudes toward homosexuality, carried out among health workers in Montenegro¹⁰², showed the necessity of constant education of health workers on human rights of LGBT persons. This survey preliminarily showed that 48.1% of the examinees think that homosexuality is a disease, 30.4% of health workers in Montenegro find that homosexuality can be medically treated, 59.7% that homosexuality is not natural, 36.2% that homosexuality is immoral, while 59.5% find that raising children by homosexual persons would boost homosexuality of the children, and 48.1% would feel as failed parents if their child were homosexual. 18.4% of the examinees consider verbal abuse of LGBT persons to be justified and there is also a high percentage of health workers who approve of physical violence, 11.4%.

Furthermore, the answer that we got from the Ministry of Health contains a discriminatory sentence in which we can read that is "understandable" that Strategy of Fight against HIV/AIDS "recognizes the need for special interventions aiming to protect the LGBT population" and no other policy document developed. Such manner of speaking implies that the whole community can be easily brought into connection with HIV/AIDS which could influence more discrimination to happen. The Strategy actually recognizes the need for special interventions among MSM (men who have sex with men) and Juventas is the organization dealing with the program aiming to decrease level of HIV and other sexually transmitted infections in this population. So far the homophobic general and professional public hasn't connected HIV infection with male homosexuality in a public discourse (which happened in many other countries), which we consider to be a fortunate circumstance due to HIV infection carries its load of discrimination by itself.

- ii. *Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

¹⁰² Indicative research carried out by Juventas within the framework of the project „Improvement of quality of services for LGBT persons“ supported by the British Embassy Podgorica.

International classification of diseases in force does not recognize homosexuality as a disease. Therefore educational programs for professionals are made in a way that are able to provide health protection services according to modern medical achievements and having full respect for patients' persona.

Other information provided by the grantee:

According to our knowledge, Juventas is the only organization which provides health professionals with training programmes related to issues specifically tied with sexual orientation and gender identity. We organized 4 trainings so far which included 100 participants from all levels within the health care system. Topics covered by these trainings were: basics related to sexual orientation and gender identity: identities and sexual orientation as a human right; information on STIs, on syphilis epidemics in the MSM population, oral manifestations of STIs, anal sex and STIs, HPV infection in MSM population, concept of vulnerability, study cases, LGBTIQ identities, theoretical explanation of coming out and mechanisms of homophobia and internalized homophobia, existing legal framework for protection of the LGBT people in Montenegro, professional ethics and standards in the work with LGBT people and related issues with a lot of practical exercises that made the training more interactive. The trainings have been organized within the frameworks of three projects implemented by Juventas: "Montenegro-a bright spot on a gay map"¹⁰³, "Health and rights"¹⁰⁴ and "Improvement of quality of services for LGBT persons"¹⁰⁵. All trainings gave special emphasis on quality of services provided by health care professionals and inclusive practice providing full respect of LGBT people's human rights.

- iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

We do not dispose of any information concerning this question. In spite of several attempts and meetings held with a representative of the Ministry of Health of Montenegro, we did not manage to obtain any answers to these questions.

¹⁰³ From December 2009 to April 2011 Juventas implemented a project called "Montenegro a bright spot on a gay map" supported by the Delegation of EU to Montenegro. This project introduced a common agenda for human rights and democratic reform in the area of LGBT human rights within different sectors. It created a knowledge data-base (numerous surveys and analyses), a wide network of support by launching Coalition for LGBT rights, which included representatives of state institutions and CSOs, working together on drafts of strategic documents. (More about the project: <http://www.montenegro-gay.me/component/content/article/26-crna-gora-svijetla-tacka-na-gej-mapi/118-o-projektu-qcrna-gora-svijetla-taka-na-gej-mapiq.html>)

¹⁰⁴"Health and Rights" is a project implemented by Juventas since 1 September 2006, within the program of support to the implementation of the Montenegrin National Strategy for HIV and AIDS of the Government of Montenegro. The project is supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria and is completely harmonized with the envisaged interventions defined by the above-mentioned strategy. The project is designed to promote sexual health and rights amongst the MSM population (men who have sex with men), but also to strengthen the capacities of activists in this field of work. The project is, also, based on creating a positive environment in Montenegrin society in relation to respect of human rights of all our citizens regardless of their sexual orientation or gender identity.(More about the project: <http://www.montenegro-gay.me/component/content/article/23-zdravlje-i-prava/24-zdravlje-i-prava.html>)

¹⁰⁵The Project "Improvement of Quality of Services for LGBT persons" has been implemented by Juventas since 1 November 2011 with the main purpose to promote and protect human rights of LGBT persons in Montenegro. The specific goals of this project are upgrading the capacities of the staff in institutions responsible for protection against discrimination, which come across LGBT persons in their work, and, when it comes to activism, upgrading the capacities of LGBT activists. The project is financially supported by the British Embassy in Podgorica.

Other information provided by the grantee:

Since 2006, in the scope of the project “Health and Rights”, the NGO Juventas has carried out the activities aimed at prevention of HIV/AIDS and sexually transmitted infections intended for the MSM population. These activities include distribution of condoms, lubricants, information materials on sexually transmitted infections, as well as providing information on safe sex to MSM persons on the spot, through outreach work in Montenegro. The NGO Juventas also manages a drop-in-center for LGBT persons. A psychologist and a health worker are employed in the center, providing consultation and counseling to LGBT persons. LGBT persons can get consultation and counseling on health and psychological problems in the center, while the physician working in the center acts as intermediary in establishing communication between clients and physicians in health institutions, if a person has a health problem to be treated. Also, open trainings on sexual and reproductive health of LGBT persons are organized in the drop-in-center, facilitated by the physician employed in the center. Information texts on health, written by the physician working in the drop-in-center, are published on the www.montenegro-gay.me web-portal; the “Health”¹⁰⁶ section within this portal is the most visited out of all the other sections. LGBT persons are offered the possibility to ask for advice from the psychologist or the physician by the means of Online Counseling¹⁰⁷, also part of the www.montenegro-gay.me web-portal, and thus get into direct contact with the psychologist or the physician.

- iv. *Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

Health system is created in a manner that health services are provided according to standards available, but primarily according to equality principle having always in mind respect of patients’ rights.

Other information provided by the grantee:

Within the framework of the project “Improvement of quality of services for LGBT persons” Juventas did an antidiscrimination campaign which was targeting police officers and medical workers. The campaign involved creation of posters, postcards and guidelines for professionals in the area of health and rights: judges, prosecutors, police officers, **medical workers**¹⁰⁸ and **psychologists**¹⁰⁹.

Developed guidelines have the role to make it clear that sexual orientation and gender identity, like any other difference, must not be grounds for discrimination, therefore stress that we are all equal in the right to protected psychological and physical integrity, as well as good quality health protection.

¹⁰⁶<http://www.montenegro-gay.me/zdravlje.html>

¹⁰⁷http://www.montenegro-gay.me/savjetovaliste/chat.php?hg=P1N1cHBvcnQ_

¹⁰⁸<http://www.montenegro-gay.me/files/publikacije/Prirucnik%20za%20medicinske%20radnike.pdf>

¹⁰⁹<http://www.montenegro-gay.me/files/publikacije/Prirucnik%20za%20psihologe.pdf>

During the period to come we are convinced that guidelines will serve as a valuable recourse for service providers in joint efforts to improve social position of lesbians, gay, bisexual and transgender individuals.

- v. *Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

The Law on Patients' Rights defines the right of a patient to choose a person that can be fully introduced with his/her medical condition, without discrimination.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organization.

- i. *Has homosexuality been removed from the national classification of diseases?*

Yes, homosexuality has been removed from the national classification of diseases.

- ii. *Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

Yes.

Other information provided by the grantee:

According to our knowledge, the answer to this question is no. Forensic medicine textbook used at studies of medicine, considers anal penetration (without considering the sex of persons involved in such act) as "fornication against nature". On the other hand, the same textbook gives incorrect information that sex between men is illegal according to Montenegrin legislation.

- iii. *Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

Yes. The Law on Patients' rights defined a necessary explicit patient's consent for carrying out diagnostic and therapeutic procedures, which prevents the possibility of a compulsory treatment happening.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

- i. *Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

In developing medical capacities of Montenegro, it has been concluded that it is not rational to build up highly sophisticated services for a small number of patients, so we use the capacities of other centers from the region. The Law on Health Insurance provides the possibility of gender reassignment surgery for medical reasons at the expense of obligatory health insurance.

- ii. *If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

We do not dispose of any information that such practice ever existed.

- iii. *Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

Yes. The Law on Patient's Rights regulates this area and guarantees that a child can give a statement on acceptance/rejection of a medical intervention, which is being appreciated and taken into consideration, in accordance with child's age and level of understanding.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

- i. *Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

The Law on Health Insurance defines a possibility of gender reassignment surgery for medical reasons at the expense of obligatory health insurance and according to defined criteria.

Other information provided by the grantee:

To our knowledge, amendments to the Law on Health Insurance came into force on 15 March 2012, according to which transgender persons are provided and covered 80% of the costs of gender reassignment¹¹⁰. However, it is not possible yet to use this right in practice,

¹¹⁰Amendments of the Law on Health Insurance proscribe the following: "From the fund for mandatory health insurance insured persons are provided with 80% of coverage for health services for:

...
- gender reassignment surgery for medical reasons;

....
The difference between the full price of the health service and the reimbursement provided according to paragraph 1 of this article (here and after: supplement) is paid by the insured person when using the health service.

For persons insured in additional health insurance, the supplement is provided by the Fund or insurance company. The health service provider is obliged to give a receipt to the insured person, which must contain data on the amount that is provided by the mandatory health insurance fund and on the supplement amount given by the insured person.

because the deadline for determination of protocols and procedures which will enable its use is March 15th 2013.

ii. *If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

Yes.

Other information provided by the grantee:

The Law is not yet put in practice due to reasons mentioned above (see answer to question *i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured? within Recommendation no. 36*).

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

i. *Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

on the grounds of (a) sexual orientation and (b) gender identity?

In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

Other information provided by the grantee:

According to the available information¹¹¹, in accordance with the Inheritance Law, a homosexual partner is decidedly excluded from the successors entitled to inheritance pursuant to the Law, because only spouses and consensual partners, children, parents and other relatives are recognized as legal inheritors¹¹². This means that a same-sex partner would be in the same position as any other person who can inherit based on a will. The testamentary succession is limited by the right of compulsory heirs, which belong to the

The criteria for verification of medical reasons for gender reassignment surgery are defined by the state institution in charge for health issues (here and after: Ministry).” (Full Text of the Law available on: http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Zakon%20o%20izmjenama%20i%20dopunama%20zakona%20o%20zdravstvenom%20osiguranju.pdf).

¹¹¹No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

¹¹² The Inheritance Law, Official Gazette of Montenegro, No. 74/08, Art. 9

closest group of legal inheritors, to the inheritance of the compulsory share of the inheritance (part over which the testator cannot dispose)¹¹³.

- ii. *Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

Other information provided by the grantee:

The answer to this question is no, Montenegro does not have provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity. The only state shelter that exists in our country is the shelter for women who are victims of trafficking. Other shelters, in possession of women NGOs, have ensured this non-discriminatory access for LGBT persons. One example is the shelter of Safe Women's House, located in Podgorica, which provided emergency accommodation and medical assistance to two lesbian women who were attacked and beaten up by unidentified group of men during their vacation in Montenegro.

On December 1st2011 LGBT Forum Progress, LGBT organization from Podgorica, opened its very own shelter for LGBT persons in conflict with their families and evicted from their homes. Nevertheless, it is important to mention that this shelter also provides housing for LGBT persons whose physical and mental wellbeing is endangered in their surroundings.¹¹⁴

- i. *Is information available to landlords and tenants aimed at preventing such discrimination?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

- ii. *Are adequate and effective legal or other remedies available to victims of such discrimination?*

We do not dispose of any information concerning this question, or if anything has been achieved in this subject matter. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

- iii. *Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

¹¹³ Ibid, Art. 27 and 28

¹¹⁴For more on Shelter for LGBT persons see: <http://lgbtprogres.me/2011/12/sigurno-mjesto-za-lgbt-osobe/>

We do not dispose of any information concerning this question, or if anything has been achieved in this subject matter. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

- i. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighborhood support and security?*

We do not dispose of any information concerning this question, or if anything has been achieved in this subject matter. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

- ii. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

We do not dispose of any information concerning this question, or if anything has been achieved in this subject matter. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Labor and Social Welfare.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

- i. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

The Law on Sport (Official Gazette of Montenegro, No. 36/11), Article 4, dealing with availability, emphasizes that sport is available to all, regardless of age, physical capability, disability, gender, race, language, religion, national affiliation, social origin, political belief, property status or other personal characteristic. However, this Law does not explicitly mention sexual orientation and gender identity.

- ii. *By encouraging, for example:*
- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organizations and clubs,*
 - *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
 - *anti-discrimination campaigns in the sports world,*
 - *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

The Law on Sport, Article 3 prescribes sport principles, which, *inter alia*, promote that sport practicing shall be human, free, based on free will, healthy, safe, fair, tolerant and ethically acceptable. Also, the mentioned Article 4 of the Law provides availability of sports to all, regardless of, e.g. gender or other personal characteristic.

Article 8 defines measures concerning application of sports rules. According to this Article, sports subjects are obliged to respect and apply sports rules of national and international sports federations, Montenegrin Olympic Committee and International Olympic Committee. Practicing sports activities is governed by sports rules adopted by the National Sports Association, i.e. Sports Organization.

The National Sports Federation (article 59) is obliged to adopt sports rules for the sport within its competences, according to the Law and international sports rules. The National Sports Federation adopts the following rules: rules for organization of sport competitions and participation in competitions; security measures for participants of a sports event etc.

Other information provided by the grantee:

LGBT Forum Progress' members as well as other individuals from Montenegrin LGBT community took part in Eurogames 2012, the biggest LGBT sport event *thanks to the support of Montenegrin Government.*

Eurogames happened in Budapest from June 27th and 1st of July and Montenegrin LGBT athletes were among 4000 sportsmen and women, 2000 workers in sport industry, LGBT activists and supporters.¹¹⁵

- iii. *Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

The Law (Article 69) stipulates that the organizer of a sports event is obliged to:

- 1) ensure smooth and safe organization of a sports event;
- 2) undertake measures of risk prevention concerning possible harms for sportspersons, spectators and other participants in a sports event (warnings, prohibitions, notifications and instructions etc.), as well as measures of influence on increased risks (safety of a sports venue, functioning and adequacy of the installed and other equipment,

¹¹⁵ Please find more information by following the link: <http://lgbtprogres.me/2012/07/crna-gora-po-prvi-put-na-lgbt-eurogame-su-u-budimpe%C5%A1ti/>

providing emergency medical service, development of a sports event according to the competition rules etc.);

3) undertake the necessary safety measures for preventing violence and inadequate behavior on sports events, according to the Law and sports rules etc.

The organizer of a sports event is responsible for any harm incurred to sportspersons, spectators or other participants in a sports event and third persons due to non-respect of the obligations according to the general rules on responsibility for the harm incurred. A sports event organized on the territory of Montenegro under the management of the international Sports Federation shall conform to the laws and sports rules of the federation in question.

iv. *In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehavior at Sports Events,¹¹⁶ the European Sports Charter¹¹⁷*
- *and ECRI's General Policy Recommendation No.12¹¹⁸ been implemented in respect of (a) sexual orientation and (b) gender identity?*

No.

v. *Have specific appropriate measures been taken to:*

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

No.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

i. *Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*

- *developing awareness-raising activities*
- *condemning homophobic and transphobic behaviour during and in connection with sports events?*

¹¹⁶<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders").

¹¹⁷[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.I (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

¹¹⁸http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf: Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

We do not dispose of any information concerning this question. We did not manage to obtain an answer to this question from the Ministry of Education and Sports when we were seeking additional explanation.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognize that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

- i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

Other information provided by the grantee:

According to the available information¹¹⁹, the right to asylum, guaranteed by the Constitution, may be requested by “a foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs¹²⁰”.

The Law on Asylum prescribes that the asylum shall be given to foreigners in need of international protection in accordance with the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and other ratified international agreements and universally accepted rules of international law, pursuant to this Law¹²¹.

Neither the Constitution nor the Law on Asylum explicitly mention sexual orientation or gender identity, but they do mention “affiliation to a group” as a ground for a reasonable fear from persecution and a justification for request of asylum¹²².

According to the provisions of the Law on Asylum, discrimination in the asylum procedure is prohibited on any basis, and in particular on the basis of race, color, sex, citizenship, social origin or birth, religion, political or other opinions, country of origin, economic status, culture, language, age, or mental or physical disability (Article 7). Accordingly, it is to conclude that if in the country of origin there is a reasonable fear of persecution due to affiliation to a certain group, as for example LGBT community, the request for asylum is to be approved.

¹¹⁹No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

¹²⁰ Constitution, Art. 44, paragraph 1

¹²¹The Law on Asylum, Art. 2, paragraph 2, Official Gazette of Montenegro, No. 45/2006.

¹²² Constitution, Art. 44, paragraph 1 and Law on Asylum, Art. 2, paragraph 3.

The Law on Asylum lists groups which should be taken special care of in the asylum procedure, such as minors, persons deprived of working capacity, the elderly, persons subjected to torture, rape or other serious forms of mental, physical or sexual violence and other vulnerable persons.

Article 12 separately emphasizes that an asylum seeker shall be treated in a gender-sensitive manner at all the stages of the asylum procedure. Since the position of transgender persons is not explicitly defined by this Law, there is no guarantee that competent officers would respect the gender identity of a transgender person and that they would insist on a treatment in accordance with the gender mark in the personal documentation of the person in question.

- ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

- iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

- i. What procedures are in place to ensure compliance with this obligation?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

- ii. Are there documented cases where asylum seekers have been returned to such a country?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment

against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

- i. *What measures have been taken to comply with this requirement?*
- ii. *In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

We do not dispose of any information concerning this question. In spite of several attempts, we did not manage to obtain any answer to this question from the Ministry of Internal Affairs.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

- i. *Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

Yes.

The area of protection against discrimination in Montenegro is arranged in a new and systematic way. The Law on Prohibition of Discrimination, as the basic anti-discrimination law, stipulates prohibition of discrimination, concrete protection from discrimination and it also arranges mechanisms of protection.

Pursuant to the Law on Prohibition of Discrimination: “Anyone who considers that he/she has been discriminated by an act, action or failure to act of an authority and other legal and natural persons, can address the Protector of Human Rights and Freedoms by a complaint.” The complaint referred to in paragraph 1 of this Article may be addressed to the Protector also by organizations or individuals engaged in protection of human rights, with the consent of the discriminated person or group of persons.

Procedure by the complaints referred to in the paragraph 1 and 2 of this Article shall be conducted in compliance with the method of work of the Protector of Human Rights and Freedoms, unless stipulated differently by this Law. (Article 22).

Pursuant to the Law on the Protector of Human Rights and Freedoms of Montenegro (Official Gazette of Montenegro, No. 42/11): “The Protector shall autonomously and independently, on the principles of justice and fairness, take measures to protect human rights and freedoms, when they are violated by the act, action or failure to act of state bodies, state administration bodies, bodies of the local self-administration and local

administration, public services and other holders of public powers, as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination.” (Article 2)

“The Protector shall be the institutional mechanism for protection against discrimination. The Protector, with the approval of discriminated person, shall act and take measures for protection from discrimination, in accordance with this Law and specific Law governing the prohibition of discrimination. When he/she deems necessary, the Protector initiates the court proceeding for protection from discrimination or may join the discriminated person as intervener. Provisions of this Law shall apply accordingly in the actions taken by the Protector in cases of discrimination by physical or legal person.” (Article 27)

The Law on Discrimination stipulates that:

"Any differentiation, unequal treatment or bringing in unequal position of a person on the basis of gender identity or sexual orientation, shall be deemed to be discrimination. Everyone has the right to publicly declare his gender identity and sexual orientation. Gender identity and sexual orientation is a private matter and no one can be called upon to publicly declare his/her sexual identity and sexual orientation.” (Article 19)

ii. *In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*
in relation to (a) sexual orientation or (b) gender identity?

The Protector shall act upon complaints of citizens or on his/her own initiative, and he/she gives opinions to draft laws and other legal acts aiming at their harmonization with international human rights standards. He/she also initiates the amendment and adoption of laws (e.g. Law on same-sex union).

Pursuant to the provisions of the Article 23 paragraph 1 of the Law on Prohibition of Discrimination (Official Gazette of Montenegro, No. 46/10), the Protector of Human Rights and Freedoms submits to the Parliament of Montenegro the Annual Report on work, informing the Parliament in a special part of the Report on identified cases of discrimination and undertaken activities as well as recommendations and measures for elimination of discrimination. The Report shall contain a separate part dealing with discrimination on grounds of gender identity and sexual orientation.

The display of cases of discrimination in the Report is based on complaints, court reports in Montenegro, authorities dealing with offenses, inspections, as well as on conversations with citizens, surveys conducted by other authorities and non-governmental organizations and other sources of information, including the participation of the Protector’s representatives in round tables, conferences, television and radio programs.

Other information provided by the grantee:

The fact is that current Protector of Human Rights and Freedoms actively works on SOGI discrimination, *but is necessary to emphasize their lack of capacities, both administrative and financial, which influences their full commitment to LGBT human rights. Such a situation is recognized with activities and measures within the Strategy against Homophobia and Transphobia. This standing point is being publicly presented by this institution's representatives on numerous occasions.*

ABOUT JUVENTAS

Juventas exists from January 29th 1996 and is one of the oldest NGOs in Montenegro.

Our organization's mission is to animate as large number of young people is possible to become active participants in the decision making processes related to the creation and realization of their future.

Vision of Juventas is Montenegro as a democratic society with stable conditions, in which young people can freely express their potential, recognize their interests and create their future accordingly.

As one of the objectives of Juventas is **promotion and protection of rights and freedoms of the LGBT community** in Montenegro, we would like to stress some of the most important activities done and ongoing in this field:

- Lobbying and advocacy activities in the field of improvement of position of LGBT people in Montenegro;
- Created the first guidelines for professionals in their work with LGBT persons (medical workers, psychologists, police officers and legal practitioners);
- Delivering health services for at least 800 MSM;
- The first gay portal in Montenegro **www.montenegro-gay.me** launched;
- The first IDAHO campaign in Montenegro organized;
- From December 2009 to April 2011 implemented a project called "Montenegro a bright spot on a gay map" supported by the Delegation of EU to Montenegro which put LGBT rights on the top of the social agenda;
- Juventas' legal team constantly worked on the draft Law on antidiscrimination, one part of suggestions adopted and finds itself in the current version of the Law. This team is currently involved in activities related to ;
- Implemented trainings for scaling up capacities of LGBT activists;
- Doing translation and distribution work when important documents are concerned (Yogyakarta principles, Committee of Ministers' Recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity and Resolution of Parliamentary assembly of Council of Europe, etc.);
- National coalition "Together for LGBT rights" established and comprised out of 30 persons members of governmental institutions and non-governmental organizations;
- Trained professionals (medical workers, police officers and judiciary) on LGBT rights and sexual identity;
- Sent the first appeal to Ombudsman related to discrimination based on sexual orientation and gender identity;
- Carried out the first comprehensive research on the degree of homophobia in Montenegro;
- Opened the Counselling centre for LGBT persons (community building activities within the Counselling centre started and ongoing (workshops, trainings, social events, psychological and medical consultations)).
- The first successful research on STI's prevalence among MSM implemented;
- Organized the first National Conference "Montenegro – brighter spot on an LGBT map";
- Created the first Draft of the National Action plan of fight against homophobia;
- Undertook and still puts a lot of effort in lobbying activities for the adoption of the National Strategy and Action Plan of fight against homophobia