
Submission for the United Nations Human Rights Council for the Universal Periodic Review

Country: Montenegro

Date: 16.07.2012

Submitted by: NGO Juventas and ILGA-Europe, the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association

Contact details:

E-mail: juventas@t-com.me; juventascg@gmail.com

Telephone/fax: +382 20 657 098

Postal address: Josipa Broza 23A, 81000 Podgorica, Montenegro

Contact persons: Jelena Colakovic, Program Director, NGO Juventas

Overview of the situation of LGBT persons in Montenegro

The LGBT community in Montenegro is facing three main problems:

- A high level of homophobia in Montenegrin society, meaning a high influence of stereotypes and prejudices on attitudes and low level of knowledge on sexuality and gender identity among general population and professionals;
- Violence and discrimination of LGBT population, which is rarely reported and documented;
- Inadequate legal and institutional framework addressing the needs of LGBT people.¹

These problems are interrelated. The high level of homophobia is a direct consequence of social norms, the lack of knowledge on sexuality and gender identity and an inadequate legal and institutional framework. It is also a cause of discrimination and violence towards LGBT people, low capacities of institutions to protect the rights of LGBT people, and finally the cause of significant lack of trust of LGBT people in institutions. This also results in the fact that violence and discrimination cases are rarely reported and documented.

In July 2010, Juventas conducted a research poll on homophobia among the Montenegrin public, while LGBT Forum Progress and Centre for Civic Education implemented their survey in January 2012. Both surveys showed that a high level of homophobia (in the broadest sense of the word²) exists: 68.5% of the population in 2010 and 59.9% in 2012 believed that homosexuality is a disease. Similarly, 61.3% in 2010 believed that homosexuals do not have the right to freely disclose their sexual orientation in public, while 45% of people interviewed had this opinion in 2012.

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

² Homophobia is defined as a range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender (LGBT).

This high level of homophobia causes significant lack of trust among LGBT persons in relation to State institutions³, which discourages them from undertaking activities that would improve their current situation. This, in turn, is reflective of the fact that societal attitudes coincide with the limitations of the current legal and institutional framework. A high level of homophobia has been measured among professionals in a research conducted by Juventas in May 2012, which included data collected among service providers. As an illustration, this research showed that: 51% of police officers and 48.1% of medical workers think that homosexuality is a disease, 68.6% of police officers and 59.7% of medical workers think that homosexuality is not natural and 66.7% of police officers and 48.1% of medical workers would feel as failed parents upon finding out that their child is gay.

LGBT people are also victims of violence, which is rarely reported. During 2011, LGBT Forum Progress and Juventas have documented at least 30 cases of discrimination and violence, some of which proved to be quite severe. Surveys have measured a decrease in public support of violence, but in 2012 11% of general population still justifies violent behaviour directed at LGBT people. As far as service providers are concerned our indicative research showed that 10.2% of police officers and 18.4% of medical workers think that verbal violence against LGBT persons is justified, while 5.7% of police officers and 11.4% of medical workers excuse physical violence. Psychological and social support program should be established to respond to the needs of LGBT people who experience strong homophobia/transphobia, especially focusing on coming-out process, family relations, work place relations as well as partner relations.

The government have been changing their approach within the past three years, changing its policies from highly homophobic or ignorant to formally very cooperative. The most important document that governmental organisations and NGOs are working on in this moment is the National Strategy of Fight Against Homophobia which is expected to be adopted in the near future. The baseline for this document has been provided throughout a project named "Montenegro a bright spot on a gay map"⁴ implemented by Juventas. Nevertheless, ignorance and disputes are still present on the level of implementation of adopted standards and recommendations. In March 2010, Montenegro voted for the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. The Council of Europe supports the monitoring of the implementation of these Recommendations in 2012/13, while Juventas engaged in NGO monitoring with the support of ILGA-Europe.

On June 29th 2012 negotiations on Montenegro's accession in the European Union have

³ "No more no less: Equal rights for all", LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁴ From December 2009 to April 2011 Juventas implemented a project called "Montenegro a bright spot on a gay map" supported by the Delegation of EU to Montenegro. This project introduced a common agenda for human rights and democratic reform in the area of LGBT human rights within different sectors. It created a knowledge data-base (numerous surveys and analyses), a wide network of support by launching Coalition for LGBT rights, which included representatives of state institutions and CSOs, working together on drafts of strategic documents. After, official consultation between civil society and Deputy Prime minister, Government of Montenegro formed three working groups which took these drafts as a starting point for the future *National Strategy against Homophobia and Analysis of the institutional and legal framework for LGBT rights in Montenegro*. Working group in charge for the Analysis mentioned accepted the initial document with introducing small number of corrections.

started in relation to chapters 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security). Taking into account that LGBT people are facing fundamental rights violation, we can expect reforms in this area but only if civil society organizations take the opportunity given by the current momentum.

Hate speech and hate crime-The Right to Equality and Non Discrimination, The Right to Security of the Person

As mentioned in the overview, a significant percentage of people in the general population as well as in the population of service providers (police officers and medical workers) justifies verbal and physical violence against LGBT persons.

Stereotypes and prejudices based on sexual orientation and gender identity, i.e. homophobia and transphobia are one of the reasons, but do not stand solely. The Criminal Code furthermore strengthens the position of such attitudes by providing no definition or specific sanctions related to hate speech and hate crime.

In the process of documenting LGBT human rights violations Juventas recorded severe cases of hate speech which were not sanctioned (this is especially related to hate speech by government and church officials), but also unresolved hate crimes (one of most serious is the case of tear gas bomb thrown into the mass during a concert organized for IDAHO 2011). Furthermore, thanks to its community work, Juventas is aware that a high proportion of the violence targeting LGBT people goes unreported to the responsible authorities. Our documentation system shows that in most cases victims of public sphere violence are gay men and transgender persons, while lesbian women are more often victims of domestic violence.

Recommendations:

1. The Criminal Code should be amended in a manner in which protected grounds in relation to violation of equality include actual or perceived sexual orientation and gender identity.⁵
2. The Criminal Code should be amended in a manner which includes sanctions for incitement to violence and hatred towards sexual minorities and transgender persons.⁶
3. The Criminal Code should be amended so that hate crimes against persons of homosexual orientation (homophobia) or transgender persons (transphobia), as well as other forms of hate crimes, would be considered as severe forms of criminal offence. This could be done thanks to the creation of an aggravating circumstance for offences committed with a bias motivation, including in the cases of homophobic or transphobic motivation. For the sake of example, the Croatian Criminal Code adopted in 2009 defines „hate crime“ as every crime done based on hate towards a person due to its race, skin, gender, sexual orientation, political or other belief, language, religion, national or social background, property, birth, education, social position, age, health condition or other characteristic (Article 89, point

⁵ “No more no less: Equal rights for all”, LGBT rights situation analysis in Montenegro, Juventas, Podgorica, 2011.

⁶ Ibid

36).⁷

4. Educational and informational campaigns for the general population should be created and implemented.⁸
5. Educational and informational campaigns should be launched to address various professionals: medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of the institutions that are involved in exercising and protecting LGBT rights.
6. Relevant national and international standards and good practices should be furthermore promoted.
7. The existing situation should be monitored and evaluated, as well as the results of the action undertaken to tackle it. This should be conducted by means of systematic data collection, conform to the commitments made by Montenegro within international institutions such as the Council of Europe or the OSCE.
8. Continuous monitoring of harmonization of the Montenegrin legal framework with the needs of LGBT community and international standards should be conducted.
9. Initiatives related to amendments of the existing legislation, made according to LGBT community needs and international standards (Constitution, Criminal Code, Antidiscrimination Law, Family Law, Law on Infertility Treatment with Assisted Reproductive Technologies, Law on Asylum, Law on Obligations, Law on Social and Child Protection, Law on Pension and Disability Insurance, Law on Succession, Law on Protection from Domestic Violence, Law on Patients rights, General Education Law, Law on Civil Registry, Anti-discrimination Law, Law on Property Taxes, Law on Personal Income, Law on Domestic Violence...) should be taken.
10. The administrative and financial capacities of the Institution of the Ombudsman in Montenegro should be strengthened.

Pride March-Right to Freedom of Assembly and Association

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

Recommendations⁹:

⁷ Ibid

⁸ Recommendations 4 -10: Draft of the National Strategy of Fight Against Homophobia, "Montenegro a bright spot on a gay map", Juventas and Coalition for LGBT rights, 2011

⁹ Recommendations 1-8: Draft of the National Strategy of Fight Against Homophobia, "Montenegro a bright spot on a

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

Health care-The Right to the Best Available Health

To date, our experience shows that a certain number of health care providers base their services on prejudices rather than on valid medical standards and practices. Furthermore, research conducted among professionals in this area show significant lack of knowledge in relation to sexual orientation and gender identity. Furthermore, general negative attitude towards LGBT persons in Montenegro indicates the need of a more consistent LGBT friendly mental health system.

Beside great deal of prejudices related to LGBT persons it is important to emphasize gaps in the existing legislation regarding data protection (related to people living with HIV and MSM (men who have sex with men) as a subcategory in this context), and especially when concerning transgender health issues.

Namely, 2012 witnessed the adoption of *Amendments to the Law on health protection* which at this point proscribes the following:

“From the fund for mandatory health insurance insured persons are provided with 80% of coverage for health services for:

...

- **gender reassignment surgery for medical reasons;**

....

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

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

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

The criteria for verification of medical reasons for gender reassignment surgery are defined by the state institution in charge for health issues (here and after: Ministry)."¹⁰.

However, the Ministry of Health still provides no protocols that would define the criteria under which this Law could be implemented in practice i.e. under which conditions a person could undergo gender reassignment surgery and treatment.

Recommendations in this area would include¹¹:

1. A continuous monitoring of law appliance and general liability rules should be conducted;
2. Supervision aiming to ensure consistent use of data protection regulation should be introduced;
3. Activities aiming to ensure implementation of the Law on medical records should be undertaken;
4. Educational trainings of employees in medical institutions on the obligations and responsibilities related to collecting and processing data should be organized;
5. Activities related to the improvement of sexual and reproductive health of LGBT persons should be undertaken;
6. Full health protection for transgender persons in Montenegro should be provided (including the definition of protocols related to gender reassignment surgery and other treatments for the persons who choose to undergo such procedures, and the expansion of the list of interventions that can be performed outside Montenegrin territory (by-laws and international agreements), forming a team of experts dealing with gender reassignment interventions and treatment.). Some of the best examples related to these issues are the current legislations from Germany, Argentina or Portugal.

¹⁰ Text of the Law available on:

http://www.montenegro-gay.me/files/dokumenti/pravni_propisi/Zakon%20o%20izmjenama%20i%20dopunama%20zakona%20o%20zdravstvenom%20osiguranju.pdf

¹¹ Recommendations 1-9: Draft of the National Strategy of Fight Against Homophobia, "Montenegro a bright spot on a gay map", Juventas and Coalition for LGBT rights, 2011