

# 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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by

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## EXECUTIVE SUMMARY

From the moment the wider public started to get familiar with the human rights of LGBTI persons, from 2003 onwards<sup>1</sup>, Montenegrin society has made great progress towards acceptance of diversity. This progress is reflected in the significant reduction of the level of discrimination and violence against LGBTI persons, and in the significantly higher degree of acceptance of LGBTI people in their families, and also in society as whole. LGBTI persons-related issues have become a part of the institutional and social agenda, bringing a higher level of public knowledge. Although many breakthroughs are evident in the field of human rights of LGBTI people, and quality of LGBTI people's lives improved in Montenegrin society, the level of homophobia, transphobia and intersex-phobia still remains high. This situation indicates the necessity of continuing the implementation of activities and additional efforts to reduce discrimination and violence against LGBTI persons. Special attention needs to be given to the improvement of legislative and protection policies regarding transgender and intersex people, whose issues are only addressed strictly through the medical context.

Since the last review process of Recommendation CM/REC (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity which occurred in 2013, the government has been changing its approach to human rights of LGBTI persons. The most important document which emerged after this process is *Strategy for improvement of quality of lives of LGBT people for period 2013-2018*.<sup>2</sup> The creation process of the Strategy was guided by Recommendation CM Rec (2010)5, and provides systemic response of Government of Montenegro against discrimination on grounds of sexual orientation and gender identity in the following fields: human rights of LGBT persons, sexual orientation and gender identity in education, cultural changes, security and social acceptance of LGBT persons, implementation of laws, healthcare, media, sport, economic growth and LGBT tourism, as well as international LGBT politics.

However, the Strategy lacks a comprehensive approach to upholding the human rights of LGBTI people, focusing on transgender people only in terms of the gender affirming process, not mentioning legal gender recognition in any way. However, *Action plan for implementation of the Strategy for 2018* addresses legal gender recognition, for the first time, setting out the forming of a working group for drafting the law on gender identity by the end of 2018. Issues of intersex persons are not addressed by the Strategy at all.

Montenegro has accomplished most of the improvements regarding human rights of LGBTI people in terms of changes to its legal framework, but the protection of human rights has not yet reached international standards and best practice in all areas. The Montenegro Report on the implementation of Recommendation CM/REC (2010)5, submitted by NGO "Juventas" in 2013, states that Montenegro has made advances in complying with the Recommendation, but still has some way to go as regards

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<sup>1</sup> In 2003, a first LGBT organization named 'Free Rainbow' started its work and was active for the following several years. A more comprehensive discussion on LGBT human rights started at the end of 2009, through project "'Montenegro' – a bright spot on a gay map", implemented by NGO Juventas

<sup>2</sup> Strategy for improvement of life quality of LGBT people for period 2013-2018, Ministry of human and minority rights, Government of Montenegro, 2013.

gender identity.<sup>3</sup> This general conclusion still remains the same today. Montenegro State Report from 2013 provides an unclear response to the question of legal gender recognition, only referring to the possibility of change of gender marker, without mentioning removal of the sterilization requirement, which still exists in practice.

**The Constitution of Montenegro** still *does not specifically mention discrimination based on sexual orientation, gender identity, gender expression and sex characteristics*, but amendments of **Law on prohibition of discrimination**<sup>4</sup> from 2014 provide an explanation for SOGI, and amendments from 2017, in addition to sexual orientation and gender identity, now also include also “*intersex characteristics*” as a ground for discrimination, with clear explanations of all of these terms. Further, the same Law defines *hate speech* as a special form of discrimination.<sup>5</sup> **Criminal Code** amendments from 2013<sup>6</sup> provide SOGI as grounds for special circumstance for determining the penalty for a criminal offense *hate crime*, as well as for *hate speech*.<sup>7</sup> Protection against discrimination based on gender identity is guaranteed also through **Law on gender equality**, which provides protection, not only to men and women, but also “*people of diverse gender identities*” equally in all areas of social life<sup>8</sup>, as well as prohibits discrimination against a *person based on sex change*.<sup>9</sup>

Despite the legal developments that protect from discrimination and violence, specific measures need to be undertaken in order to implement the Recommendations accordingly. *Since 2013, when changes of Criminal Code occurred, not a single case of violence against LGBTI persons has been considered hate crime, nor any case of hate speech was convicted by the court.*

Improvements in legislation is recognized in the ECRI report from 2017.<sup>10</sup> However, the report also recognises the lack of adequate response from authorities in regards to taking hate crime and hate speech as aggravating circumstances in homophobic and transphobic crimes, describing it as a direct result of the insufficient knowledge and expertise among the judiciary in understanding and recognizing hate crime dynamics.

Education and trainings of law enforcement structures, including police officers, prosecutors and judges, have been implemented mostly by NGOs with expertise in protection of LGBTI human rights. However, there still does not appear to be effective remedies in the event of discrimination and

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<sup>3</sup> 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 orientation, NGO Juventas, 2013.

<sup>4</sup> Article 19., Law on prohibition of discrimination, Official Gazette of Montenegro, No. 46/2010, 40/2011 – second law, 18/2014 and 42/2017)

<sup>5</sup> Article 9a, Law on prohibition of discrimination, Official Gazette of Montenegro, No. 46/2010, 40/2011 – second law, 18/2014 i 42/2017)

<sup>6</sup> Article 41a, Criminal code, Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro No. 40/2008, 25/2010, 32/2011, 64/2011 – second law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – second law and 44/2017

<sup>7</sup> Article 443, Criminal code, Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro No. 40/2008, 25/2010, 32/2011, 64/2011 – second law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – second law and 44/2017

<sup>8</sup> Article 1, Law on gender equality, Official Gazette of Montenegro, No. 46/2007 and Official Gazette of Montenegro, No. 73/2010 – second law, 40/2011 – second law and 35/2015)

<sup>9</sup> Article 4, Law on gender equality, Official Gazette of Montenegro, No. 46/2007 and Official Gazette of Montenegro, No. 73/2010 – second law, 40/2011 – second law and 35/2015)

<sup>10</sup> ECRI report on Montenegro (fifth monitoring cycle), Council of Europe, 20th June 2017.

violence against LGBTI persons. Despite the fact that cooperation between The Police Directorate of Montenegro and the LGBTI community is strengthened through the formation of the Trust Team between Police forces and the LGBTI community and appointment of LGBTI contact police officers in every municipality of Montenegro, numerous cases of violence remain unreported and just as many remain unsanctioned.<sup>11</sup>

Improvements in the legislation regarding right to private and family life are in process at this moment. A working group composed of representatives from Ministries and NGOs wrote and published the **draft of the Law on life partnership of persons of the same sex**, for which adoption is planned by the National Strategy for the end of 2018. The Law should *provide a set of rights to same-sex partners, which correspond to rights of heterosexual couples in marriage and extra-marital unions, with exception to the right to adopt and right to asylum.*

However, protection of human rights of transgender people is still lacking even in regard to the legal framework. *In Montenegro, sterilization is still a requirement for legal gender recognition<sup>12</sup> in practice, despite the fact that there is no clear law on this issue.* The **Law on national registers** provides the possibility for a person to change their gender marker<sup>13</sup>, without clear guidelines for the process of legal gender recognition. This allowed for the Ministry of Internal Affairs to demand “proof on sex change” which includes sterilization, in order to allow change of gender marker. In 2017, NGO Juventas, Institute for Legal Studies and Queer Montenegro, in cooperation with Spectra, presented **draft of the Law on gender and sex identity**, which, if adopted, *would provide transgender persons the possibility of legal gender recognition without any medical requirements and mental health diagnosis, only with the recommendation of a clinical psychologist.* Discussion with relevant Ministries on forming a working group for this Law has already started and is expected to form in 2019. Research into the attitudes of candidates for Members of Parliament about important issues for LGBT population<sup>14</sup>, conducted in 2017 by the Centre for Monitoring and Research (CEMI), Queer Montenegro and NGO Juventas, showed a general lack of knowledge about trans issues.

Furthermore, the human rights of intersex people are mentioned for the first time in Montenegrin legislation through amendments to the **Law on Prohibition of Discrimination** in 2017. Based on the official media statement<sup>15</sup> from Clinical Centre of Montenegro, *medical interventions are performed on intersex babies, with the purpose of sex determination.* The draft of the Law on gender and sex identity proposes prohibition of unnecessary medical interventions on intersex persons, which is a crucial step in the protection of the human rights of intersex persons.

Montenegro has Memoranda of Understanding (MoUs) signed between 16 local governments and the Ministry of Human and Minority Rights on the *Understanding and cooperation with the local authorities on improvement and protection of human rights of LGBT persons on the local level.*

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<sup>11</sup> Data provided by outreach work conducted by Queer Montenegro, NGO Juventas and Association Spectra

<sup>12</sup> Montenegro CEDAW Shadow Report, T. Žegura, I. Vujović, J. Čolaković, J. Ulićević. NGO Juventas, Queer Montenegro, Spectra. 2017.

<sup>13</sup> Article 6, Law on national registers, Official Gazette of Montenegro, No. 47/2008, 41/2010, 40/2011 – second law and 55/2016)

<sup>14</sup> Attitudes of candidates for members of Parliament about important issues for LGBT population, 2017. Centre for Monitoring and Research (CEMI), NGO Juventas, Queer Montenegro. Research was conducted through the project “My rights are your rights”.

<sup>15</sup> Vijesti web portal, One of 2000 babies is intersex, 3<sup>rd</sup> April 2017. Available online at: <http://www.vijesti.me/vijesti/jedna-od-2000-beba-je-interpolna-931985>

However, additional support to local and national institutions during this process, as well as expansion of activities from the central region to other parts of the country, is of crucial importance. Evaluation of the implementation of MoUs<sup>16</sup>, done by the Ministry of Human and Minority Rights, showed that municipalities had no clear idea on what activities to implement under the framework of these documents.

In Montenegrin society, which is strongly patriarchal, hetero- and cis-normative, being LGBTI is viewed mostly through a pathologizing context, with around 70% of citizens believing that homosexuality is a disease, and more than three quarters believing that LGBTI persons shouldn't have the right to freely express their sexuality or gender identity. Even 13% of citizens of Montenegro claim that violence toward LGBTI people is acceptable. Even with much greater visibility of LGBTI<sup>17</sup> persons in public life in Montenegro, around 90% of citizens do not personally know any LGBTI person. Furthermore, 90% of citizens believe that LGBTI community members are only gays and lesbians, with 31% having never heard of the term "intersex" and 19% having never heard of the term "transgender". Almost two thirds of citizens claim that human rights of LGBTI persons should not be granted, even if it is a precondition for accessing EU membership.<sup>18</sup>

Furthermore, many studies and outreach work experience in previous years showed that lack of knowledge and negative attitudes prevail even among the public service providers, who are an essential part of the process of creating a respectful democratic society, but who have not addressed LGBTI rights and needs in their educational or professional curricula. Research conducted by the Ministry of Human and Minority Rights in 2015<sup>19</sup>, showed that 17.4% of citizens do not have information regarding to whom they can report cases of discrimination and 23.6% wouldn't report discrimination. Research results also showed that the first institution for reporting discrimination is still the Police Department, despite the fact that trust in this institution decreased significantly from 2013 (from 20.3% to 13.4%). The second is the Protector of Human Rights and Freedoms (10.7%), then media (7%), prosecution (6.1%) and Court (6.1%). There are two main reasons for not reporting discrimination: lack of information and knowledge about discrimination protection mechanisms (51.7%) and lack of trust in institutions (28.5%).

Monitoring of the implementation of the adopted LGBT Strategy implemented by NGO Juventas and Queer Montenegro and Spectra, and regular meetings, cooperation and trainings done in 2016/2017 with representatives of respective Ministries, police, relevant judicial and prosecutor's bodies, health and social care institutions confirmed that state institutions need to improve their knowledge of the issues facing LGBTI communities and the human rights of LGBTI persons. Inter-institutional communication needs to be improved and further capacities and support provided in the creation and implementation of respective local and national plans to a high standard. Full quality implementation of the Strategy is obstructed by the fact that the Government provides insignificant funds for its implementation and the majority of activities are funded and implemented via CSO's approved projects.

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<sup>16</sup> Report on realization of measures from Action plan 2017 for implementation of Strategy for improvement of life quality of LGBT persons in Montenegro 2013-2018, Ministry of Human and Minority rights, 2017.

<sup>17</sup> There are no publicly visible intersex persons in Montenegro yet

<sup>18</sup> Attitudes towards LGBT population, 2016. NGO Juventas, Institute for Legal Studies, Queer Montenegro. This research was conducted through the project "Contribution to the improvement of the quality of lives of LGBT persons in Montenegro" funded by European Delegation in Montenegro.

<sup>19</sup> Attitudes of citizens towards discrimination in Montenegro, Ministry of Human and Minority Rights, 2015.

LGBTI groups can operate freely and play a role with human rights organizations in working to prevent SOGI discrimination. Recommendations including housing, sport, asylum and employment have not been addressed adequately, which can be concluded to be based on the lack of, or small number of, activities implemented in these areas.

The current Protector of Human Rights and Freedoms actively works on discrimination based on sexual orientation and gender identity, with some clear and important decisions in the period from 2013-2018, which determined institutional and social discrimination towards LGBT people. The Protector did not address intersex issues at all so far. The Protector of Human Rights and Freedoms is now showing more capacity to commit to LGBTI human rights, with a more visible key role in the protection against discrimination and violence, as well as more constructive dialogue with CSOs. Role, authorization, scope of responsibilities and reporting about the situation of human rights in Montenegro is regulated by the **Law on Protector of Human Rights and Freedoms**.<sup>20</sup>

Montenegro has made great progress regarding legislation improvement for protection of human rights of LGBTI persons. However, clear steps need to be undertaken in order to adequately implement existing legislation and to provide strong protection against discrimination based on sexual orientation, gender identity, gender expression and sexual characteristics. Transgender and intersex person's rights need to be prioritised in the States' agenda, as well as strong policy protection against hate crime and hate speech towards LGBTI persons.

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<sup>20</sup> Law on Protector of Human Rights and Freedoms, Official Gazette of Montenegro, No. 42/2011 and 32/2014.

## RECOMMENDATIONS TO MONTENEGRIN GOVERNMENT FOR PRIORITY ACTIONS

### *Recommendations related to institutional and legal mechanism against homophobia and transphobia:*

1. Adoption of the new Strategy for improvement of quality of life for LGBTI people in Montenegro for the period of 2018-2023, which will further improve institutional capacity for implementing protective measures against homophobia, transphobia and intersex-phobia, with a more comprehensive approach toward the human rights of LGBTI persons, as well as more specific measures for protection of transgender and intersex persons
2. Adoption of the Law on gender identity and sex characteristics which recognizes specific issues and needs of the transgender and intersex communities, aligned with international standards
3. Further cooperation of institutions in the protection of human rights of LGBTI persons
4. Continuous monitoring of implementation of protective measures provided by the Strategy by all relevant institutions, with special focus on the Protector of Human Rights and Freedoms and the Ministry of Human and Minority Rights
5. Educational and informational campaigns should be launched to address various professions with regard to discrimination based on sexual orientation, gender identity, gender expression and sex characteristics (medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of institutions responsible for protection against discrimination)
6. Creation of an effective system for reporting discrimination based on sexual orientation, gender identity, gender expression and sex characteristics by the Protector of Human Rights and Freedoms
7. Creation of a system providing free legal aid and support to LGBTI persons to report violence and/or seek legal redress and protection against discrimination
8. Promotion of relevant national and international standards and good practices with regard to the protection of human rights of LGBTI persons

### *Recommendations related to hate crime and hate speech:*

9. The Criminal Code should be amended to include sanctions for hate crime and hate speech against persons based on sex characteristics
10. The Law on media and Law on electronic media should be amended to include protection against discrimination based on gender identity, gender expression and sex characteristics
11. Intensive education for the judicial system (prosecutors and judges) should be implemented in regard to determining hate crime and hate speech in cases of violence



- and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics
12. Juridical system should be educated on the importance of recognizing hate bias against LGBTI persons, as well as adequate sanctioning of hate crime and hate speech against LGBTI persons
  13. Processing of cases of hate crime and hate speech should be conducted in an adequate and effective way which prioritizes the safety and respect for the dignity of the victim, with clear provision of all relevant information regarding available legal remedies
  14. Hate speech from public officials should be strictly sanctioned and publicly disavowed by the Government, including hate speech from religious leaders
  15. Educational and informational campaigns should be launched to address various professions in regard to hate crime and hate speech (medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of institutions responsible for protection against discrimination)
  16. Developing of LGBTI protection polices in Institution for Execution of Criminal Sanctions, especially in regard to protection of transgender prisoners, regarding accommodation, searches, treatment and access to trans-specific healthcare
  17. Educational training for staff in the Institution for Execution of Criminal Sanctions should be implemented, with special focus on treatment of transgender prisoners
  18. Continuous monitoring and data collection of cases of hate crime and hate speech against LGBTI persons should be implemented by juridical system and the Protector of Human Rights and Freedoms
  19. Educational campaigns for the general public should be implemented with the purpose of combating violence and discrimination against LGBTI persons should be implemented

*Recommendations related to freedom of association, expression and peaceful assembly:*

20. The right to freedom of peaceful assembly should be guaranteed in every municipality of Montenegro
21. Government officials should provide clear and strong support to LGBTI human rights
22. LGBTI activists should be included in every process of creation of LGBTI protection policies, especially trans and intersex activists, in order to create comprehensive LGBTI policies that correspond to the needs of people who are addressed and influenced by these policies
23. Campaigns for promotion of the human rights of LGBTI persons for general public should be implemented
24. Additional institutional and financial support should be provided to LGBTI organizations who work on promotion and protection of human rights of LGBTI persons, with special focus on trans and intersex organizations who have low level of access to funding

### *Recommendations related to respect for private and family life:*

25. The Law on Personal Data Protection should be amended to protect personal data with regard to sexual orientation, gender identity, gender expression and sex characteristics
26. The Rulebook on the method of labelling and protection of a specific category of personal data should be amended to include gender identity, gender expression and sex characteristics as a special category of personal data
27. The Family Law should be amended to prohibit discrimination based on sexual orientation, gender identity, gender expression and sex characteristics during the process of adopting a child
28. Adoption of the Law on same-sex partnership which will provide family rights to same-sex partners which correspond to the rights of heterosexual partners in same situation
29. Adoption of the Law on gender identity and sex characteristics, which will provide the right to legal gender recognition without any medical requirements, including sterilization or medical interventions which could induce sterilization, as well as prohibit surgeries on intersex persons without informed consent
30. Continuous supervision of personal data protection should be implemented, with special focus on data concerning sexual orientation, gender identity, gender expression and sex characteristics
31. Educational activities for institutions regarding data protection, especially for medical staff, police officers and administrative staff of the Ministry of Internal Affairs, should be implemented, with special focus on data protection of transgender persons
32. Education of relevant institutions responsible for the implementation of aforementioned Laws in order to ensure adequate application of these Laws
33. Conducting campaigns for raising awareness of the needs of LGBTI people in regard to the family rights and right to private life
34. Establishing counselling services for families of LGBTI persons, as well as LGBTI families
35. Conducting intensive trainings for social workers on sexual orientation, gender identity, gender expression and sex characteristics

### *Recommendations related to employment:*

36. The Law on Labour and the Law on Volunteer Work should be amended to include protection against discrimination based on gender identity, gender expression and sex characteristics
37. The Law on public peace and order should be amended to completely decriminalize sex work in order to stop the marginalisation of and violence against sex workers, especially trans sex workers
38. Implement activities to educate employers regarding LGBTI human rights through the promotion of relevant legal solutions and campaigns aimed at employers
39. Provide tax benefits for employers who are employing transgender persons
40. Provide support to social entrepreneurship of LGBTI persons

### *Recommendations related to education:*

41. Introduce amendments into Laws on education (Law on general education, Law on Gymnasium, Law on High Education, Law on professional education) to provide protection against discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics
42. Designing and inclusion of expanded content related to the human rights of LGBTI persons in school curricula and programmes at all levels of education
9. Further education of teachers, school psychologists and pedagogues on the protection of LGBTI students in elementary and high school with regard to the human rights of LGBTI students, with special focus on the most vulnerable groups – transgender and intersex students
43. Conducting campaigns on combating discrimination and violence against LGBTI students in elementary and high schools, as well as universities
44. Inclusion of protective measures for transgender students in the National LGBTI Strategy, which will address the use of correct pronouns and preferred name, access to bathrooms and changing rooms, and protection against gender-based violence and discrimination

### *Recommendations related to access to healthcare:*

45. Further development of trans-specific healthcare which will provide access to fit-for-purpose, high-quality healthcare to transgender people, respecting their mental and physical integrity, in accordance with national and international standards of practice
46. Creation of intersex-specific healthcare which will provide access to adequate healthcare to intersex people, respecting their mental and physical integrity
47. Activities related to improvement of sexual and reproductive health of LGBTI persons should be undertaken, with special focus on HIV and STI prevention and development of trans-specific prevention programmes
48. Further education of medical practitioners regarding adequate treatment of LGBTI persons in respecting their human rights, with special focus on affirmative and individual approaches to providing health services to transgender and intersex persons
49. Campaign to raise awareness on adequate, accessible and respectful healthcare for transgender and intersex patients among healthcare providers

### *Recommendations related to housing:*

50. Law on social and child protection should be amended to prohibit discrimination based on gender identity, gender expression and sex characteristics
51. Provide institutional and financial support to the LGBTI Shelter and Drop-in Centre
52. Implement activities to support emergency housing for LGBTI persons experiencing violence and discrimination from their family of origin during the coming out process
53. Conduct intensive education of social workers in social centres on the human rights of LGBTI people

*Recommendations related to sports:*

54. The Law on Sports should be amended to guarantee engagement in sports regardless of sexual orientation, gender identity, gender expression and sex characteristics, as well as prohibiting discrimination based on these grounds
55. Conduct campaigns on combating discrimination against LGBTI persons in sports
56. Government should provide support to facilitate the cooperation between LGBTI organizations and Montenegrin sports associations
57. Implement protective measures against the discrimination and harassment of LGBTI people in sports, especially focusing on transgender persons in sports

*Recommendations related to right to seek asylum:*

58. Provide specific protection measures against discrimination and violence based on sexual orientation, gender identity, gender expression and sex characteristics regarding asylum seekers, their accommodation and treatment in asylum centres

## INTRODUCTION

The following 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 is the second such report created by an NGO. The first report was submitted by NGO Juventas for the first Review Process in 2013, which provided data and analysis about the implementation of the Recommendation from the period of its adoption in 2010 to 2013.

This report refers to the period from March 2013 to June 2018 and expresses the view of the Montenegrin non-governmental organization *Association Spectra*, which works on the promotion and protection of human rights of transgender, gender diverse and intersex persons, on the steps undertaken by the State to implement the Recommendations accordingly. Taking into consideration that CSOs' and States' reports were more focused on LGBT issues, with not much data on the human rights of transgender persons and a complete lack of data on the human rights of intersex persons, this report emphasises measures concerning the protection of the human rights of transgender and intersex persons and provides a comprehensive approach to LGBTI human rights with regard to the Recommendation.

### The purpose of this report

The purpose of this report is to assess what progress has been made by the Montenegrin authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have and have not been implemented, it provides a baseline against which to measure further progress in the implementation of the Recommendation in coming years.

The report has two main target audiences. At the national level, these are the decision makers and civil official who are responsible for implementing the Recommendation. At the European level, this is the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, and after a review process which occurred in 2013, that it would conduct a review of progress towards its implementation in 2018/19. It is intended that this report will contribute to that review. This report should provide necessary information for the review of the Recommendation, which would correspond to the advancement of the understanding of LGBTI human rights and the highest European standards of protection.

### 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.

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

- Responses from individual Ministries to letters from Association "Spectra" listing the relevant checklist questions and asking for comments on actions taken to implement the related measures. It is worth mentioning that only two Ministries provided responses to the Questionnaire – the Ministry of Human and Minority Rights and the Ministry of Internal Affairs;

the request to access documents via freedom of information was denied by the Ministry of Justice and the Ministry of Labour and Social Welfare; other Ministries, such as the Ministry of Sports, the Ministry of Health and the Ministry of Foreign Affairs did not respond.

- Information acquired from meetings with Ministries
- Information from international published sources, such as the reports:
  - ECRI report on Montenegro (fifth monitoring cycle), Council of Europe, 20<sup>th</sup> June 2017.
  - CEDAW Concluding observations on the second periodic report on Montenegro, 21<sup>st</sup> July 2017.
  - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 2018 Communication on EU Enlargement Policy, Strasbourg, 17<sup>th</sup> April 2018.
- Information from published reports and research by the government and institutions of Montenegro:
  - Reports on the realization of measures of the Action plan for implementation of the National Strategy for improvement of the quality of life of LGBT persons in Montenegro 2013-2018, for 2013, 2014, 2015, 2016 and 2017, by the Ministry for Human and Minority Rights of Montenegro.
  - Research on the “Attitudes of citizens towards discrimination” for 2013 and 2015, by the Ministry of Human and Minority Rights of Montenegro.
  - Reports on work for 2013, 2014, 2015, 2016 and 2017 of the Protector of Human Rights and Freedoms of Montenegro.
  - Report submitted by Montenegro pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report), 11<sup>th</sup> July 2017.
- Research, documentation and reports assembled by non-governmental organizations
- Montenegrin electronic and printed media reports.

## FINDINGS

### Recommendations

*The operative text of the recommendation includes four main requirements:*

- 1. A review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity*
- 2. Introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies*
- 3. Ensuring that victims have access to effective legal remedies*
- 4. Member states should be guided by the principles and measures contained in the appendix to the Recommendation*

After the last review process of the Recommendation, within the period of 2013-2018, three analyses of legal framework regarding sexual orientation and gender identity were conducted.

The first study was conducted by the Ministry of Human and Minority Rights *“Analysis of the model of Law on Registered Partnership”*<sup>21</sup> in 2015, which was overseen by the National LGBT Strategy. The aim of the Analysis was to present the models of the Law on Registered Partnership, which are best suited to Montenegrin conditions, in order to open a dialogue on the adequate legal solutions to ensure full equality for the LGBT community in terms of rights and obligations related to marital and family relations. The second study was *“The possibility of legal recognition and protection of same-sex partnership in legal system of Montenegro”*. This study included an analysis of Montenegrin legislation with respect to private and family life, providing a draft of the Law on life partnership of same-sex persons as a result, which will go through the process of adoption by the end of the 2018. The third study, *“Legal recognition of transgender persons in legal system of Montenegro”*, included an analysis of legislation regarding the human rights of transgender persons, which resulted in a draft of the Law on gender identity and sex characteristics. The last two analyses were conducted by CSOs: the Institute for legal studies, NGO Juventas and the LGBTIQ Association Queer Montenegro, with the support of Association Spectra regarding the human rights of trans persons. These studies provided a legal basis for further improvement of Montenegrin legislative, which will guarantee respect of the human rights of LGBTI persons with respect to family and private life, legal gender recognition, right to adequate healthcare, and protection against discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics.

Legal protection against discrimination towards LGBTI persons improved in the reporting period. The creation and implementation of the **National Strategy for improvement of life quality of LGBT people 2013-2018** has provided a systematic approach and set of measures which had a main goal of improving respect for and protection of the human rights of LGBT people in Montenegro. *However, the Strategy lacks a comprehensive approach to the human rights of LGBTI people, focusing on transgender people only in the terms of gender affirming processes.* For the first time since Strategy

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<sup>21</sup> *Analysis of the model of Law on Registered Partnership*, B.Radošević Marović, M.Rajković, Mr I.Jončić, D.Kalezić, Ministry of Human and Minority Rights, December 2015.

was adopted, the *Action plan for implementation of the Strategy for 2018* looks at the issue of legal gender recognition, predicting the forming of a working group for drafting the Law on gender identity by the end of 2018. *Additionally, issues pertaining to intersex persons are not addressed by the Strategy at all.*

Numerous changes in Montenegrin legislation occurred with regard to protection against discrimination of LGBTI people. Amendments of the **Law on prohibition of discrimination** in 2014 provided clarification of terms “sexual orientation” and “gender identity”, which was not the case in 2011, when these terms were only introduced as grounds for discrimination, and amendments from 2017 introduced “*intersexual characteristics*” as a ground for discrimination, which is first time that intersex human rights are mentioned in Montenegrin legislation. Further, amendments of the **Law on gender equality** from 2015 provide protection against discrimination based on gender identity, not only to men and women, but also to “*people of diverse gender identities*” equally in all areas of social life,<sup>22</sup> as well as prohibiting discrimination toward *person based on sex change*<sup>23</sup>.

Amendments of the **Criminal code** from 2013 introduced *hate crime* as aggravating circumstance if committed on grounds of sexual orientation and/or gender identity, as well as *hate speech*, with more severe punishments if the crime was committed by public official. Measures against discrimination are also improved with the amendments of the **Law on Protector of Human Rights**, with clear specification of the Protector’s jurisdiction, more transparency of the election procedure, a higher degree of competence required of this institution in providing protection against discrimination, as well as higher degree of financial independence. Further, Montenegro **ratified the Istanbul Convention**, which came into force on August 1<sup>st</sup>, 2014.

However, despite these improvements in the legal framework for protection of LGBTI persons against violence and discrimination, effective procedures for protection of victims and provision of adequate legal remedies are still lacking. The **law on free legal aid**<sup>24</sup> prohibits discrimination while providing the right to free legal aid on grounds of sexual orientation, but *gender identity, gender expression and sex characteristics are not mentioned*. Further, it recognizes only victims of family violence<sup>25</sup> and some other vulnerable categories, but not LGBTI people, which is quite problematic taking into consideration that many LGBTI persons experience violence within their families<sup>26</sup>. In addition, the **Law on compensation of damage to victims of criminal offenses of violence**, provides the opportunity of requesting compensation for victims of violence in cases where the criminal act has violated their physical integrity, sexual freedom, or, in cases of death, where serious bodily injury or serious violation of physical and mental health has occurred.<sup>27</sup> These compensations can be provided for the purpose of compensation for wages lost, healthcare expenses, and funeral costs<sup>28</sup>. Both of the abovementioned laws require the Police Department, the State Prosecutor and

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<sup>22</sup> Article 1, Law on gender equality, Official Gazette of Montenegro, No. 46/2007 and Official Gazette of Montenegro, No. 73/2010 – second law, 40/2011 – second law and 35/2015)

<sup>23</sup> Article 4, Law on gender equality, Official Gazette of Montenegro, No. 46/2007 and Official Gazette of Montenegro, No. 73/2010 – second law, 40/2011 – second law and 35/2015)

<sup>24</sup> Article 8, Law on free legal aid, Official Gazette of Montenegro, No. 20/2011 and 20/2015.

<sup>25</sup> Article 13, Law on free legal aid, Official Gazette of Montenegro, No. 20/2011 and 20/2015.

<sup>26</sup> Data provided by Association Spectra, Queer Montenegro and NGO Juventas.

<sup>27</sup> Article 2. Law on compensation of damage to victims of criminal offenses of violence, Official Gazette of Montenegro, No. 35/2015.

<sup>28</sup> Article 4, Law on compensation of damage to victims of criminal offenses of violence, Official Gazette of Montenegro, No. 35/2015.



the Courts to provide information to victims about the option to access free legal aid and requests for compensation, which is rarely the case in practice.

The NGO shadow report of the implementation of CEDAW in Montenegro from 2017<sup>29</sup>, states that measures for the adoption and implementation of legislation to prevent discrimination based on sex, sexual orientation, gender identity and gender expression undertaken by the state were insufficient. They mainly consisted of educational activities directed at state institutions' personnel, yet they were not followed up with adequate evaluation and impact assessments. This report also states that institutions' conduct in cases of violence are worrisome – they demonstrate a complete lack of physical protection of victims, even after repeated reports of violence to the police and other relevant institutions. NGO noted a failure of institutions to comply with the principle of urgency, a complete lack of risk assessment, a very small number of protection measures issued for victims and a lenient penal policy. The report also states that a great number of victims are not familiar with the procedures, which is only one of the key reasons for a lack of trust in State institutions and the withdrawal of victims from further involvement in proceedings.

Cooperation between the LGBTI community and the Police Department has significantly improved with the formation of the Team of Trust between the Police Department and the LGBT Community, by the appointment of contact police officers for the LGBT community in every municipality of Montenegro and continuous education of police officers in the field of protection of the human rights of LGBTI persons. However, *despite numerous reported cases of violence against LGBT persons in the reporting period, not a single one has been characterized as hate crime, which indicates clear lack of capacity of juridical system, despite educational training that was conducted with regard to hate crime cases.* This is the one of the reasons why most cases of discrimination and violence remain unreported.

The Government took some steps to promote the Recommendations and its appendix, through organizing conferences and roundtables before the first review process. The translation of the Recommendations can only be found on the Government website under the section of the Vice President for economic politics and the financial system. The translation has been done by NGO Juventas and, due to the networking with European partners, it has been made official by the Council of Europe. The creation process of the national *Strategy for improvement of quality of lives of LGBT people for period 2013-2018* was guided by Recommendation CM Rec (2010)5 and provides the systemic response of the Government of Montenegro against discrimination on grounds of sexual orientation and gender identity.

Communication on EU Enlargement Policy stated fundamental rights legislation in Montenegro has further aligned with EU standards. In particular, the work of the Protector's office has improved, but more effort is still needed to strengthen institutional frameworks and effective protection of human rights. Following the process on anti-discrimination legislation, Montenegro now needs to ensure that adequate institutional mechanisms are in place to protect vulnerable groups from

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<sup>29</sup> NGO Shadow Report on the Implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in Montenegro, Submitted for the 67th CEDAW Committee Session, July 2017.

discrimination. Implementation of the legislation remains weak and institutional capacity on human rights needs to be increased<sup>30</sup>.

Much progress has been made in Montenegro in regard to the existing national legislation and adoption of protection measures against discrimination and violence based on sexual orientation, gender identity, gender expression and sex characteristics. However, further steps need to be undertaken in order to ensure adequate implementation of existing protection measures, particularly regarding the human rights of transgender and intersex persons.

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

1. Adoption of the new Strategy for improvement of life quality of LGBTI people in Montenegro for the period of 2018-2023, which will further improve institutional capacities for implementing protective measures against homophobia, transphobia and intersex-phobia, with a more comprehensive approach to the human rights of LGBTI persons, as well as more specific measures for protection of transgender and intersex persons
2. Adoption of the Law on gender identity and sex characteristics, which recognizes the specific needs and issues of the transgender and intersex communities, aligned to international standards
3. Further cooperation of institutions in the protection of the human rights of LGBTI persons
4. Continuous monitoring of implementation activities of protective measures provided by the Strategy by all relevant institutions, with a special focus on the Protector of Human Rights and Freedoms and the Ministry of Human and Minority Rights
5. Educational and informational campaigns should be launched to address various professions regarding discrimination based on sexual orientation, gender identity, gender expression and sex characteristics (medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of institutions responsible for protection against discrimination)
6. Creation of an effective system for reporting discrimination based on sexual orientation, gender identity, gender expression and sex characteristics by the Protector of Human Rights and Freedoms
7. Creation of a system of free legal aid and support to LGBTI persons to facilitate reports violence and/or to seek legal redress and protection against discrimination
8. Promotion of relevant national and international standards and good practices with regard to the protection of human rights of LGBTI persons

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<sup>30</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 2018 Communication on EU Enlargement Policy, Strasbourg, April 2018.

## 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. cover:*

- 1. Effective, prompt and impartial investigations into alleged cases of crimes and other incidents which are suspected to be related to sexual orientation and/or gender identity of the victim; with special attention when such crimes are alleged to be committed by law enforcement officials*
- 2. Taking bias motive related to SOGI when determining sanctions*
- 3. Encouraging victims to report these crimes and incidents*
- 4. Training of police officers, judiciary and prison staff*
- 5. Taking protective measures for LGBT prisoners, with special attention given to respecting the gender identity of transgender persons*
- 6. Gathering and analysing relevant data on prevalence and nature of discrimination on grounds of SOGIESC*

**The Ministry of Justice** denied the request by Association "Spectra" to provide responses to the Questionnaire on measures of the implementation of the Recommendation CM/Rec (2010)5, referring to the Article 29 of the Law on Free Access to Information, which defines that the "request will be denied if it requires creation of new information." Since providing responses to the Questionnaire is perceived as creation of new information, the Ministry denied Spectra's request. Taking into consideration that the Ministry of Human and Minority Rights, as well as the Ministry of Internal Affairs did not deny the same request for access to information, but provided the required information, this kind of attitude can be perceived as latent discrimination against the human rights of LGBTI persons in Montenegro and unwillingness to cooperate on this matter. However, the Ministry of Justice did respond to Spectra's request for a meeting with regard to starting a discussion about the formation of a working group, which will take part in the creation of a Law on gender identity and sex characteristics, so it must be acknowledged that there is a willingness for further cooperation.

Violence against LGBTI people in Montenegro is still widely prevalent in society<sup>31</sup>. Research on attitudes towards the LGBT population, conducted by NGO Juventas and Queer Montenegro in 2016, showed that a significant majority of the Montenegrin population does not believe that violence against LGBT people is acceptable, while 60% of them would be ready to report such violence to the police. However, taking into account that a negative response to this question is socially desirable, the fact that 13% of them openly argues that this kind of violence is acceptable is worrying<sup>17</sup>.

Protection with regard to hate crimes committed against LGBT people in Montenegro is guaranteed by several laws. The **Constitution of Montenegro** guarantees protection of human rights and freedoms<sup>32</sup>, prohibits infliction or encouragement of hatred or intolerance<sup>33</sup>, as well as direct or

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<sup>31</sup> Data provided by Association Spectra, Queer Montenegro, LGBT Forum Progres and NGO Juventas

<sup>32</sup> Article 6, Constitution of Montenegro, Official Gazette of Montenegro, No. 1/2007 and 38/2013.

<sup>33</sup> Article 7, Constitution of Montenegro, Official Gazette of Montenegro, No. 1/2007 and 38/2013.

indirect discrimination<sup>34</sup> on any grounds, *without explicitly mentioning sexual orientation, gender identity, gender expression and sex characteristics*. Further, the Constitution guarantees the dignity and safety of every human being, and protection of their physical and psychological integrity, privacy and personal rights.<sup>35</sup> Amendments of the **Criminal Code** in 2013 introduced *hate crime* as an aggravating circumstance in determining the penalty for crimes committed on ground of sexual orientation and gender identity. Further, amendments of the Criminal Code in 2017 *redefined the definition of rape* as based on absence of consent<sup>36</sup>.

*However, despite numerous training provided to the judiciary, prosecuting such crimes as hate crimes still hasn't happened, with most of the cases either dismissed by the Prosecutors office, or ruled in the favour of the defendant by the Court, or with low penalties such as fines, reprimand or a prison sentence of 3-4 months. These crimes are mostly categorized according to Article 370 (Evocation of national, racial and religious hatred), Article 443 (Racial and other discrimination), and Article 399 (violent behaviour), without recognizing hate crime as the aggravating circumstance<sup>37</sup>.*

Improvement of legislation is recognized in the ECRI report from 2017<sup>10</sup>. However, this report also recognizes the lack of adequate response from authorities with regard to taking hate crime and hate speech as aggravating circumstances in homophobic and transphobic crimes, as a direct result of the insufficient knowledge and expertise among the judiciary in understanding and recognizing hate crime dynamics.

Communication on EU Enlargement Policy also stated that the entire rule of law system, in particular the judiciary, now needs to deliver more results<sup>29</sup>. The policy also expresses serious concerns about gender-based violence, as well as violence against children. Additionally, in the concluding observations by CEDAW in 2017, the Committee recommends that the State party apply a zero-tolerance policy with respect to discrimination and violence against LBT women, with prosecution and adequate punishment of perpetrators<sup>38</sup>.

Survey results of perception and attitudes towards homosexuality, carried out by NGO Juventas, in cooperation with the Police Department of Montenegro in 2012 with 245 police officers from all regions of Montenegro, showed the necessity of ongoing education of police officers on the human rights of LGBTI people. Within the period of 2013-2018, sensibility training in the form of workshops, conferences and study visits for police officers and judiciary were implemented continuously, mostly by NGOs in cooperation with or supported by Government and respective Ministries. Further, educational material in the form of publications on guidelines for dealing with hate crimes against LGBT persons were disseminated within the Police Department. The Ministry of Justice, as well as the Ministry of Internal Affairs, have not provided information about the number of law enforcement officials who were trained in LGBTI human rights. Within the reporting period of 2013-2018, NGO

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<sup>34</sup> Article 8, Constitution of Montenegro, Official Gazette of Montenegro, No. 1/2007 and 38/2013.

<sup>35</sup> Article 28, Constitution of Montenegro, Official Gazette of Montenegro, No. 1/2007 and 38/2013.

<sup>36</sup> Article 204, Criminal Code, Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro No. 40/2008, 25/2010, 32/2011, 64/2011 – second law, 40/2013, 56/2013, 14/2015 42/2015 58/2015

<sup>37</sup> Reports of Ministry of Human and Minority Rights and Protector of Human Rights for 2014, 2015, 2016 and 2017.

<sup>38</sup> Concluding observations on the second periodic report of Montenegro, Committee of the Elimination of Discrimination against Women, 21st July 2017.

Juventas and Queer Montenegro have provided training for 300 police officers and police students, as well as 41 prosecutors and judges. 600 copies of educational material for the official juridical system has been distributed<sup>39</sup>.

Cooperation between the Police Department and the LGBTI community has been strengthened by the appointment of LGBTI contact police officers in every municipality of Montenegro, and even more so with the formation of the Team of Trust between the Police Department and the LGBTI community. However, even though the activities of the Team of Trust are promoted on the Police Department and the Ministry of Internal Affairs' websites, and some workshops been done by members of the Team for the LGBTI community, there is still very little trust in institutional mechanisms among the LGBTI community and few LGBTI-related crimes reported<sup>40</sup>.

Mechanisms for investigation of crimes allegedly committed by law enforcement and prison staff exist and are regulated by the **Law on internal affairs**<sup>41</sup>. These mechanisms should be independent and include Parliamentary, Civil and Internal control of Police Department. However, it is unknown whether these mechanisms function in practice.

Analysis of data obtained from the Legal Department of the Institute for Execution of Criminal Sanctions has shown that there are no protocols that specifically relate to respect of human rights and treatment of LGBT people in the prison system<sup>42</sup>. *Treatment of transgender persons is not specifically regulated, especially for those who have not undergone gender affirming surgeries, and thus have no possibility of changing their gender marker in personal documents. In these cases, transgender persons are accommodated according to sex assigned at birth, which makes them more vulnerable to violence. Issues regarding admissions and body searches of trans people are also unresolved.* However, the Institute for Execution of Criminal Sanctions shows a willingness to cooperate and to consider the introduction of programmes for transgender people that can protect them from violence and further discrimination in the prison system.

Regarding the **Law on prohibition of discrimination**<sup>43</sup>, the Ministry of Justice and the Ministry of Human and Minority Rights created **Guidelines on contents and methods of keeping record on cases of reported discrimination**<sup>44</sup>. These Guidelines provide clear instructions for authorities and institutions to keep precise records on any cases of discrimination and to submit them to the Protector by the end of January each year, or with short notice at the Protector's demand. In this way, these records become an integral part of the Protector's Special Report on Discrimination in Montenegro, submitted to the Parliament of Montenegro. Records are kept electronically, which provides a possibility to the Protector to have immediate access to the data, if necessary, which makes cases of discrimination towards LGBT people more visible and transparent.

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<sup>39</sup> Data provided by NGO Juventas and Queer Montenegro

<sup>40</sup> Data provided by Association Spectra, NGO Juventas and Queer Montenegro

<sup>41</sup> Section VIII, Articles 110 – 119, Law on internal affairs, Official Gazette of Montenegro, No. 44/2012, 36/2013 and 1/2015.

<sup>42</sup> Report on the rights of LGBT persons in the institute for Execution of Criminal Sanctions (IECS), J.Ulićević, T.Dakić, *Equal access to justice*, NGO Juventas, CEMI, Queer Montenegro, 2017.

<sup>43</sup> Article 33, Law on prohibition of discrimination, Official Gazette of Montenegro, No. 46/2010, 40/2011 – second law, 18/2014 and 42/2017)

<sup>44</sup> Guidelines on contents and methods of keeping record on cases of reported discrimination, Official Gazette of Montenegro, No. 50/2014.

Within the reporting period, numerous cases of violence against LGBT people occurred. For the purpose of this report, some representative cases will be further explained.

**Assault on Stevan Milivojević, former Executive Director of LGBT Forum Progres<sup>45</sup>** occurred in January 2016, when 2 unidentified male attackers assaulted him, inflicting minor body injuries. Milivojević was insulted and attacked after he exited the Post Office. At first, he tried to resolve the conflict in a peaceful way, which was unsuccessful and escalated into an assault, with the attackers punching him in the face twice. The case was convicted by the Protector of Human Rights and Freedoms, the Council for the protection of discrimination, the Ministry of Human and Minority Rights, representatives of the Positive Party of Montenegro, the Liberal Party, the Social-Democrats, the Social Democratic Party of Montenegro and the Youth Forum of the Social Democratic Party, as well as many CSOs. Milivojević stated that he submitted all the necessary medical documentation from the Clinical Centre of Montenegro to the Police Department and that he is communication with the Prosecutor's office with regard to the classification of the charge. *Unfortunately, the identity of the perpetrators was never revealed. The State Prosecutor's Office in Podgorica informed LGBT Forum Progres of the formation of a case against the unknown perpetrators, also stating that the case is currently being evaluated and, after all the relevant evidence has been gathered, a final decision will be made. This decision still hasn't been finalised.*

**Assault against the minor L.J. in Podgorica<sup>40</sup>**, in September 2016. The victim was beaten by the three attackers, who were identified and charged under criminal codes, with clear evidence that the violence was committed based on the presumed sexual orientation of the victim. L.J. is an ally of the LGBTI community, family member of LGBT persons involved in Pride organization, and was very visible during the Pride March and Pride preparations. At the time of the attack, the minor L.J. was walking with his minor sister near their home, when the car passed with 3 perpetrators who started insulting him with the word "faggot". After a short period of time, the car returned, and the attackers exited the vehicle to start the attack. One of the attackers grabbed the victim, pushed him to the ground and started hitting his head against the concrete, inflicting him with major injuries to the head. After this incident, the attackers escaped but the victim managed to write down the registration number of the car, which helped the Police Department with identifying the attackers. *One attacker A.M. (18), was charged under the criminal code for violent behaviour, and the other two attackers were released. After the hearing, the defendant was held in custody until the Court ruling. This case was concluded with the admission of guilt from the attacker, which resulted in a milder sentence of community service.*

**Assault against Hana Konatar, trans woman and coordinator in Association "Spectra", in September 2017, in Podgorica<sup>46</sup>**. She was brutally beaten up on a street near her home while some passers-by cheered on the attackers. This happened after Pride March, for which she was visible during the preparations as well as in the March itself. When she reported the case, with the support of Association "Spectra" and "Queer Montenegro", the police inspector responsible for her case tried to persuade her to drop charges after identification of the attacker, which she refused. *After the Prosecutor proceeded with the case, there was no more information provided to the victim until she was called, in June 2018, by a staff member of the General Court in Podgorica to inform her that two hearings were held without her, due to the fact that "she could not be reached on her telephone and her address*

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<sup>45</sup> Report on situation regarding human rights of LGBTI persons for 2016/2017, D.Kalezić, Queer Montenegro, 2018.

<sup>46</sup> Data provided by the case documentation of Association „Spectra“ and „Queer Montenegro“

*was missing in the report". This is in spite of the fact that she provided this information in her report to the Police Department. The next hearing is scheduled for September 2018. This is a representative case demonstrating the lack of information provided to the victim about the case procedure and legal remedies, as well as lack of transparency in the process.*

## **I. Right to life, security and protection from violence**

### **B. "Hate speech"**

*Section I.B. of the Appendix requires measures:*

- 1. To combat all forms of "hate speech", including from the media and on the Internet*
- 2. Public disavowal of hate speech by government officials*
- 3. To raise awareness among public authorities and public institutions about their responsibility to refrain from "hate speech"*
- 4. Promoting tolerance and respect for the human rights of LGBT persons*

*Hate speech* based on any grounds is strictly prohibited by the **Constitution of Montenegro**<sup>47</sup>. Amendments of the **Criminal Code** in 2013 of Article 433 (Racial and other discrimination), oblige the Court to take into account biased motivation regarding sexual orientation and gender identity, and in case of such, implement a harsher penalty, which should be more severe when the defendant is a public official. Further, the **Law on media** prohibits the publishing of any information and opinion which encourages discrimination, hate or violence against persons based on their sexual orientation, *but does not explicitly mention gender identity, gender expression or sex characteristics*<sup>48</sup>. The **Law on electronic media** prohibits encouragement of hatred or discrimination based on sexual orientation and gender identity through audio visual material services<sup>49</sup>, as well as through commercial audio-visual material, but it only mentions sexual orientation explicitly, *not gender identity, gender expression or sex characteristics*<sup>50</sup>. According to information provided for the Juventas report in 2013 by the Agency for Electronic Media, which, among other activities, supervises the implementation of this Law, the experiences and lessons learned from the 10-year period of work have shown that mistakes and failures in the work of electronic media are almost always as a result of lack of knowledge, information and without deliberate intent<sup>3</sup>. Additionally, the **Law on public peace and order** prohibits insults towards on public space<sup>51</sup>, as well as any insults based on personal characteristics<sup>52</sup>. *Hate speech on the internet* is also covered by the Law on public peace and order, which recognizes violations that disturb public peace and order through actions done via networks

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<sup>47</sup> Article 7, Constitution of Montenegro, Official Gazette of Montenegro, No. 1/2007.

<sup>48</sup> Article 23. Law on media, Official Gazette of Montenegro, No. 46/2010 – second law and 40/2011 – second law.

<sup>49</sup> Article 48, Law on electronic media, Official Gazette of Montenegro, No. 46/2010, 40/2011 – second law, 53/2011, 6/2013, 55/2016 i 92/2017.

<sup>50</sup> Article 85, Law on electronic media, Official Gazette of Montenegro, No. 46/2010, 40/2011 – second law, 53/2011, 6/2013, 55/2016 i 92/2017.

<sup>51</sup> Article 7, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011

<sup>52</sup> Article 19, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011

of electronic communications<sup>53</sup>, *but does not mention sexual orientation, gender identity, gender expression or sex characteristics.*

In addition to national legislation, in Montenegro there is an independent self-regulatory body - the **Media Council for Self-Regulation**, which gathers 19 Montenegrin media professionals and has a role in collecting, analysing and deciding upon complaints which are violating the **Journalist Codex**. The Codex strictly *prohibits mentioning sexual orientation and gender identity in reporting*, except when necessary in order to inform the public about an issue.

**The National Strategy for improvement of life quality of LGBT persons 2013-2018** obliges the Government to actively work on *“suppression and expansion of hate speech and intolerance through the Internet and media, by encouraging media organizations, Internet and other media to promote the culture of respect, tolerance and diversity with the goal of avoiding negative and stereotypical comments/reports/writings about LGBT persons which are humiliating and/or sexist.”* This includes public campaigns, promotional videos and jingles. Reports on the implementation of the action plan of the Strategy in the period of 2013-2017 indicate that several campaigns were implemented by the Ministry of Human and Minority Rights and CSOs with the goal of raising awareness on LGBTI issues, anti-discrimination practices and decreasing level of prejudice among the general population.

However, regarding hate speech from public official, as well as cyber violence and hate speech, *clear sanctions and public disavowal of such speech are still lacking*. Within the reporting period, numerous reports of hate speech have been submitted to the Police Department, with only a few of them prosecuted and sanctioned. In 2013 and 2014, 218 reports were submitted to the Police Department, of which 108 have been processed as misdemeanour charges, and only 36 were sanctioned with fines in the range of 100-700 Euros, 12 with a warning, 2 with a conditional prison sentence and 15 released, with the rest of them dismissed<sup>54</sup>. In 2016, 45 reports were submitted to the Police Department (27 for hate speech on the Internet), with 18 misdemeanour charges for violation of the Law of public peace and order and 3 charges for hate speech on the Internet, with one criminal charge for hate speech from a religious public official, which was dismissed by the State Prosecutor due to the “lack of elements of hate speech”<sup>55</sup>. In 2017, 221 reports were submitted to the Police Department, of which 210 involved cyber violence and hate speech, which resulted in 2 misdemeanour charges of cyber violence and 18 charges of violating the Law on public peace and order<sup>56</sup>. From all charges raised by the Prosecutor in 2016 and 2017, the Court ruled 7 fines (100-700 euros), 1 conditional prison sentence, 2 closed by agreement and the others were released or dismissed<sup>57</sup>.

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<sup>53</sup> Article 4, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011

<sup>54</sup> Myths and stereotypes: Violence and hate speech against LGBT persons: Police and juridical practice in Montenegro, A.S.Zeković, J. Koičić, P. Tomović, LGBT Forum Progres, 2014.

<sup>55</sup> Report on realization of measures from Action plan for 2016. for implementation of Strategy for improvement of life quality of LGBT persons in Montenegro 2013-2018., Ministry of Human and Minority Rights, 2016.

<sup>56</sup> Report on realization of measures from Action plan for 2017. for implementation of Strategy for improvement of life quality of LGBT persons in Montenegro 2013-2018., Ministry of Human and Minority Rights, 2017.

<sup>57</sup> Violence against LGBT persons and gender-based violence in Montenegro – examples from practice, B.Jokić, M. Raičević, J.M.Barac, LGBT Forum Progres, 2017.



***Sanctions and public disavowal of hate speech of public officials is still lacking from the Government. There were several cases of hate speech against LGBT persons coming from public officials and religious leaders which were not sanctioned.***

**The case of hate speech from M.R., Senior Officer of the Institute for Execution of Criminal Sanctions<sup>49</sup>** who was reported by the LGBTIQ Association “Queer Montenegro” after he expressed homophobic attitudes and encouraged discrimination towards LGBT persons through his Facebook profile. The report was submitted to the Protector of human rights and freedoms of Montenegro, the Ministry of Justice and the Ethical Board of Human Resources Bureau of Montenegro. M.R. is also a high official in The People’s Party, which has been present for decades on the Montenegrin political scene. Queer Montenegro reported that M.R. had been continuously spreading homophobic statements on Facebook before, during and after Montenegro Pride in 2013. Among other things, he claimed that Montenegro Pride is “*violence against moral and human nature*”, “*violation of moral orientation of majority of citizens*”, as well as “*aggressive promotion of abnormal sexual orientation*”. The Queer Montenegro team stated that M.R., as a state official, has inflicted damage to the “*accomplishments and reputation of the Government of Montenegro in the field of promotion and protection of human rights of LGBT persons*”. They have requested that he be disciplined, take responsibility for his actions, apologise and remove his disputable statements. *The Ethical Board of Montenegro, after reviewing the whole case, decided that M.R. has violated the Ethical Code of state officials, Art. 5, as well as drawing on the Constitution of Montenegro and Human Rights Convention in their prosecution, stating that “freedom of expression is not absolute and that a balance must be made between the freedom of expression and right of others to protect their reputation.” The Ethical Board has submitted its decision in this case to the Minister of Justice, which punished the aforementioned state official with a fine, referring to the Law on Civil Servants and State Employees<sup>58</sup>.*

The most important case of **hate speech comes from a priest of the Serbian Orthodox Church, Jovan Plamenac<sup>40</sup>**, during Orthodox New Year on 13<sup>th</sup> January 2016, organized by the political party the Democratic Front. In his speech, he addressed the symbol of Pride, moustache, which he called “to return from faggot asses where it was in our great ancestors”, after which he addressed the fight against abortion for “dignity and respect in Montenegro”. LGBTIQ Association “Queer Montenegro” submitted a complaint to the Protector for hate speech of the priest Plamenac, after which *the Protector decided that the case had elements of hate speech against LGBT persons and gave recommendation to the priest Plamenac to restrain from hate speech against LGBT persons and to provide a public apology to LGBT persons within the timeframe of 15 days. This case was publicly condemned by the Ministry of Human and Minority rights, the Deputy Protector, NGO “Juventas” and the political party Young Liberals. However, after gathering evidence, the State Prosecutor dismissed the case due to the lack of evidence indicating elements of hate speech.*

Improvements of legislation with regard to hate crime and hate speech, without adequate knowledge in the juridical system on recognizing bias motive in cases of violence towards LGBTI persons, is insufficient for providing adequate protection. Further amendments in the Criminal Code and the

<sup>58</sup> Law on Civil Servants and State Employees, Official Gazette of Montenegro, No. 39/2011, 50/2011 - correction., 66/2012, 34/2014, 53/2014 – second law, and 16/2016 – second law.

Law on Media should be introduced in order to protect intersex persons from such crimes. Priority needs to be given to educating prosecutors and judges, raising awareness in general public of LGBTI issues, as well as clear Government support and public condemnation of hate crime and hate speech, especially when coming from public officials, state employees and religious leaders.

*Recommendations related to hate crime and hate speech:*

1. The Criminal Code should be amended in a manner which includes sanctions for hate crime and hate speech against persons based on sex characteristics
2. The Law on media and the Law on electronic media should be amended to include protection against discrimination based on gender identity, gender expression and sex characteristics
3. Intensive education of the judicial system (prosecutors and judges) should be implemented with regard to determining hate crime and hate speech in cases of violence and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics
4. Juridical system should be educated on the importance of recognizing the hate bias against LGBTI persons, as well as implementing adequate sanctions for hate crime and hate speech against LGBTI persons
5. Processing of cases of hate crime and hate speech should be conducted in an adequate and effective way which prioritizes safety and respect of the dignity of the victim, with clear provision of all relevant information regarding available legal remedies
6. Hate speech from public officials should be strictly sanctioned and publicly disavowed by the Government, including hate speech from religious leaders
7. Educational and informational campaigns should be launched to address various professionals in regard to hate crime and hate speech (medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of institutions responsible for protection against discrimination)
8. Developing of LGBTI protection policies in the Institution for Execution of Criminal Sanctions, especially as regards protection of transgender prisoners in accommodation, searches, treatment and access to trans-specific healthcare
9. Educational training for staff in the Institution for Execution of Criminal Sanctions should be implemented, with special focus on the treatment of transgender prisoners
10. Continuous monitoring and data collection of cases of hate crime and hate speech against LGBTI persons should be implemented by the juridical system and the Protector of Human Rights and Freedoms
11. Educational campaigns for the general public with the purpose of combating violence and discrimination against LGBTI persons should be implemented

## II. Freedom of association

*Section II of the Appendix requires Member states to:*

- 1. Ensure that LGBT organizations can gain official registration and are able to operate freely*
- 2. Provide access for NGOs to public funding without discrimination*
- 3. Protect LGBT human rights organizations from hostility and aggression*
- 4. Consult LGBT human rights organizations on the adoption and implementation of measures which can have an impact on LGBT persons*

There are no restrictions on official registration of organizations whose publicly stated purpose is to work for the wellbeing of LGBTI persons in the promotion and protection of their human rights, or in for any other purpose.

**The Constitution of Montenegro** guarantees freedom of association of every political or non-political association, without any approval, through registration with the relevant authority<sup>59</sup>. Freedom of association is restricted by the Constitution only in cases of organizations whose action 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, religious and other hatred and intolerance.<sup>60</sup> Further, through the same Article 53, the Constitution provides the right to access public funding for NGOs if it is of public interest. The **Law on non-governmental organizations** also states that refusal to register of a non-governmental organization can be decided if the goals determined by the statute are a violation the Constitution or laws<sup>61</sup>. The same Law guarantees that the State provide funding for NGOs in the public interest in the amount of 0,3% of the annual state budget, for areas of: social care and healthcare, poverty reduction, protection of persons with disabilities, social care for children and youth, assistance to older persons, protection and promotion of human and minority rights, rule of law, civil society development and volunteerism, Euro-Atlantic and European integration of Montenegro, non-institutional education, science, art, culture, technical culture, environmental protection, agriculture and rural development, sustainable development, consumer protection, gender equality, the fight against corruption and organized crime, the fight against addiction diseases, as well as other areas of public interest by special law<sup>62</sup>.

Organizations that work on the promotion and protection of the human rights of LGBTI persons - NGO Juventas, LGBTIQ Association Queer Montenegro, LGBTIQ Community Centre and LGBT Forum Progres - as well as organizations that work on the promotion and protection of human rights of transgender, gender diverse and intersex persons - Association Spectra - can operate freely in Montenegro and have access to public funding.

According to the **Regulation on the way and the procedure for cooperation between the State and Non-governmental organizations**, non-governmental organizations have the right to

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<sup>59</sup> Article 53, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/2007.

<sup>60</sup> Article 55, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/2007.

<sup>61</sup> Article 18a, The Law on Non-Governmental organizations, Official Gazette of Montenegro, No. 39/2011 i 37/2017)

<sup>62</sup> Article 32, The Law on Non-Governmental organizations, Official Gazette of Montenegro, No. 39/2011 i 37/2017)

participate within the working groups in the “process of drafting and issuing acts from the annual work programme (strategy and analysis of the situation in a particular area, drafts and draft laws, other regulations and bylaws regulating the way of exercising the freedoms and rights of citizens)”<sup>63</sup>. NGO Juventas, Queer Montenegro and LGBT Forum Progres have been part of a working group for drafting and issuing proposals for the *Law on life partnership of persons of same sex*.

The above-mentioned organizations have been provided with protection from hostility and aggression, whenever requested, which usually includes structured community-based activities. *However, there have been some cases of attacks on the property of some of LGBT organizations, which were not adequately sanctioned. Further, as mentioned in the “hate crime” section, multiple cases of assaults on LGBT activists occurred, with not a single case being properly sanctioned.*

**Case of attack against LGBTIQ Social Community Center**<sup>40</sup>, occurred in June 2016, when several minors threw stones at the LGBTIQ Social Community Centre, damaging its property. The report by the Centre was not submitted, after taking into consideration that the perpetrators were minors, but the Police Department was informed. Activists requested that police officers conduct an informative and educational communication with the parents of the above-mentioned minors, so that they could overcome the hatred and violence they manifested, due to their lack of knowledge about human diversity, as they stated. *There is no data to confirm that this action of the police was conducted.*

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<sup>63</sup> Article 2, Regulation on the way and the procedure for cooperation between the State and Non-governmental organizations, Official Gazette of Montenegro, No. 07/12.

### III. Freedom of expression and peaceful assembly

*Section IV of the Appendix requires Member states to:*

- 1. 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*
- 2. Encourage pluralism and non-discrimination in media*
- 3. Protection of lawful assemblies*
- 4. 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 is guaranteed by **the Constitution** and can be limited only by the right of others to dignity, reputation and honour, or if it threatens public morality or the security of the state Montenegro<sup>64</sup>. Additionally, the Constitution also guarantees the right to peaceful assembly, without permission, only with previous declaration to the relevant authority. The freedom of assembly may be temporarily limited by the decision of the relevant authority for the purpose of preventing disorder or the committing a criminal offense, endangering health or morals, or protecting the working safety of people and property, in accordance with the law. So far, there have been no interference in regard to the freedom of expression and peaceful assembly with the use arguments such as offense to public morality and dignity.

***However, some public gatherings of LGBTI people have been banned for the reason of “public safety”, since they were categorized as “events of high security risks”. Such is the case of Nikšić Pride, which is a clear example of a violation of the right to peaceful assembly.***

**National Strategy for improvement of life quality of LGBT persons 2013-2018** obliges the Government to actively work on *“suppression and expansion of hate speech and intolerance through the Internet and media, by encouraging media organizations, Internet and other media to promote the culture of respect, tolerance and diversity with the goal of avoiding negative and stereotypical comments/reports/writings about LGBT persons which are humiliating and/or sexist.”*

The presence of LGBTI topics in printed and electronic media in Montenegro has significantly increased since the last reporting period, particularly regarding Pride Marches and trans issues. Several trainings were implemented for journalists, including education focused on reporting on trans and intersex issues implemented by Queer Montenegro in cooperation with Trans Network Balkan, as well as reporting on the Law about life partnership of same-sex couples, implemented by the Ministry of Human and Minority Rights, in cooperation with the SOGI unit of the Council of Europe and Queer Montenegro. However, there are still some cases of sensationalised reporting, especially in the light of the above-mentioned Law proposal, as well as with regard to trans issues.

There have been six Pride Marches organized in Montenegro since the last reporting period in 2013. Five Montenegro Pride Marches in Podgorica, organized by LGBTIQ Association Queer Montenegro, have passed peacefully, mostly through cooperation between Queer Montenegro and the Police Department, as well as with thorough preparations implemented by the Police Department and intense educational training delivered to police officers protecting the Pride Marches. However, some

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<sup>64</sup> Article 47, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/07.

cases indicate the lack of capacity of the state to protect the right to freedom of peaceful assembly of its LGBTI citizens.

**Seaside Pride in Budva in July 2013<sup>49</sup>**, which was the first public assembly of LGBT community in Montenegro. Adoption of the National Strategy was an indicator of an improvement of the overall situation for LGBT persons in Montenegro, thus a protective measure for the organization of the first public assembly of LGBT community. This event was classified by the Police Department as an event of highest security risk in Montenegro. For the purpose of maintaining this event, 446 police officers were on duty, as well as 5 members from Operational headquarters. Police officers intervened, using means of coercion, to prevent attacks and protect participants of the Pride March. At this event, 2000 citizens were gathered, with approximately 500 of whom were extremely violent. Two LGBT persons, members of NGO “LGBT Forum Progres” suffered minor injuries. After the event ended, police units performed evacuation of the participants of the Pride March. *Police Security Centre of Budva identified 32 suspects, among whom there were 6 minors, for violating public peace and order. The Police Department submitted request for processing of misdemeanour charges against 32 persons, for “rude and inconsiderate behaviour”<sup>65</sup>; as well as “grossly insulting or particularly impertinent, obscene or offensive behaviour”<sup>66</sup> against 3 persons; and against 1 person for “interfering or disparaging an official person in carrying out an official act”<sup>67</sup>. Of all these accused, 23 persons were found guilty, of which 19 were fined and corrective measures were imposed for 3 minors.*

**Banning the Nikšić Pride, organized by LGBT Forum Progres and Hiperion in September, 2015<sup>40</sup>** by the Police with the refusal stating that the Police Department cannot provide support to the organization of the announced gathering due to the high risk of violating the public peace and order in Nikšić, taking into consideration that the planned date was Day of liberation of Nikšić, when several cultural and entertainment events are held. Organizers filed a complaint to the Ministry of Internal Affairs, which was denied as unfounded, after which they submitted a report to the Protector. In this case, after reviewing the case, the Protector ruled in favour of the organizers, recognizing discrimination and violation of the right to peaceful assembly. In his decision, the Protector indicated several facts: that the organizers of the Nikšić Pride submitted the request for gathering to the Police Department first; none of the mentioned events submitted their requests; the Police Department hadn’t taken all the necessary measures to react to threats of hooligan activity in Nikšić. The Protector recommended that the Police Department implement numerous public activities in the purpose of building a more favourable atmosphere for enabling access to the right to peaceful assembly of LGBT persons in Nikšić. *LGBT Forum Progres and Hiperion, with the legal support of Action for Human Rights, have filed charges against the decision of the Ministry of Internal Affairs regarding the ban of the Nikšić Pride to the Administrative Court, which was dismissed, after which they filed charges to the Supreme Court, and eventually to the Constitutional Court. The case is still in process, 18 months after charges were submitted, thus exceeding the legal timeframe of 2 months. Of all the above facts, the most worrying is that the Police Department did not submit any criminal charges against persons who threatened violence, instead finding a solution in banning the Pride event.*

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<sup>65</sup> Article 5, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011.

<sup>66</sup> Article 7, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011.

<sup>67</sup> Article 11, Law on public peace and order, Official Gazette of Montenegro, No. 64/2011.

Despite the fact that five Pride Marches were held in the capital of Montenegro, Podgorica, as well as it being possible for LGBTI organizations to operate freely with some access to public funding, many actions are needed in order to truly improve lives of LGBTI people. The State needs to show strong and clear support for LGBTI organizations and public events of the LGBTI community in every city in Montenegro. Access to funding must be improved, in order to provide sustainability for the LGBTI movement, especially the trans and intersex movements, taking into consideration the general lack of trans and intersex specific funding. Trans and intersex activist must be more explicitly included in every process of creating LGBTI protection policies in order to ensure adequate and comprehensive policies that will respond to the actual needs of these communities and remove the obstacles for protection of their human rights.

*Recommendations related to freedom of association, expression and peaceful assembly:*

1. The right to freedom of peaceful assembly should be guaranteed in every municipality of Montenegro
2. Government officials should provide clear and strong support to LGBTI human rights
3. LGBTI activists should be included in every process of creation of LGBTI protection policies, especially trans and intersex activists, in order to create comprehensive LGBTI policies that correspond to the needs of the people who are addressed and influenced by these policies
4. Campaigns for promotion of human rights of LGBTI persons for the general public should be implemented
5. Additional institutional and financial support should be provided to LGBTI organizations that work on the promotion and protection of human rights of LGBTI persons, with special focus on trans and intersex organizations who have limited access to funding

#### IV. Right to respect for private and family life

*Paragraphs of Section IV of the Appendix address following measures:*

- 1. Ensure that any legislation criminalizing adult same-sex sexual acts is repealed*
- 2. Ensure that any personal data regarding a person's sexual orientation and/or gender identity is not collected*
- 3. Remove any abusive requirements in the process of legal gender recognition for transgender persons*
- 4. Provide full legal gender recognition of a person's gender in a quick, transparent and accessible way*
- 5. Ensure that transgender persons are able to marry after gender reassignment*
- 6. Ensure that the rights and obligations of same-sex partners are equivalent to unmarried heterosexual couples*
- 7. Ensure that the rights of registered same-sex partnerships are equivalent to those of heterosexual partners in a comparable situation*
- 8. Provide legislation which addresses the problems of social reality in which same-sex and unmarried heterosexual partners live*
- 9. Ensuring that decisions about primary custody of a child regarding parental responsibility or guardianship is taken without discrimination based on SOGIESC*
- 10. Ensuring that decisions about adoption of a child, when possible for single individuals, is taking into consideration without discrimination based on SOGIESC*
- 11. Ensuring that access to assisted reproductive treatment for single women, if supported by national legislative, is permitted without discrimination on grounds of SOGIESC*

In Montenegro, the “homosexual act”, specifically the “homosexual act between males” was decriminalized in 1977. “Homosexual act between women” was of no interest to the law-makers, therefore it was never a subject of legal documents in the territory of Montenegro. There is no difference in the age of consent. Trans identities are not, and were never, criminalized in Montenegro.

**The Law on Personal Data Protection** regulates the protection of personal data in a lawful and honourable way<sup>68</sup>, without use above necessary purposes or contrary to their purpose. Article 3 states that personal data provided that determines the identity of a person can only be stored for the time required for the purpose for which that personal data is being processed, which is relevant especially in regards to trans persons in cases of gender marker change. Protection of personal data is guaranteed to every person regardless of “citizenship, residence, race, skin colour, sex, language, religion, political and other belief, nationality, social origin, property, education, social position or other personal property”<sup>69</sup>, **but sexual orientation, gender identity, gender expression and sex characteristics are not mentioned specifically.** **The Rulebook on the method of labelling and protection of a specific category of personal data** specifies the manner of marking a special category of personal data and their protection in order to prevent unauthorized access to this data,

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<sup>68</sup> Article 2, The Law on Personal Data Protection, Official Gazette of Montenegro, No. 79/2008, 70/2009, 44/2012 and 22/2017

<sup>69</sup> Article 4, The Law on Personal Data Protection, Official Gazette of Montenegro, No. 79/2008, 70/2009, 44/2012 and 22/2017



*and includes sexual orientation as a specific category<sup>70</sup>, but not gender identity, gender expression and sex characteristics.* The Rulebook also requires familiarization and training of employees who are processing the special category of personal data<sup>71</sup>. For the purpose of this report, there was no clear data provided by the Ministry of Internal Affairs on whether this staff education occurred, especially in terms of protecting data of LGBTI persons. Data relating to the special categories can be processed only in cases defined by the Law, such as: *with explicit consent of the person in question; when it is necessary for employment purposes according to the Labour Law with application of adequate protective measures; when necessary for disease detection, prevention, diagnostics and treatment, as well as during the process of managing health services, only in cases where the processing of data by the medical worker or other entity is obliged to protect the privacy of data; when necessary for the protection of people's lives, other vital interests of the person to whom the personal data relate or the other persons, and this person is not able to personally consent, as well as in other cases prescribed by law; if the person has made the personal data publicly available or the processing is necessary for the realization in an obvious way or the protection of legal interests of that person before a court or other authority; when the processing of personal data is carried out within the legal activity of a non-governmental organization or association or other non-profit organizations with political, philosophical, religious or union goals, if this data relates only to members of that organization or persons who have a permanent contact with it in connection to the purpose of their organization activities, and if this data is not published without the consent of those persons.* Additionally, the **Law on confirmation of the Convention on the protection on facts of automatic processing of the personal data** requires Montenegro to guarantee that the processing of personal data with regard to sexual life, among other personal characteristics such as racial origin, political determination, religious conviction or other types of conviction, as well as personal data relating to health can be automatically processed only in cases where domestic legislation provides appropriate guarantees. The same is true with personal data regarding criminal records<sup>72</sup>. However, *gender identity, gender expression and sex characteristics are not mentioned.*

*Legal gender recognition* in Montenegro is not clearly regulated by the national law, neither are procedure rules for legal gender recognition defined. **The Law on National Registers** regulates changes on the national register of birth with regard to the “sex change”, *which formally gives the right to legal gender recognition to transgender persons<sup>73</sup>.* The same Law defines that the data entered into the national birth registers after legal gender recognition must be changed, amended or erased, based on the decision of the relevant authority responsible for determining the change of personal state<sup>74</sup>.

The procedure of making a decision or criteria for determining whether the person can change their gender marker is not defined in Law or by-laws, which leaves space for the competent authority, in

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<sup>70</sup> Article 2, Rulebook on the method of labelling and protection of a specific category of personal data, Official Gazette of Montenegro, No. 11/2011

<sup>71</sup> Article 5, book on the method of labelling and protection of a specific category of personal data, Official Gazette of Montenegro, No. 11/2011

<sup>72</sup> Article 6, Law on confirmation of the Convention on the protection on facts of automatic processing of the personal data, Official Gazette of Montenegro – International Contracts, No. 6/2009

<sup>73</sup> Article 6, The Law on National Registers, Official Gazette of Montenegro, No. 47/2008, 41/2010, 40/2011 – second law and 55/2016

<sup>74</sup> Article 14, The Law on National Registers, Official Gazette of Montenegro, No. 47/2008, 41/2010, 40/2011 – second law and 55/2016

this case the Ministry of Internal Affairs, to interpret the Law with a *clear requirement for a person to undergo gender affirming surgery and, with that, the sterilization process*, violating, in this case, the practice of the European Human Rights Court and the decision in the case A.P., Garçon and Nicot v France<sup>75</sup>, which found that the requirement for the proof of *“having undergone a sterilising operation or medical treatment resulting in a very high probability of infertility, amounts to a breach by the respondent State of its positive obligation to guarantee the right [...] to respect for [...] private life”*. The sterilization requirement of the Ministry of Internal Affairs not only prevents the procedure from being quick, transparent and accessible, but clearly violates the human rights, dignity and integrity of trans persons in Montenegro. Regarding this issue, CEDAW recommends to the State of Montenegro *“facilitate the procedure for legal gender recognition of a sex change, including by removing the requirement to undergo sterilization”*<sup>35</sup>.

Change of a first name is possible for any trans person, without any restrictions, based on the **Law on Personal Name**, which defines that any person has a right to change their first or last name after the change of *family or personal status (adoption, determination of maternity of paternity, marriage, divorce or annulment of marriage)*<sup>76</sup>, *but does not specifically mention gender identity*. However, the Law also provides for the change of name based on a *request of Montenegrin citizen*, which provides the right to trans persons to change their name without any restrictions.

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. However, in practice, trans persons have managed to access the right to change these documents after changing their gender marker in personal documents. In these cases, assistance provided by the NGOs dealing with the human rights of LGBTI persons has been invaluable in terms of making the procedure accessible and efficient.

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 sexes. Therefore, it implies that transgender persons can marry a person of the sex “opposite” to their gender marker in their personal documents.

In November 2016, after conducting the *Analysis of legal gender recognition of transgender persons in legal system of Montenegro*, the Institute for Legal Studies, Queer Montenegro and NGO Juventas, in cooperation with Spectra, presented a draft of the Law on gender identity and sex characteristics. *The Law, if adopted would provide the right to legal gender recognition to trans persons without any medical requirements, with only the opinion from a psychologist from the public health institution of Montenegro. This opinion of psychologist is not in any way a diagnosis requirement, but confirmation of the informative appointment conducted with the trans person*. The same Law would regulate several rights of trans persons, such as specific prohibition of discrimination in several social spheres, rights regarding private and family rights, right to adequate, accessible and ethical healthcare, pension rights, parental rights, right to employment, property rights, as well as the rights of intersex persons to respect of bodily integrity, prohibiting unnecessary medical intervention without consent and providing the option for intersex persons to choose a third gender

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<sup>75</sup> A.P., Garçon and Nicot v. France, 6 April 2017, No. 79885/12, 52471/13 and 52596/13, the Fifth Chamber of the European Court of Human Rights (ECHR)

<sup>76</sup> Article 9, The Law on Personal Name, Official Gazette of Montenegro, No. 47/2008, 40/2011 – second law and 55/2016

marker. The forming of a working group for creating and drafting the Law on gender identity is planned by the end of 2018, according to the Action Plan for implementation of the National LGBT Strategy for 2018. The first meeting, in which the discussion was started with relevant Ministries, was conducted at the beginning of July 2018. The meeting was organized by Association Spectra, in cooperation with Queer Montenegro and NGO Juventas, which gathered representatives from the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Human and Minority Rights and the Protectors' Institution. At the meeting, the Ministries were introduced to the proposal of the Law on Gender Identity and Sex Characteristics and comparable relevant international standards, and an agreement on further discussion and cooperation was established.

**Case of trans woman V.M. in March 2017<sup>40</sup>**, who was denied the right to change her first name by the Ministry of Internal Affairs, was categorized as a clear case of discrimination based on gender identity by the Protector. In this case, V.M. submitted a request to the Ministry of Internal Affairs for a change of her first name. After submission of the request and exiting the Regional Unit of Ministry, she received a phone call by the officer who accepted the request, trying to convince her to withdraw the request and change it into the request for changing her name into a "gender neutral name", with an explanation that the request for a name perceived as a "female name" is not possible without the medical documentation which proves her "sex change". After V.M. reported the case to Queer Montenegro and Spectra, the organizations organized a meeting with the director of the Directorate for Civil Status and Personal Documents of Ministry, which admitted that the Law had been violated, but referred to the "fact that this situation violates traditional gender norms and roles". After this meeting, Queer Montenegro submitted a report to the Protector, in the name of V.M., in regard to the committed discrimination based on gender identity by the Ministry, respectively in the terms of denial of the access to the right to change her first name, guaranteed by the Law on personal name. In his decision, the Protector mentioned *"the obligation of the public authority/administrative authorities to respect gender identity of person in the procedure of deciding regarding human rights of citizens, regardless of their sex assigned at birth. Persons of different gender identity cannot be denied in access to their citizen's rights and freedoms, nor can their rights can be denied based on the excuse that their expression of their gender identity was not followed by the medical interventions of gender affirming process"*. The Protector provided several recommendations which included: in all future cases, the Ministry acts in accordance to the Law on personal name, Law on prohibition of discrimination and Law on gender equality, together with regulations which will not restrict or deny the trans persons the right to change their name, as long as they fulfil requested criteria; to adhere to the standards of good governance and good administrative conduct and to decide on each request received by a reasoned legal act on which a citizen may invest remedies for the review of legality; to contact V.M. in order to allow her to change her personal name as she pleases, while respecting her gender identity, without requesting her medical documentation to confirm her gender affirming process. *The Ministry had cases of trans people changing their personal name without any restrictions afterwards, however, this institution did not follow all recommendations from the Protector and did not contact V.M. Additionally, it is worth mentioning that all later cases of trans people accessing the right to change their name included trans men, who often face less difficulties in Montenegrin system and society in whole<sup>77</sup>.*

Montenegrin legislation still does not recognize same-sex partnership. The Constitution of Montenegro regulates the right to marriage and defines that it can be concluded only by the "free

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<sup>77</sup> Data provided by Association Spectra

consent of a man and a woman”, as well being based on equality of spouses<sup>78</sup>. **The Family Law** further regulates marriage, family and family rights, while confirming the constitutional regulations of marriage, defining it as a union of man and woman<sup>79</sup>. It also defines family as a “*the life community of parents, children and other relatives who, in the context of this law, have mutual rights and obligations, as well as another basic community of life in which children are raised*”<sup>80</sup>. Family law also prohibits discrimination of children, parents, adoptive parents, guardians, foster parents, family members of the child and the child of close relatives specifically on grounds of sexual orientation and gender identity<sup>81</sup>.

Despite the fact that Montenegrin legislation does not recognize unions of persons of the same sex, this issue was challenged in 2012 when, in front of the Constitutional Court of Montenegro, provisions of the Family Law which gives some property rights only to heterosexual partners in extra-marital union, were disputed<sup>82</sup>. Further, the above-mentioned decision of the Constitutional Court of Montenegro stated that “*disputed provision of the article 12, paragraph 1 of the Family Law, as a consequence has different treatment in regard to sexual orientation of persons living in emotional and economic union, depending on the case of persons of same or different sexes. According to the disputed provision of the Law, extra-marital partners are only persons of different sexes, excluding persons of same sex who live in permanent union... However, according to the opinion of the Constitutional Court, different treatment which is based on reasonable and justified ground does not represent discrimination...*” In addition to that, the Constitutional Court concludes that “*the sphere of family and marital societies belongs to the domain of rights in which states have been given a broader field of assessment when deciding. Consequently, there are no legal obstacles to granting certain rights to those of the opposite sex to those of the same sex.*”

This decision of the Constitutional Court was a ground for **Analysis of possibility of legal recognition and protection of same-sex partnership in legal system of Montenegro**, conducted by the Institute for Legal Studies, Queer Montenegro and NGO Juventas. The result of this study was a draft of the Law on Civil Partnership, which was presented in February 2016. The National LGBT Strategy 2013-2018 also obliged the State to create **the draft of the Law on Registered Partnership**, which will guarantee rights to same-sex partners which correspond to the confirmed rules of international Law. In October 2016, the working group for the creation and drafting the Law on Registered Partnership was formed, by members of the Ministry of European Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, the Ministry of social care and labour, the Ministry of Public Administration, the Secretariat of Legislation, the Protector of human rights and freedoms and representatives of CSOs: Queer Montenegro, NGO Juventas and LGBT Forum Progres. After making several changes to the initial draft of the Law, which provided the right to registered partnership to every person, regardless of their sexual orientation, a *draft which includes only same-sex partnerships* was sent to the public discussion. *The draft of the Law on life partnership of persons of same sex provides most of the rights that heterosexual partners in marriage and extra-marital unions have, with exception of the right to adopt children and right to asylum based on the*

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<sup>78</sup> Article 71, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/2007.

<sup>79</sup> Article 15, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>80</sup> Article 2, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>81</sup> Article 5a, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>82</sup> Decision No. U-1 No. 2/11 of 19 January 2012 Constitutional Court of Montenegro

*partnership status*. It is planned that the draft of this Law be discussed in Parliament in December 2018.

Family Law provides for the possibility of adoption of children by a single person, regardless of their sex assigned at birth, *but does not consider sexual orientation, gender identity, gender expression or sex characteristics in any manner*<sup>83</sup>. The person who adopts must be between 30 and 50 years old. Restrictions in the process of adoption are: if a person is deprived of parental rights or their parental right is limited; is deprived of business ability; is suffering from a disease that can adversely affect the adoptee; does not provide sufficient guarantees that they will properly achieve parental care; has been convicted of a criminal offense from a group of offenses against life and body, against full liberty and criminal offenses against marriage and family<sup>84</sup>. Adoption by a single person can only be allowed by the Minister in charge of social welfare, and only in cases where there are particularly justified reasons for this and if this is in the best interests of the child, in accordance with this Law<sup>85</sup>. The Ministry of Labour and Social Welfare 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 laws<sup>86</sup>. *However, there are no registered cases of an LGBT person submitting a request for adoption, implying that this right has been denied on the basis of being LGBT*<sup>87</sup>.

On the other hand, Article 11 of the Law on treating infertility with assisted reproductive technologies explicitly defines the right to treatment includes men and women who live in consensual union or marriage, as well as a woman who is not married and does not live in consensual union. Sexual orientation is not mentioned in regard to this Law. *There are no known cases of LGBTI women or non-binary persons requesting assisted reproductive treatment*.

Taking into consideration some of the clear violations of human right to private and family right of LGBTI persons, especially transgender and intersex persons, the State has to make crucial steps in order to improve legislation concerning this section. The human rights of transgender persons are violated by the inhumane request for sterilization in the legal gender recognition process. Lack of protection of a person's right to bodily and mental integrity, which is represented in the sterilization requirement, as well as lack of protection of intersex persons from medical interventions which are performed without consent, are worrying. In order to provide complete protection of human rights of transgender and intersex persons, as well as to comply with international standards and practice of ECHR, the State needs to create a comprehensive Law on gender identity and sex characteristics which will, in adequate and respectful ways, provide complete support to the human rights of trans and intersex persons. Further, marital rights need to be equal to heterosexual partners in similar situations. Reproductive assisted treatment needs to be accessible, affordable and provided without discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics.

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<sup>83</sup> Article 126, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>84</sup> Article 127, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>85</sup> Article 132, The Family Law, Official Gazette of Montenegro, No. 1/2007 and 53/2016

<sup>86</sup> Decision no 01-27, January 2010, Ministry of labour and social welfare

<sup>87</sup> Data of the Ministry of labour and social welfare provided for the Montenegro report on implementation of Recommendations in 2013, NGO Juventas.

*Recommendations related to respect for private and family life:*

1. The Law on Personal Data Protection should be amended to protect personal data in regard to sexual orientation, gender identity, gender expression and sex characteristics
2. The Rulebook on the method of labelling and protection of a specific category of personal data should be amended to include gender identity, gender expression and sex characteristics as a special category of personal data
3. The Family Law should be amended to prohibit discrimination based on sexual orientation, gender identity, gender expression and sex characteristics during the adoption process of a child
4. Adopt the Law on same-sex partnership to provide family rights to same-sex partners which correspond to heterosexual partners in the same situation
5. Adopt the Law on gender identity and sex characteristics to provide the right to legal gender recognition without any medical requirements, including sterilization or medical interventions which could induce sterilization, as well as prohibit surgeries on intersex persons without informed consent
6. Continuous supervision of personal data protection should be implemented, with special focus on data concerning sexual orientation, gender identity, gender expression and sex characteristics
7. Educational activities of institutions, especially medical staff, police officers and administrative staff of the Ministry of Internal Affairs regarding data protection, should be implemented, with special focus on data protection of transgender persons
8. Education of relevant institutions responsible for implementation of aforementioned Laws, in order to ensure adequate application of Laws
9. Conducting campaigns for raising awareness on the needs of LGBTI people in regard to the family rights and right to private life
10. Establishing counselling services for families of LGBTI persons, as well as LGBTI families
11. Conducting intensive trainings for social workers in regard to sexual orientation, gender identity, gender expression and sex characteristics

## V. Employment

*Section V of the Appendix requires Member states to:*

- 1. Provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation and policies prohibiting discrimination*
- 2. Implement specific measures which ensure protection of right to privacy of transgender persons in employment, especially to avoid any irrelevant disclosure of their gender identity and former name*

**Ministry of Social Welfare and Labour** denied request for providing responses to the Questionnaire, referring to the Article 29 of the Law on Free Access to Information, which defines that the “request will be denied if it requires creation of a new information”. Since providing responses to the Questionnaire is perceived as creation of a new information, the Ministry denied Spectra’s request. Taking into consideration that Ministry of Human and Minority Rights, as well as Ministry of Internal Affairs did not deny the same request for access to information, this kind of attitude can be perceived as inactive attitude towards human rights of LGBTI persons in Montenegro, which is a continuation of a practice from the last reporting period.

**The Labour Law** prohibits discrimination on the ground of sexual orientation *but does not mention gender identity*.<sup>88</sup> **The Law on volunteer work** also prohibits discrimination based on sexual orientation, *but not gender identity*.<sup>89</sup>

*This implies that transgender persons do not have any explicit protection during the employment, which is often not accessible, especially taking into consideration that there is no clearly regulated legal gender recognition and that transgender persons cannot access the right to change their gender marker in personal documents without having undergone gender affirming surgeries which include sterilization. This leaves many trans persons unemployed, which forces many of them, especially trans women, to get involved in sex work.*

Sex work in Montenegro is not criminalized, but it is penalized, based on **the Law on public peace and order**, which orders a fine of 200 to 1000 euros for “*engaging in prostitution in public space or encouraging prostitution*”<sup>90</sup>. This situation places many trans sex workers at risk of violence and discrimination, even from police officers<sup>91</sup>, unable able to access protective services and health services without facing stigma and discrimination on multiple grounds.

**The Law on Armed Forces** adopted in 2017 prohibits discrimination on grounds of sexual orientation and gender identity, which is an important improvement since the previous reporting

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<sup>88</sup>Article 5, The Labour Law, Official Gazette of Montenegro, No. 9/2008, 26/2009 – corrected, 88/2009 – second law, 26/2010 – second law, 59/2011, 66/2012, 31/2014, 53/2014 – second law i 4/2018 – decision of the Constitutional Court

<sup>89</sup> Article 10, The Law on Volunteer Work, Official Gazette of Montenegro, No. 26/2010, 31/2010 - corrected, 14/2012 and 48/2015

<sup>90</sup> Article 27, The Law on Public Peace and Order, Official Gazette of Montenegro, No. 64/2011.

<sup>91</sup> Outreach data provided by Association Spectra

period when NGO Juventas reported the lack of protection against discrimination based on sexual orientation and gender identity within military service.

Further, **the Law on Civil Servants and State Employees** prohibits discrimination on grounds of “sex change, gender identity, sexual orientation and/or intersexual characteristics”<sup>92</sup>.

There are no records on reported discrimination of LGBTI persons in employment. However, from the field experience of NGOs working on promotion and protection of human rights of LGBTI persons - NGO Juventas and Queer Montenegro - there have been some cases of LGBTI persons experiencing discrimination in the labour market, which remain unreported due to their fear of further discrimination.

Data obtained through outreach work of Association Spectra shows that trans persons face the majority of discrimination from employers, in most cases being denied access to work after revealing their gender identity, either by showing their personal documents or being outed by someone they know. Experience also shows that many employers are not familiar with LGBTI issues, especially transgender issues, often stating that they can have problems if employing a trans person with personal documents which do not correspond with their perceived gender. This indicates a clear need for raising awareness among employees about the human rights of trans persons, as well as introducing some positive measures for employing transgender persons.

#### Recommendations related to employment:

1. Law on Labour and the Law on Volunteer Work should be amended to include protection against discrimination based on gender identity, gender expression and sex characteristics
2. The Law on public peace and order should be amended to completely decriminalize sex work, in order to stop marginalisation of and violence against sex workers, especially trans sex workers
3. Implement activities aiming to educate employers in respect of LGBTI human rights through the promotion of relevant legal solutions and campaigns targeting employers
4. Provide tax benefits for employers who are employing transgender persons
5. Provide support for social entrepreneurship of LGBTI persons

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<sup>92</sup> Article 7, The law on Civil Servants and State Employees, Official Gazette of Montenegro, No. 2/2018.



## VI. Education

*Section VI of the Appendix requires Member states to:*

- 1. Ensure that the right to education can be enjoyed without discrimination on grounds of gender identity and sexual orientation, including measures to provide protection from bullying and social exclusion*
- 2. Taking 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*

**Ministry of Education** did not respond to Spectra's request for providing responses to the Questionnaire. This kind of attitude can be perceived as latent discrimination against the human rights of LGBTI persons in Montenegro, which is very worrying due to the vulnerability of LGBTI students in Montenegrin primary and high schools, as well as universities.

Montenegro, in accordance to the signed international obliging documents, along with **the Constitution**, guarantees right to free education to every Montenegrin citizen under equal circumstances<sup>93</sup>. **The General Law on Education** defines clear goals of education in Montenegro as: to provide the opportunity for a comprehensive development of the individual regardless of gender, age, disability, social and cultural background, national and religious affiliation, and physical and psychological constitution; to satisfy the needs, interests, desires and ambitions of an individual for lifelong learning; enable the achievement of an internationally comparable level of knowledge, skills and competences; to develop awareness, the need and ability to preserve and promote human rights, the rule of law, the natural and social environment, multi-ethnicity and diversity; to develop awareness of the state affiliation with Montenegro and its culture, tradition and history; to enable the individual, in accordance with their own possibilities, to participate at all levels of work and activity; to develop awareness of national affiliation, culture, history and tradition; and to contribute to achieving the strategic goals of Montenegro<sup>94</sup>. In addition, the Law prohibits "physical, psychological and social violence, harassment and neglect, physical punishment, insulting, sexual harassment of children, pupils and teachers and any other forms of discrimination"<sup>95</sup>, as well as providing equal opportunities in education for all Montenegrin citizens, regardless of nationality, race, sex, language, religion, social origin, disability or other personal characteristic<sup>96</sup>, *but does not mention sexual orientation, gender identity, gender expression and sex characteristics*.

Education in secondary schools is regulated by **The Law on Gymnasium** which defines educational goals such as: developing capability for life in pluralistic and democratic society and encouraging

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<sup>93</sup> Article 75, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/2007.

<sup>94</sup> Article 2, The General Law on Education, Official Gazette of Montenegro, 64/2002, 49/2007 and 45/2010, 40/2011 – second law, 39/2013 i 47/2017

<sup>95</sup> Article 9a, The General Law on Education, Official Gazette of Montenegro, 64/2002, 49/2007 and 45/2010, 40/2011 – second law, 39/2013 i 47/2017

<sup>96</sup> Article 9, The General Law on Education, Official Gazette of Montenegro, 64/2002, 49/2007 and 45/2010, 40/2011 – second law, 39/2013 i 47/2017

understanding, tolerance and solidarity<sup>97</sup>. Discrimination in terms of access to secondary education is prohibited on grounds of sex, race, marital status, colour of skin, language, religion, political or other belief, national, ethnic or other origin, property, disability or other similar basis, situation or circumstances<sup>98</sup>, *but not explicitly based on sexual orientation, gender identity, gender expression and sex characteristics*.

**The Law on High Education** guarantees free access to high education without any restrictions based on sex, race, marital status, colour of skin, language, religion, political or other opinion, national, ethnic or other origin, property, disability or other similar ground, situation or circumstances, *without mentioning sexual orientation, gender identity, gender expression and sex characteristics*<sup>99</sup>.

**The Law on Professional Education** defines one of its goals as encouragement, understanding, tolerance, solidarity and respect for diversity<sup>100</sup>, and guarantees free access to education without discrimination based on personal characteristics<sup>101</sup>, but also *doesn't mention sexual orientation, gender identity, gender expression and sex characteristics*.

When it comes to concrete protective measures for LGBT persons in educational system, the **Strategy for improvement of life quality of LGBT persons** provides strategic goals in the field of education: *improvement of the dimension of human rights in the educational system; improvement of quality and practice of the teaching process in regard to LGBT topics; improvement of schools' democratic culture, respect and acceptance of diversity*.

In practice, protection for LGBTI persons in the education system is still lacking. **Research among high school students about attitudes related to sexuality, sexual orientation and partnership relations** was conducted by NGO Juventas in 2013 on a sample of 1599 high school students from the whole territory of Montenegro. Results of the research showed high level of social dissonance between students, and high levels of homophobia, transphobia and violence, which is often not visible. In this research, 50.8% of students think that homosexuality is a disease, 44.2% wouldn't accept their classmate if they found out that they were LGBT, 24.3% would cut off any contact with their LGBT friend, and only 13.9% would accept the sexual orientation or gender identity of their close friend. In regard to safety, 63% of respondents stated that they heard about a student exposed to mockery for their sexual orientation or gender identity; 53.5% heard about insults; 22.7% heard about physical assault on LGBT students and 29.8% know of LGBT pupils who experienced threats. This kind of environment does not provide a safe space for growth, development and learning of young pupils, leaving LGBTI student particularly exposed to discrimination and violence. *Research did not address intersex students, so the data on discrimination of intersex students in Montenegrin education system is still lacking*.

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<sup>97</sup> Article 2, The Law on Gymnasium, Official Gazette of Montenegro, 64/2002 and 49/2007 and 45/2010, 39/2013 and 47/2017

<sup>98</sup> Article 2a, The Law on Gymnasium, Official Gazette of Montenegro, No. 64/2002 and 49/2007 and 45/2010, 39/2013 and 47/2017

<sup>99</sup> Article 6, The Law on High Education, Official Gazette of Montenegro, No. 44/2014, 52/2014 - correction, 47/2015, 40/2016, 42/2017 and 71/2017

<sup>100</sup> Article 2, The Law on Professional Education, Official Gazette of Montenegro, No. 64/2002, 49/2007 and 45/2010, 39/2013 and 47/2017

<sup>101</sup> Article 2a, The Law on Professional Education, Official Gazette of Montenegro, No. 64/2002, 49/2007 and 45/2010, 39/2013 and 47/2017

During 2013, an analysis of *“Montenegrin educational politics and sexual orientation: Representation of LGBT rights in Montenegrin school programmes and books”* was conducted in order to determine the way that Montenegrin subject programmes and books treat LGBT topics<sup>102</sup>. Analysis included 16 compulsory and elective subjects; 17 textbooks for primary and secondary school; as well as regulations which manage education and textbook policy. The results of this analysis show that there is openness of curricula for the introduction of LGBT themes as well as the development of tolerance and understanding in order to accept diversity. *However, although existing textbooks supposedly promote human rights, topics such as: the human rights of LGBT people, sexual orientation, gender identity, same-sex partnerships of the community and family, are omitted.* As the author concludes, the attitude of the Montenegrin textbook authors reflects the general social and political context in which these topics fall into “the other”, “the rest” and “less important”<sup>103</sup>.

In 2016, two research studies were conducted in regard to the situation of LGBT persons in high schools of Montenegro<sup>104</sup>. *Qualitative research on the position of LGBT youth in high schools from the perspective of professionals working in professional services in high schools*<sup>105</sup> showed general invisibility of LGBT students, with a small number of these seeking support in an environment where regular homophobia and transphobia is highly tolerated. Most teachers do not question the ways in which their attitudes impact the development of the educational system. However, the research also showed high level of willingness from the professions working in psychological/pedagogical school services to provide support and contribute to creating a safe environment for LGBT pupils. *Quantitative research on the perception of teachers in high schools about LGBT identities and human rights of LGBT persons*<sup>106</sup>, which included 3120 teachers from all high schools in Montenegro, showed that most teachers have never participated in any training course related to the human rights of LGBT persons (87.5%). However, most of them show knowledge, understanding or acceptance towards LGBT persons. 27.5% of respondents stated that LGBT topics are represented enough in schools, with only 6% claiming that these topics should not be mentioned in schools. Only a few teachers stated that they had knowledge about violence against LGBT students (5%).

Within the reporting period, several activities were implemented in order to improve the protection of LGBT students<sup>107</sup>.

During 2013, NGO Juventas, in cooperation with the Ministry of education and the Institute for Education, has implemented several activities through the project *“We teach non-discrimination”*. In addition to the above-mentioned research, different workshops were delivered in high schools to students, but outside of teaching activities and on a voluntary basis. In addition,, brochures *“Let’s learn not to be made of prejudices”* have been distributed among high school students. As one of the most important products of this project, the publication *“Guidelines for professional service’s*

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<sup>102</sup> Intersex topics were not included in the research.

<sup>103</sup> *Montenegrin educational politics and sexual orientation: Representation of LGBT rights in Montenegrin school programmes and books*, Mr A.S.Zeković, Centre for Civil Education, LGBT Forum Progres, 2013, Podgorica.

<sup>104</sup> Intersex issues were not addressed in these researches

<sup>105</sup> *Qualitative research on the position of LGBT youth in high schools from the perspective of professionals working in professional services in high schools*, I.Kovačević, NGO Juventas, 2016, Podgorica.

<sup>106</sup> *Quantitative research on the perception of teachers in high schools about LGBT identities and human rights of LGBT persons*, I.Kovačević, T.Dakić, NGO Juventas, 2016, Podgorica.

<sup>107</sup> There were no activities addressing issues of intersex students.

*treatment of LGBT adolescents*” was created and distributed to psychologists and pedagogists in high schools. In accordance with recommendations for the Analysis of representation of LGBT topics in textbooks, during 2015 additional material was created for the following schools subjects: civil education (6th and 7th grade of primary school), biology (8th and 9th grade of primary school), biology (1st, 2nd and 3rd grade of gymnasium, as well as 1st and 2nd grade of professional high schools), sociology (4th grade of gymnasium and 3rd and 4th grade of professional high schools) and psychology (2nd grade of gymnasium and 3rd and 4th grade of professional high schools). In 2013, the first anti-discrimination policy in the educational institution of Montenegro was adopted in the **Medical Faculty of Montenegro**<sup>108</sup>.

During 2015, seminars and series of consultations were organized with psychological/pedagogical services of high schools with the goal of educating them in the field of providing support to LGBT pupils. These activities were organized by NGO Juventas in cooperation with the Ministry of education.

At the beginning of 2017, the project *“Empowering high school students and teachers for the fight against violence based on sexual orientation and gender identity”* included a campaign *“Don’t stand by the side”* which aimed to empower student to report violence and discrimination. This campaign directly reached out to 30,000 students, with an estimate of 60,000 students reached indirectly.

Despite progress in the past 5 years, several cases of discrimination occurred in regard to the education system.

**Discriminatory interview of University professor Dr S.R.**<sup>49</sup> - NGO “LGBT Forum Progres” submitted a report for an evaluation to the General State Prosecutor with regard to the media interview in the daily newspaper “Dan” published on February 11<sup>th</sup>, 2013, for the purpose of determining criminal or misdemeanour responsibility for discrimination and violation of equality. In the media report, the professor referred to homosexuality as paedophilia and claimed that the cause of homosexuality is environmental factors. He expressed many homophobic attitudes, calling it deviant and abnormal. *The Higher State Prosecutor formed a case and determined the lack of evidence for pressing criminal charges against the professor to be prosecuted ex officio. However, a case for protection against discrimination eventually went to the General Court that, in May 2013, found the professor guilty and fined him 900 Euros, ordering him not to repeat this behaviour.*

LGBT Forum Progres states that during 2013/2014, more than 10 LGBT students have contacted their psychological counselling.

**Bullying of a gay student in Podgorica, 2014**<sup>49</sup> - The student stated that he was experiencing violence and harassment throughout his entire educational experience due to his sexual orientation. He reported every incident to his class teacher and school management, but without any result. Violence escalated in March 2014, when several students approached him and assaulted him while using insults based on his sexual orientation. After he reported the incident to one professor, also stating that he is a member of LGBT Forum Progres, the professor notified the school management. The Deputy Director of the school talked to him, asking him to drop charges and to resolve the issue calmly and quietly. The school psychologist also told him “not to make a big deal out of it, taking into

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<sup>108</sup> Anti-discrimination policy, NGO Juventas, Medical Faculty, University of Montenegro, 2013, Podgorica.

consideration that the school is almost over”, and asked him “did the membership in the NGO encourage him a little bit too much”. *He didn't press charges.*

Data provided by Association “Spectra” indicates that transgender students usually experience bullying, harassment and disrespectful behaviour regarding their gender identity and gender expression. Professors usually refuse to use their chosen name, justifying it by stating that they have to use the official name in order to abide “by the rules”. It is worth mentioning that there are no clear rules in any educational institution which define treatment or protection against discrimination of transgender persons, with the exception of the anti-discrimination policy of the Medical Faculty, therefore there are no rules which oblige teachers to refer to the official name of the trans student.

The recent case of **trans student Nikola Ilić, member of Association Spectra, experienced bullying in Podgorica in 2017/2018**<sup>109</sup>, when he came out in school and Student home where he lives. Most of the professors in his high school refused to use his chosen name and most of the students in school as well as his home harassed him verbally or physically. After he approached Spectra, asking for peer support and help in this case, Spectra submitted a request to the management of the Student home to influence teachers who refused to support him and with the intent to stop the encouragement of students to harass him. The problem was not solved immediately, which resulted in several students attacking him, inflicting minor injuries, which occurred after speaking publicly about his gender identity. *The case was reported to the police, which identified the attackers, and submitted the case to the State Prosecutor. The case is in process.* After this event, the trans student left the Student home, because he did not feel safe there, as the harassment didn't stop and part of the teachers in Student home continued their transphobic attitude towards him. After he stayed at a friend's house for some short time, he was left with no place to stay, after which Spectra submitted a request to the Student home to aid him in this particular situation while protecting him from further violence. *The response of the management of the Student home is an example of good practice, since they overcame internal rules and received him back into the Student home, giving him a separate room where he can be protected and safe.*

The current situation regarding protection from discrimination of LGBTI students in education system of Montenegro is worrisome. The vulnerable position of transgender and intersex students in educational institutions caused by the complete lack of protection against discrimination and violence is not being addressed in any proper way. Clear protection policies need to be developed in order to address trans and intersex issues to create safe spaces in schools and universities thus provide adequate, accessible and affordable education with complete respect of human rights. Taking into consideration that education is a precondition of further employment, and that many trans persons leave education due to discrimination and violence<sup>110</sup>, it is of crucial importance to create protection policies, as well as to educate teachers and school/university staff on LGBTI issues. Special attention needs to be given to educational training on intersex issues, which are not addressed at all in the school curricula.

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<sup>109</sup>Data provided by Association Spectra

<sup>110</sup> Data collected through outreach work by Association Spectra

*Recommendations related to education:*

1. Introduce amendments into Laws on education (Law on general education, Law on Gymnasium, Law on High Education, Law on professional education) which will provide protection against discrimination on grounds of sexual orientation, gender identity, gender expression and sex characteristics
2. Design and include expanded content related to the human rights of LGBTI persons in school curricula and programmes on all levels of education
3. Further education of teachers, school psychologists and pedagogues on protection of LGBTI students in elementary and high school regarding the human rights of LGBTI students, with special focus on the most vulnerable groups – transgender and intersex students
4. Conduct campaigns on combating discrimination and violence against LGBTI students among elementary and high schools, as well as universities
5. Inclusion of protective measures for transgender students in National LGBTI Strategy, which will address using correct pronouns and preferred name, access to bathrooms and changing rooms, protection against gender-based violence and discrimination

## VII. Health

*Paragraphs of Section VII of the Appendix require Member states to:*

- 1. Ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation and gender identity*
- 2. To take into account specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses*
- 3. Withdrawing medical textbooks and other documents that treat homosexuality as a disease*
- 4. Ensuring effective access to appropriate gender affirming services to transgender persons, without being subjected to procedures without their consent*
- 5. Provide appropriate legislation to ensure that any decisions limiting the costs covered by health insurance for gender affirming procedures are lawful, objective and proportionate*

*As with many other Ministries, the **Ministry of Health** did not respond to Spectra's request for providing responses to the Questionnaire. However, this Ministry did respond to Spectra's request for a meeting regarding starting a discussion about the Law on gender identity and sex characteristics, which indicates that there is a willingness for further cooperation regarding improvement of human rights of LGBTI persons.*

According to the data provided by medical workers, Montenegrin healthcare system acts upon the ICD-10. In that manner, homosexuality is not considered or treated as a disease, but transgender identities are still pathologized. Since the ICD-11 removed the diagnosis F.64. Transsexualism, as well as other trans related diagnoses from mental health section<sup>111</sup>, it remains to be seen how the Montenegrin healthcare system will follow these changes.

Amendments of the **Law on Health Protection** from 2016 guarantee the right to health protection "in accordance with the highest possible health standards and achievements of modern medical theory and practice"<sup>112</sup>, without discrimination on grounds of sexual orientation and gender identity<sup>113</sup>. Further, the **Law on Patients' Rights** guarantees human dignity, physical and mental integrity and respect of human rights<sup>114</sup>.

According to the **Law on Health Insurance**, healthcare is free and available to all Montenegrin citizens and foreigners (in accordance to the international health insurance contracts), who are registered with the State Insurance Fund<sup>115</sup>. Transgender persons have the right to healthcare in terms of the gender affirming process, which is covered by the State Health Insurance to the amount

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<sup>111</sup> WHO, "WHO releases new International Classification of Diseases (ICD-11): [http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-\(icd-11\)](http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-(icd-11))

<sup>112</sup> Article 4, The Law on Health Protection, Official Gazette of Montenegro, No. 3/2016, 39/2016 i 2/2017

<sup>113</sup> Article 5, The Law on Health Protection, Official Gazette of Montenegro, No. 3/2016, 39/2016 i 2/2017

<sup>114</sup> Article 1, The Law on Patients' Rights, Official Gazette of Montenegro, No. 40/2010 and 40/2011 – second law

<sup>115</sup> Article 6, The Law on Health Insurance, Official Gazette of Montenegro, No. 6/2016, 2/2017, 22/2017 and 13/2018

of 80% of the overall cost<sup>116</sup>. The rest of the expenses are paid by the insured person, according to the invoice for the provided health service, and at most the amount of two average net salaries in Montenegro for the previous calendar year according to the data of the administrative authority responsible for statistics. For insured persons with supplementary health insurance, the State Insurance Fund or insurance company cover the additional 20% of the costs. The Ministry of Health issued the **Rulebook for determining medical reasons for sex change**<sup>117</sup>, which defines criteria for accessing State Health Insurance for the gender affirmation process. This Rulebook requires a trans persons to gather and submit “positive” opinions from the following: general medical practitioner, endocrinologist, surgeon, psychiatrist, psychologist and social worker, as well as the opinion of the Consilium of Clinical Centre of Montenegro, together with the request to the State Insurance Fund, which then decides on funding the gender affirming process. A request can be made by any person older than 16 years. This Rulebook was issued 2 years after the amendments of the Law on Health Insurance in 2012, which made it impossible to implement this Law in practice within this period. Since 2014, when the Rulebook was issued, 2 trans persons accessed the right to gender affirmation surgeries which were covered by State Health Insurance.

*Spectra’s official position on this Rulebook reflects on the accessibility and pathologization of the gender affirming process. Spectra believes that requiring a trans person to acquire a mental health diagnosis, as well as obtaining the “green light” from all aforementioned medical practitioners, exposes them to further discrimination and stigma, especially when considering the lack of knowledge and sensitivity among medical practitioners.*

Experience demonstrates that some trans persons who needed healthcare services were outed by their medical practitioner to their colleagues. In one case, a medical nurse was familiar with one trans man who requested access to the gender affirming process. Being unaware that he was experiencing severe family violence, after she received his documents and appointed him to a medical practitioner, she outed him to his family, revealing that he was starting his transition, which brought an escalation to the family violence. He **did not want to report the case**, because he did not want to “inflict the damage to the nurse and worsen his family situation”<sup>118</sup>.

Despite the fact that the Rulebook provides for any trans person older than 16 years to access the gender affirming process, in practice a person who is a minor over 16 years, cannot access any gender affirming health services without the presence of a parent/guardian, including psychological support. Taking into consideration that many transgender youths live in families which are not supportive of their gender identity, this gap puts them into a more vulnerable situation.

In Montenegro, trans persons have access to psychiatrist, psychologist, endocrinologist and a surgeon who performs mastectomies. It is worth mentioning that, in order to access hormone replacement therapy or a mastectomy, it is not necessary to have an appointment with a psychiatrist, but only an informative appointment with a psychologist. The official stance of the Montenegrin Government implies that, in developing medical capacities of Montenegro regarding trans healthcare, 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 centres from the region has been used. This is the main

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<sup>116</sup> Article 18, paragraph 9, The Law on Health Insurance, Official Gazette of Montenegro, No. 6/2016, 2/2017, 22/2017 and 13/2018

<sup>117</sup> Rulebook for determining medical reasons for sex change, Official Gazette of Montenegro, No. 14/12

<sup>118</sup> Data obtained through peer consultation service of Association Spectra



reason why the contract with Belgrade Gender Team was signed, and why trans persons requesting genital gender affirming surgeries are being sent there.

However, trans persons still *don't have the right* to choose between different procedures of gender affirmative surgeries, such as metoidioplasty or phalloplasty, and they don't have the right to breast augmentation, due to the fact that the signed contract only includes "basic procedures". This situation clearly violates the **Law on rights of the patient**, which guarantees the right of a patient to "*freely choose between multiple forms of medical intervention which are offered by the medical doctor*"<sup>119</sup>. Additionally, despite the fact that the **Positive list of medications** include hormone replacement therapy used in the gender affirmation process, scarcity of these medications is a common problem for the transgender community in Montenegro. Despite numerous efforts of Association Spectra and Queer Montenegro to resolve this problem on several occasions, initiating communication with Healthcare Centres and the Ministry of Health in the period of June 2017 – June 2018, no response was received regarding this matter. *This situation forces many trans persons to access hormone replacement therapy in other countries around the region or on the black market, which exposes them to debt and health risks.*

Two national strategies recognize the specific needs of LGBT persons in the healthcare system of Montenegro. The **Strategy for improvement of life quality of LGBT persons 2013-2018** defines the following strategic goals in the section of healthcare: *to improve access of LGBT persons to national healthcare system and protection; to improve sensibility of healthcare providers for work with LGBT persons; to improve and nurture trust between healthcare authorities and LGBT community.* The Strategy obliges healthcare authorities to sign memos of cooperation with the LGBT community, to build capacities of healthcare providers and medical staff and to improve the level of information among LGBT persons, with special focus on transgender persons, on the healthcare system, administrative and medical procedures. *The Strategy does not address issues of intersex persons in healthcare system.* Further, the **National Strategy for Combating HIV/AIDS 2015-2020** recognises the need for preventive interventions in the population of men who have sex with men (MSM), *but not specifically among trans people*, who are often incorrectly included in this term, usually referring to trans women.

Education for healthcare providers on the human rights and treatment of LGBTI persons is implemented by only one CSO in Montenegro – NGO Juventas, in cooperation with Queer Montenegro and Association Spectra. There is no clear data on the total number of medical workers educated in affirmative and adequate healthcare for LGBTI people. Queer Montenegro also provided education for psychologists in healthcare institutions in regard to an affirmative approach for transgender persons seeking support. Juventas also established a counselling centre for LGBTI persons, where a psychologist and a physician provide counselling services and work as an intermediary between client and state health institutions, where a person can enact their right to full and adequate health protection. Association Spectra facilitates access to medical experts who work with transgender persons in Montenegro. Juventas also provides HIV and STI prevention material, while Queer Montenegro and Association Spectra provide HIV and STI prevention information and peer support to LGBT persons living with HIV (Queer Montenegro), and trans persons living with HIV (Spectra)<sup>120</sup>. All of these activities are implemented in the Drop in Centre of Juventas, which the Government promised (but failed) to fund after the Global Fund withdrew from Montenegro. However, the Drop-

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<sup>119</sup> Article 14, paragraph 2, the Law on rights of the patient, Official Gazette of Montenegro, No. 40/2010

<sup>120</sup> No prevention activities were focused on intersex persons so far.

in Centre continued activities with the help of many volunteers and the capacities of Juventas and Queer Montenegro.

During the reporting period, several publications for the education of medical workers, as well as providing information for LGBTI persons regarding the healthcare system, have been created and distributed, mostly by the respective LGBTI CSOs. Campaigns have also been implemented by CSOs in cooperation with the Ministry of Health, with the goal of empowering trust between LGBTI persons and medical providers, raising awareness on depathologization of trans identities and intersex bodies, providing guidelines for medical workers of an affirmative approach to LGBTI persons. Memos of cooperation between LGBTI organizations and healthcare institutions have been signed with the Ministry of Health, General Hospital Bijelo Polje, Community Health Centres of Podgorica, Cetinje and Kotor, as well as the Institute for Public Health.

However, despite all of these activities, there is a clear need for further education of medical experts and medical providers, especially in terms of providing healthcare to transgender and intersex persons and LGBTI persons living with HIV.

Issues of the intersex community within the healthcare system was opened in 2017, when the *Clinical Centre of Montenegro gave an official statement that “normalizing” surgeries are performed within this institution after “detailed multiple tests of determining sex of the child”*<sup>121</sup>. This data is a clear indicator of the necessity for further education of intersex issues among healthcare providers, as well for the State to provide clear protection of the right to self-determination and bodily integrity of intersex persons, which is violated despite the fact that the **Law on prohibition of discrimination** clearly prohibits discrimination of intersex persons. Though intersex persons are not mentioned specifically, the **Law on rights of the patient** guarantees the right of a person *to timely access to all kinds of information about its state of health and illness, the way of providing health services, and their use, as well as all information that, based on scientific research and research, known and accessible*<sup>122</sup>. The same Law states that *the patient has the right to receive from the healthcare worker in a timely manner the notice they need to make a decision on acceptance or refusal of proposed medical intervention*<sup>122</sup>. However, medical intervention on a person who is a minor can be undertaken *with the consent of their parent/guardian*<sup>123</sup>.

In the past 10 years, more than 15 international human rights bodies have issued very clear recommendations that call on governments to end non-consensual medical interventions on intersex individuals<sup>124</sup>. In 2015 alone, **three UN bodies** called on seven State Parties, four of which were in Europe, to protect the physical integrity, bodily autonomy and right to self-determination of intersex individuals. The recommendation included a call to take the *“necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child”*<sup>125</sup>.

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<sup>121</sup> Article 7, the Law on rights of the patient, Official Gazette of Montenegro, No. 40/2010

<sup>122</sup> Article 14, the Law on rights of the patient, Official Gazette of Montenegro, No. 40/2010

<sup>123</sup> Article 17, the Law on rights of the patient, Official Gazette of Montenegro, No. 40/2010

<sup>124</sup> D.C. Gathas, 2016. *Standing up for the human rights of intersex people – How can you help?*, OII-Europe.

<sup>125</sup> Committee on the Rights of the Child Concluding Observations on Switzerland (CRC/C/CHE/CO/2-4);

In 2015, the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, published his issue paper **Human Rights and Intersex People**, which calls on member states to “*end medically unnecessary “normalising” treatment of intersex persons when it is enforced or administered without the free and fully informed consent of the person concerned*” and provides ways forward in terms of protection against discrimination of intersex people, adequate recognition of their sex on official documents and access to justice<sup>126</sup>.

The European Union Agency for Fundamental Rights joined the Commissioner’s recommendations by publishing its own focus paper, **The Fundamental Rights Situation of Intersex People**. The findings of the FRA confirmed the concerns expressed by intersex human rights NGOs, stating that in “at least 21 Member States sex ‘normalising’ surgery is carried out on intersex children” and that in “eight Member States a legal representative can consent to sex ‘normalizing’ medical interventions independently of the child’s ability to decide”. The FRA concluded that legal and medical professionals lacked knowledge about the fundamental rights of intersex people, particularly children, and emphasised that “*Member States should avoid non-consensual ‘sex-normalising’ medical treatments on intersex people*”<sup>127</sup>.

In order to ensure that the human rights of transgender and intersex persons are respected, the State has to improve national legislation to provide clear protection against discrimination in the healthcare system. Intensive training on an affirmative approach to trans and intersex patients need to be conducted in order to develop adequate trans- and intersex-specific healthcare services provided with full respect of their bodily and mental integrity and patient's rights.

#### Recommendations related to access to healthcare:

1. Further develop trans-specific healthcare which will provide access to adequate healthcare of the highest standards to transgender people, respecting their mental and physical integrity, in accordance with national and international standards of best practice
2. Creation of intersex-specific healthcare which will provide access to adequate healthcare to intersex people, respecting their mental and physical integrity
3. Activities related to the improvement of the sexual and reproductive health of LGBTI persons should be undertaken, with special focus on HIV and STI prevention, and development of trans-specific prevention programmes
4. Further education of medical practitioners regarding adequate treatment of LGBTI persons with regard to respecting their human rights, with special focus on affirmative and individual approaches to providing health services to transgender and intersex persons

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Committee on the Rights of People with Disabilities Concluding Observations on Germany (CRPD/C/DEU/CO/1); Committee Against Torture Concluding Observations on Austria (CAT/C/AUT/CO/6), Denmark (CAT/C/DNK/CO/6-7) and Switzerland (CAT/C/CHE/CO/7)

<sup>126</sup> <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2768767&SecMode=1&DocId=2282716&Usage=2>

<sup>127</sup> European Union Agency for Fundamental Rights: FRA Focus Paper. The Fundamental Rights Situation of Intersex People. Vienna 2015.

5. Campaign to raise awareness of provision of adequate, accessible and respectful healthcare for transgender and intersex patients among healthcare providers

## VIII. Housing

*Section VIII of the Appendix requires Member states to:*

- 1. Ensure that access to adequate housing can be enjoyed without discrimination based on SOGIESC, especially in regard to evictions*
- 2. Ensure non-discriminatory measures provide free access to shelter and emergency accommodation, addressing the risk of homelessness faced by LGBT people, including young persons and their families*

**The Law on social and child protection** is guided by the principles which include prohibition of discrimination *based on sexual orientation*<sup>128</sup>, *but gender identity, gender expression or sex characteristics are not included*. The same Law provides special protection to several categories of citizens, including homeless people, as well as victims of neglect, harassment, family violence or any person who is under risk to become a victim<sup>129</sup>, *but does not include LGBTI persons in any way, nor addresses LGBTI homelessness or LGBTI persons who are victims of violence*. Further, there is *no protection from eviction* based on sexual orientation, gender identity, gender expression and sex characteristics. In addition to that, the National LGBT Strategy does not address the issue of homelessness or access to housing for LGBTI people.

As stated in the Montenegro report by NGO Juventas on the implementation of the Recommendations in 2013, *Montenegro does not have provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to sexual orientation, gender identity, gender expression or sex characteristics*. The only shelter in Montenegro founded by the Government is a shelter for women who are victims of trafficking, where NGO Montenegrin Women's Lobby provides support. Other shelters run by women's NGOs, have ensured non-discriminatory access to LGBTI persons. In the case of the Women's Safe House, a safe space and accommodation have been provided for a trans woman who experienced violence on the street. The only LGBTI shelter operating in Montenegro is a shelter which is run by LGBT Forum Progres with the support of the Council of Europe. Shelter has the capacity for 4 persons and provides psychosocial support, as well as peer support from the voluntary team. Confidential contact with the police is also available, as well as free legal aid. The government is obliged to fund the Shelter, but the support has not been provided.

Education of social workers in social centres have been implemented by NGO Juventas, in cooperation with Queer Montenegro and Association Spectra. However, from the experience obtained by direct work with LGBTI persons, social workers still express some level of homophobia

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<sup>128</sup> Article 7, paragraph 2, the Law on social and child protection, Official Gazette of Montenegro, No. 27/2013, 1/2015, 42/2015, 47/2015, 56/2016, 66/2016, 1/2017, 31/2017 – Constitutional Court ruling, 42/2017 i 50/2017

<sup>129</sup> Article 4, the Law on social and child protection, Official Gazette of Montenegro, No. 27/2013, 1/2015, 42/2015, 47/2015, 56/2016, 66/2016, 1/2017, 31/2017 – Constitutional Court ruling, 42/2017 i 50/2017

and transphobia<sup>130</sup>. In 2015, Juventas created *Guidelines for good practice for social workers*<sup>131</sup>. In addition, NGO Juventas issued a publication called *Applicability of standards for provision of social services in civil society organizations in Montenegro*, which presents an analysis of the situation in the field of provision of services in the social and child care system, an analysis of the newly adopted criteria and standards for social care services and an assessment of the applicability of these standards in civil society organizations. The study concludes that a reform of the social welfare system, after the harmonization of all legal acts, must create conditions for consistent implementation in the community<sup>132</sup>.

Social services of any kind are provided by CSOs. As mentioned before, NGO Juventas also provides psychological support to LGBTI persons and has social workers at their disposal at the Drop-in LGBT Centre. Association Spectra runs many social services for transgender and gender diverse persons, such as a self-support group and peer support consultations in the same Centre.

There are no cases of reported discrimination regarding access to housing or eviction of LGBTI persons. However, experience and data provided by LGBTI organizations, obtained through their outreach work, shows that many LGBTI persons experience difficulties in accessing housing, especially transgender persons. Since, in most cases, landlords request personal documents in order to complete a contract with a person living in their accommodation, many trans persons face discrimination when they attempt to access housing, or they fear discrimination as some of them have changed their name but not their gender marker. Further, taking into consideration that many LGBTI persons, especially transgender persons, face non-acceptance and/or violence from their families, and few are willing to report family violence, they find themselves in a difficult situation with no place to go. In addition, difficulties that trans persons face in the field of employment put them at higher risk of homelessness, so they often choose to stay in their family home where they experience violence<sup>133</sup>.

In order to address issues regarding housing, the State needs to provide clear policies which guarantee protection against discrimination in housing, as well as to address LGBTI homelessness risks, especially taking into account the high risk of violence in their families.

### *Recommendations related to housing:*

1. The Law on social and child protection should be amended to prohibit discrimination based on gender identity, gender expression and sex characteristics
2. Provide institutional and financial support to the LGBTI shelter and the Drop-in Centre
3. Implement activities aimed at supporting emergency housing for LGBTI persons experiencing violence and discrimination from their families during the coming out process

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<sup>130</sup> Data provided by NGO Juventas

<sup>131</sup> Guidelines for good practice for social workers, J. Dacić, Dr T. Dakić, J. Kaluđerović, I.Kovačević, 2015, NGO Juventas

<sup>132</sup> Applicability of standards for provision of social services in civil society organizations in Montenegro, B. Zeković, 2016, NGO Juventas, SOS Telephone for women and children victims of violence, in cooperation with the Social Change Coalition.

<sup>133</sup> Data obtained by outreach work of Association Spectra

4. Intensive education of social workers in social centres on the human rights of LGBTI people need to be conducted

## IX. Sports

*Section IX of the Appendix requires Member states to:*

- 1. Combat all forms of discrimination based on sexual orientation and gender identity in sports, through effective measures to prevent, counteract and punish the use of discriminatory insults in connection with sports events*
- 2. Encourage partnerships between LGBT organisations and sports clubs, as well as development of anti-discrimination campaigns*

**Ministry of sports** denied request for providing responses to the Questionnaire, referring to the Article 29 of the Law on Free Access to Information, which defines that the “request will be denied if it requires creation of a new information.” Since providing responses to the Questionnaire is perceived as creation of new information, the Ministry denied Spectra’s request. Taking into consideration that the Ministry of Human and Minority Rights, as well as the Ministry of Internal Affairs did not deny the same request for access to information, this kind of attitude can be perceived as latent discrimination toward the human rights of LGBTI persons in Montenegro.

**The Law on Sports** guarantees that sport is available to every person, regardless of age, physical ability, disability, sex, race, language, religion, nationality, social origin, political orientation, property status and other personal characteristics<sup>134</sup>, *but does not specifically mention sexual orientation, gender identity, gender expression and sex characteristics*. In Montenegro, there are no openly LGBTI athletes, sport clubs or organizations. Practicing sports is governed by sports rules adopted by the National Sports Association<sup>135</sup>. The Montenegrin Olympic Committee is the only national sports federation association<sup>136</sup>.

**Strategy for improvement of life quality of LGBT people 2013-2018**, provides a set of strategic goals and protective measures for LGBT persons in sports. The Strategy obliges the State to: *support the LGBT perspective in the development of strategic programming documents and the concept of financing sports from public sources; encourage dialogue and cooperation between the LGBT community, the Montenegrin Olympic Committee and national sports; organizations and fan clubs; improve the fight against discrimination of LGBT people in sports and society; support sports associations, clubs and support groups in the development of awareness raising activities on the discrimination against LGBT people and condemning the manifestation of intolerance and violence against them; develop sports programmes for LGBT people and organizations at domestic and international levels.*

*There is no protection against discrimination of intersex athletes in any way. There are no specific measures for protection of transgender athletes in sports, to put an end to their exclusion from sports, or to provide respect for their gender identity.* Since many transgender persons undergo hormone replacement therapy, it would be very difficult to determine whether it would be possible for a trans person taking HRT, but who has not undergone gender affirming surgery, to compete in a gender

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<sup>134</sup> Article 4, The Law on Sports, Official Gazette of Montenegro, No. 36/2011 and 36/2013

<sup>135</sup> Article 59, The Law on Sports, Official Gazette of Montenegro, No. 36/2011 and 36/2013

<sup>136</sup> Article 61, The Law on Sports, Official Gazette of Montenegro, No. 36/2011 and 36/2013



category which is in accordance to their gender identity, taking into consideration the lack of information from the Ministry of Sports. The Law on sports prohibits taking unauthorized means (doping) prohibited by the World Anti-doping Agency (WADA) in competing. In this purpose, Montenegro has adopted a Law on Confirmation of the International Convention Against Doping in Sport. It is worth mentioning that WADA has issued TUE Physician Guidelines: Medical information to Support the Decisions of the TUE Committees Transgender Athletes. However, it is unknown whether the Ministry is familiar with these Guidelines.

Despite aforementioned strategic goals and programme measures of the Strategy, only a few activities are implemented to combat discrimination against LGBT persons in sports. For this purpose, a publication “Inclusion of LGBT persons in sport” created by the Council of Europe was translated and distributed, with 1000 copies sent to sports unions and clubs in 2014. In the same year, a campaign “Stop hate” as a part of the campaign “Stop hate speech on Internet” was implemented in cooperation between the Ministry of sports and the Student sport union at student sports competitions. The report from the Ministry of Human and Minority rights from 2016 states that the Youth and Sports Administration “has recognized high level of indifference of LGBT population at the public call for volunteers on organizing World junior competition in water-polo”. The same Administration is of the opinion that it would be useful to use one period of time to introduce sports organizations with the proposed measures of the Strategy. Also, in the report from 2017 by the same Ministry, it is stated that the Ministry of Sport provided information gathered from 9 national sport unions that, in their work they did not consult any LGBT organization, and a number of sports unions were not familiar with measures proposed by the Strategy. It’s important to mention that no measures were undertaken to combat discrimination against intersex persons in sports.

Sports is one area where the least attention was given to inclusion of LGBTI people and protection against discrimination based on sexual orientation, gender identity, gender expression and sex characteristics. The State needs to invest more effort in providing safe spaces for LGBTI people in sports, as well as to strengthen cooperation with LGBTI organization in the field of sports.

#### *Recommendations related to sports:*

1. The Law on Sports should be amended in a manner which guarantees availability of sports regardless of sexual orientation, gender identity, gender expression and sex characteristics, as well as prohibiting discrimination based on these grounds
2. Conduct campaigns on combating discrimination against LGBTI persons in sports
3. Government should provide support to the cooperation between LGBTI organizations and Montenegrin sports associations
4. Implement protective measures against discrimination and harassment of LGBTI people in sports, especially focusing on transgender persons in sports

## X. Right to seek asylum

*Section X of the Appendix requires member states to:*

- 1. Recognize fear of prosecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status, when international obligations exist*
- 2. 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 SOGIESC*
- 3. Provide protection to asylum seekers from any discriminatory policies or practices on these grounds*

**Ministry of Foreign Affairs** provided no information on questions related to asylum from the Questionnaire. Taking into consideration the complete lack of interest from the respective Ministry in the field of human rights of LGBTI persons, the lack of response can be perceived as a continuation of this practice.

The right to asylum is guaranteed by **The Constitution** of Montenegro, which defines that asylum can be requested by the foreigner who is afraid of prosecution in the native country based on their race, language, religion or affiliation to some nation or group, or because of political beliefs. The same Article guarantees that a foreigner cannot be expelled from Montenegro if there is a threat of condemnation to the death penalty, torture, inhumane humiliation, persecution or a serious violation of the rights guaranteed by this Constitution<sup>137</sup>.

**The Law on International and Temporary Protection of Foreigners** provides the right to asylum in case of a foreigner who is fearful of persecution because of their race, religion, nationality, membership of a particular social group or political opinion, for which they cannot or do not want to accept the protection of that country<sup>138</sup>. The reason for the persecution of asylum-seekers can be *membership of a particular social group that includes members who have common inborn features or a common origin that cannot be altered, that is, characteristics or beliefs, to the extent significant for their identity or awareness that they cannot be forced to give up, and this group has a special identity in a particular country, because the surrounding society considers it to be different. For determining belonging to a particular social group or determining the characteristics of such a group, gender identity, as well as sex, shall be taken into account*<sup>139</sup>.

**The Law on Foreigners** provides the right to temporary and permanent residence<sup>140</sup>. Temporary residence can be provided based on “humanitarian reasons”, which includes victims of human trafficking offenses or a victim of a criminal offense of domestic violence or family violence; minors who have been abandoned, or without parental care or unaccompanied, or is unlawfully employed in terms of the regulations on work; particularly justified reasons of a humanitarian nature (cases

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<sup>137</sup> Article 44, The Constitution of Montenegro, Official Gazette of Montenegro, No. 01/2007

<sup>138</sup> Article 3, The Law on International and Temporary Protection of Foreigners, Official Gazette of Montenegro, No. 2/2017

<sup>139</sup> Article 23, The Law on International and Temporary Protection of Foreigners, Official Gazette of Montenegro, No. 2/2017

<sup>140</sup> Article 33, The Law on Foreigners, Official Gazette of Montenegro, No. 12/2018

caused by force majeure, serious illness, permanent disability and other justified cases from which circumstances can be considered to be of a humanitarian character)<sup>141</sup>.

A foreigner who has been granted a temporary residence permit for humanitarian reasons has the *right to accommodation, healthcare, education, work and financial assistance*, in accordance with the law<sup>142</sup>. Also, temporary residence includes the right not to be expelled due to the illegal entry or residence in Montenegro<sup>143</sup>.

The Law on Foreigners *does not mention, in any context, sexual orientation, gender identity, gender expression and sex characteristics*. Further, the Strategy for improvement of life quality of LGBT people does not deal with the right to asylum. *In the context of transgender persons, regarding accommodation for asylum seekers and treatment, there are no strict rules or protection policies*. Even the **Guidelines on the rules of residence and home order at the refugee centre for foreigners** defines that foreigners are categorized in accommodation based on sex assigned at birth, or in “exceptional situations, a foreigner may be detained separately, for health reasons, for reasons of safety, and with the approval of the manager of the Shelter, and in the event that a measure of enhanced supervision is determined, in accordance with the Law”<sup>144</sup>.

There is no data on education implemented for staff responsible for processing asylum requests regarding LGBTI asylum seekers, as well as for staff working in asylum centre. There have been several LGBTI asylum seekers in the past years who have stayed in asylum centre and had protection and support from LGBTI organizations in Montenegro. In the past year, Association Spectra, Queer Montenegro and LGBT Forum Progres provided support to two transgender and several LGB asylum seekers by of providing peer to peer support, information regarding hormone replacement therapy, as well as facilitated access to anti-retroviral therapy in case of one person living with HIV. These transgender asylum seekers were accommodated based on their sex assigned at birth, but due to support from LGBTI organizations, they did not experience any violence or discrimination in the asylum centre.

In order to ensure that LGBTI asylum seekers are protected from discrimination and violence, the State has to provide clear policies. Special attention needs to be given to the treatment of transgender asylum seekers in asylum centres.

#### *Recommendations related to right to seek asylum:*

1. Provide specific protection measures against discrimination and violence based on sexual orientation, gender identity, gender expression and sex characteristics in regard to asylum seekers, their accommodation and treatment in asylum centres

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<sup>141</sup> Article 52, The Law on Foreigners, Official Gazette of Montenegro, No. 12/2018

<sup>142</sup> Article 53, The Law on Foreigners, Official Gazette of Montenegro, No. 12/2018

<sup>143</sup> Article 55, The Law on Foreigners, Official Gazette of Montenegro, No. 12/2018

<sup>144</sup> Article 15, Guidelines for on the rules of residence and home order at the refugee centre for foreigners, Official Gazette of Montenegro, No. 20/2015

## XI. 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 and gender identity, in particular to make recommendations on legislation and policies, raise awareness among the general public and examine individual complaints and participate in court proceedings.*

In Montenegro, there are several bodies which are responsible for protection against discrimination based on sexual orientation and gender identity.

The most relevant institution for protection from discrimination is the **Protector of Human Rights and Freedoms**, which is defined by the Law on prohibition of discrimination<sup>145</sup>. Article 22 states that “Anyone who considers that they are discriminated against by act, action or omission of bodies and other legal and natural persons, may address the Ombudsperson’s by a complaint.” The Ombudsperson acts on complaints for discriminatory treatment of the institution, company, other legal entity, entrepreneur and person, and undertakes measures and actions for eliminating discrimination and protection of the rights of the discriminated person, if court proceedings have not been initiated; provides information to a discriminated person or entity about their rights and obligations, as well as the possibilities of judicial and other protection; conducts a conciliation procedure for a person who considers that they are discriminated against with their consent; initiate a procedure for protection against discrimination before a court or appears in the proceedings as an intervention when the party makes it probable; warns the public of the emergence of more serious forms of discrimination; keeps a separate record of complaints about discrimination; collects and analyses data on cases of discrimination; undertakes activities to promote equality; submits to the Parliament of Montenegro, within the annual report, a special part of the report on the conducted activities on protection against discrimination and promotion of equality; performs other activities related to protection against discrimination prescribed by a special law regulating the competence, powers, manner of work and treatment of the Protector. The Protector’s report is based on complaints, data collected from the Courts, the Prosecutors office, the Police Department and the Ministry of Human and Minority Rights, surveys conducted by other authorities and NGOs, as well as participation of the Protector’s representatives in roundtables, conferences, events and media coverage regarding human rights.

The current Protector of Human Rights and Freedoms actively works on discrimination based on sexual orientation and gender identity, with some clear and important decisions in the period of 2013-2018, which determined institutional and social discrimination towards LGBT people. Protector of Human Rights and Freedoms now shows more capacity to commit to LGBT<sup>146</sup> human rights, with more visible key role in protection against discrimination and violence, as well as more constructive dialogue with CSOs. Role, authorization, scope of responsibilities and reporting about the situation of human rights in Montenegro is regulated by the **Law on Protector of Human Rights and Freedoms**.

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<sup>145</sup> Article 21, The Law on Prohibition of Discrimination, Official Gazette of Montenegro, 46/2010, 40/2011 – second law, 18/2014 and 42/2017

<sup>146</sup> Protector did not address intersex issues so far

**The Committee on Human Rights and Freedoms of the Parliament of Montenegro** is envisaged as a standing committee competent to consider draft laws, other regulations and general acts and other issues related to: freedom and the rights of man and citizen, with particular reference to minority rights, the application of confirmed international acts related to the realization, protection and promotion of these rights; monitors the realization of documents, measures and activities for the promotion of national, ethnic and other equality, especially in the fields of education, health, information, social policy, employment, entrepreneurship, decision-making processes etc.; participates in the preparation of documents and harmonization of legislation in this area with standard European legislation; cooperates with the appropriate working bodies of other parliaments and non-governmental organizations in this field.

**The Gender Equality Committee of the Parliament of Montenegro** is considering draft laws, others regulations and general acts related to the implementation of the principle of gender equality; monitors the application of these law through law enforcement and the promotion of the principles of gender equality, especially in the field of law, child and family relations, employment, entrepreneurship, decision-making, education, health, social policy and information; participates in the preparation and harmonization of laws and other acts with standards of European legislation and European Union programmes related to gender equality; affirms the signing of international documents dealing with this issue and following their application; cooperates with the appropriate working bodies of other parliaments and non-governmental organizations from these areas. *This body has not addressed the human rights of transgender persons so far.*

**The Ministry of Human and Minority Rights** is responsible for the implementation of regulations, strategically planning and monitoring of the human rights situation within the competence of the Ministry, including the rights of LGBTI persons and the rights of members of minority peoples and other minority national communities, as well as relations with religious communities in Montenegro, the promotion and protection of the rights of Roma, Ashkali and Egyptians and issues of gender equality.

**Council for Protection against Discrimination of the Government of Montenegro** was established in July 2011 and dismissed in 2016. The official standpoint of the Government was that there was no need for the Council since “the anti-discrimination legislation is complete”, but in practice, there were many problems with the work of the Council, with many complaints coming from NGOs. The Council consists of a president and 11 members. The Prime Minister of Montenegro is the President of the Council. The task of the Council was to: monitor and coordinate the activities of state bodies, state administration bodies and others competent institutions in the application of legally prescribed mechanisms for protection against all forms of discrimination; analyse applicable regulations from the aspect of their compliance with international standards in the field of protection against all forms of discrimination and, if necessary, initiate their amendments or additions; analyse administrative measures that the relevant authorities apply in providing protection against all forms of discrimination, the problems that arise in practice in the procedure of protection against discrimination and propose measures for their elimination; propose and take appropriate measures to promote the prohibition of discrimination, as one of the basic and general principle of the protection of human rights; achieve the necessary cooperation with domestic and international bodies and organizations that deal with the protection of human rights and freedoms and propose other measures of importance for the protection of human rights and freedoms.

## 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 abbreviation for “civil society organizations”.

**Biphobia** is defined as an irrational fear of and aversion to, bisexuality and to bisexual persons based on prejudice.

**Gender identity** refers to a person’s internal individual experience of gender, which may or may not correspond with their sex assigned at birth. Gender identity is a personal characteristic of every person and does not imply only binary concepts of gender, which includes only men and women, but the spectrum of gender identities.

**Gender affirming treatment** refers to different medical and non-medical interventions which some transgender persons may wish to undergo. Some of these treatments (surgical interventions and/or hormone treatment) may lead to sterilization of a person and are often required for the legal recognition of one’s gender, which is in opposition to the practice of the European Court of Human Rights.

**Gender expression** includes characteristics of one’s personality, appearance and behaviour, which can be described as “masculine” or “feminine” in certain cultures and/or historical periods.

**Gender non-conforming persons** are persons whose gender identity and/or gender expression are different from the norms that a society associates with the sex that is attributed to that person at birth. These norms differ between cultures, religions, and history.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation, gender identity and/or sexual characteristics) 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, gender identity and/or sexual characteristics.

**Hate crime** towards LGBTI persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offense 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 LGBTI group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation, gender identity and/or sexual characteristics of the victim.

**Hate-motivated incidents** are incidents, acts of 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 LGBTI people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBTI 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 and gay persons based on prejudice.

**Intersex person** is a person whose sex characteristics (chromosomes, genitals and/or hormonal structure) do not strictly belong to male or female medical categories, or that belong to both at the same time. Intersex stands for the spectrum of variations of sex characteristics that naturally occur within the human species. It also stands for the acceptance of the physical fact that sex is a spectrum and that people with variations of sex characteristics other than male and female do exist.

**Intersex-phobia** is defined as an irrational fear of and aversion to, intersexuality and to intersex persons based on prejudice.

**LGBTI persons** is an umbrella term used to encompass lesbian, gay, bisexual, transgender and intersex persons. It is a heterogeneous group which is often compiled together under the LGBTI acronym in social, political and activist spaces, due to some of the common issues and struggles.

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

**Non-binary person** is a person who identifies outside of the binary concept of gender, which includes only men and women.

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

**Self-determination** refers to the right of a person to define their own identity and themselves as a person. Recognition of this right is the recognition of the reality of that person and the fact that this reality is intrinsic, independent of the opinions and beliefs of others, and that suppression of this nature is a violation against that person.

**Trans person** is a person whose gender identity does not correspond with, or overcomes, traditional gender and social norms. Transgender persons include persons whose gender identity is different from their sex assigned at birth.

**Trans man** is a man, whose sex assigned at birth is female.

**Trans woman** is a woman, whose sex assigned at birth is male.

**Transphobia** is defined as an irrational fear of and aversion to transgender persons based on prejudice.



## APPENDIX III

### ABOUT ASSOCIATION “SPECTRA”

Association “Spectra” is a trans-led organization which works on the protection and promotion of human rights of transgender, gender diverse and intersex persons. It was founded in March 2017 and registered in June 2017.

*The vision of Spectra is a society in which all people enjoy equal rights and treatment, and in which all identities and bodies are respected, and all our differences are celebrated.*

*The mission of Spectra is to create a strong, visible movement that will influence decision-making and strive to contribute to full respect for the human rights of trans, gender varied and interpersonal people in Montenegro.*

*The values that Spectra's work is based on are: non-violence, self-determination, trans-inclusive feminism, respect for physical integrity, respect for identity and experience, equal access to health, social and legal systems, equal treatment in society.*

Within Spectra, there are several programmes which implement numerous activities:

**The community building programme** embraces empowerment, support and capacity building for trans, gender diverse and intersex people. Within this programme, Spektra organizes self-support groups, individual consultations, online areas, workshops, HIV prevention activities and sexually transmitted infections, facilitating access to medical staff, as well as support through the gender affirming process, providing support for the process of legal recognition of gender and reporting of violence and/or discrimination.

**The public advocacy programme** focuses on changing relevant laws and policies to promote and protect the human rights of trans, gender diverse and intersex people. The main goals within this programme is advocacy for the legal recognition of gender based on self-determination, depathologization and respect for physical integrity. The main activity within the public advocacy programme is advocacy for the adoption of the Law on Gender and Sex Identity, which was created in cooperation with Queer Montenegro, NGO Juventas and the Institute for Legal Studies, and which, if adopted, will provide the possibility of legal recognition of gender to people without medical preconditions, prohibit unnecessary surgeries on intersex persons, and to provide several rights relating to family life and discrimination based on gender and/or sex characteristics.

**The Public Relations Programme** focuses on activities aimed at raising visibility and awareness of trans and intersex issues through media, personal stories, street action and other tools through which we raise and multiply our voices.

**The education programme** is carrying out human rights education on the humane treatment of trans, gender diverse and intersex persons for various institutions and interested parties. So far, Spectra has been involved in educational training organized by our partners, Queer Montenegro and Juventas, which were implemented for: medical workers, psychologists, pedagogues, police officers, social workers, journalists and many others.