

## **Report on Montenegro – 3rd Round of the Universal Periodic Review – December 2008**

This report is submitted by the Sexual Rights Initiative (a coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development and Creating Resources for Empowerment and Action-India<sup>1</sup> and others). It deals with two subjects: the **gaps in civil rights' protection in the new legal framework in the country** and the **situation of the homosexual population**.

### **Basic information on the country**

1. Montenegro is a Balkan, Mediterranean and South-East European country, with a size of 13,812 km<sup>2</sup> and a population of around 620,000. Montenegro has renewed its independence in May 2006, and very soon acquired full international personhood. It is being built as a civil and multicultural state with significant participation of ethnic, lingual and religious minorities in its structure.<sup>2</sup> Prior to the declaration of independence Montenegro was a member state in a union with Serbia and before that a member of the Socialist Federal Republic of Yugoslavia (SFRY). Gross domestic product (GDP) per capita was 3,443 in 2006, and inflation rate was only 8% by the end of 2007. According to the official information around 12% of the population lives in complete poverty, while 20% is economically endangered and in a zone of increased risk of poverty.<sup>3</sup> Unemployment rate was around 12% by the end of 2007 and the number of unemployed non-residents has grown for about 68% in comparison to the previous period (23.000 people).<sup>4</sup> Average salary in 2007 has grown in comparison to the previous period in about 20%.<sup>5</sup>

### **Legal framework**

2. In the last couple of years Montenegro has paid a significant attention to improving respect towards and protection of human rights and to developing institutions and mechanisms to that effect. Progress has especially been achieved in the development and adoption of a new legislative infrastructure in the context of joining the Council of Europe (CoE) and signing a Stabilization and Association Agreement with European Union.

3. Membership in international associations, adoption of relevant conventions and somewhat later, change of state-legal status has contributed to faster adoption of new laws, building of institutions relevant for guaranteeing and protecting human rights and especially to the development of new procedures and practices.

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<sup>1</sup> Drafted in collaboration with Aleksandar Saša Zeković, MSc, independent researcher on violation of human rights in Montenegro and representative of Human Rights organizations in the State Council for Civic Control of Police.

<sup>2</sup> According to the census from 2003, Albanians made 5%, Bosniacs-Muslims around 12%, Croats 1.1% and Roma around half a percent of total population. Around 18% of population stated that they belong to Islam religion, 3.54% to Catholic and 74.28% to Orthodox religion. Around 5.5% of population stated that their mother tongue is Bosnian, 5.26% Albanian, 0.5% Roman and Croatian.

<sup>3</sup> According to the information of Trade Union of Montenegro around 44.000 of workers in Montenegro is socially endangered, their past service is not connected or they are waiting for severance pay for pension for a long time, Magazine "CG Ekonomist", 02/08

<sup>4</sup> Information from National Employment Agency; [www.zzzcg.org](http://www.zzzcg.org)

<sup>5</sup> Average net salary at the end of 2007 was 376 €, average pension around 165 €, and minimal life costs of four member family, according to the Trade Union information, were 685 €.

4. Keeping in mind certain reservations and exceptions, one can come to the conclusion that a solid and optimal legislative and institutional network has been created in the field of human and minority rights and anti-discrimination.<sup>6</sup> The key problem is their implementation and the functioning of state institutions that are expected by all segments of society to transparently and efficiently serve the needs of citizens. Continuation of intensive political reforms is expected and more serious work on further development and consolidation of strong, truly functional and professional institutions that guarantee democracy, the rule of law and respect towards human rights. Practice has shown that, in order to promote a more efficient protection of human rights and the inclusion of all social groups, and especially minorities and LGBT people, it is important to support the implementation of constitutional provisions on human rights, to initiate the adoption of the Law on Free Legal Aid, which is necessary for countries in transition and societies with considerable poverty rates and of the Law on Prohibition of Discrimination.

5. The Progress Report of the European Commission for Montenegro in 2007 states, in chapters dedicated to democracy and rule of law, human and minority rights, that serious reform of judiciary in Montenegro is expected, adoption of new laws especially those regarding prohibition of discrimination and protection from it, and also that respect and protection of human rights is not satisfactory in practice.<sup>7</sup>

6. The new Constitution of Montenegro has been adopted in an atmosphere in which the discussion on national identity symbols (language, flag, coat of arms and national anthem) prevailed and because of this many essential issues that are key for the process democratization, for establishing of the rule of law and especially for the respect of human rights were not high in the agenda. Domestic experts assess that the Constitution of Montenegro is not in line with the modern standards<sup>8</sup> and concepts of protection of human rights.<sup>9</sup> On the other hand, the Constitution gives certain guarantees: rights and freedoms are inviolable and everyone is obliged to respect the rights and freedoms of others. Also, inciting and fomenting of hatred or intolerance or any other direct or indirect discrimination is prohibited. Also, the Constitution guarantees freedom of action and association.

8. Beside the rights which it already contains, the Constitution lacks: right to *habeas corpus* (to appeal to court in case of unlawful imprisonment and to be released if the imprisonment was unlawful); prohibition of imprisonment for non-fulfilled contractual obligation; prohibition of inhuman and humiliating punishment; explicit guarantee for the right to life; full guarantees of right to legal defence and fair trial in line with European Convention; guarantee to arrested persons that they will be brought to court in 48 hours after the arrest; right to *effective* remedy for human rights violations, including the obligation to address the consequences of the violation. At the same time, in breach of the

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<sup>6</sup> The Law on Employment envisages that all are equal in exercising their right to employment, regardless of their nationality, race, language, religion, education, social background, assets and any other personal attribute. The Law on Labor has similar provisions when it speaks on employees and their labor rights. The Law on Social and Child Protection as well as the Law on Health Protection envisage that the citizens are equal in exercising of their rights to social and child or health protection.

<sup>7</sup> Montenegro Progress Report 2007, Commission of the European Communities, Brussels, dated 6.11.2007, (SEC) 1434

<sup>8</sup> During the debate, some MPs argued that other European countries don't recognize the rights of LGBT individuals in their constitutions, while civil society responded that those Constitutions were adopted centuries or decades ago –and later amended- and not in the 21st Century.

<sup>9</sup> BHRN, HR Report Montenegro, 2008, Tea Gorjan Prelević and Aleksandar Saša Zeković.

international standards regarding freedom of expression, national Law does recognize the right to compensation for publishing wrongful information<sup>10</sup>.

7. It is important to emphasize that the direct implementation of international standards is limited. According to the assessments of national experts priority of international standards is provided only in “legislation”, but not in “law”, which includes Constitution and legal provisions, so that misinterpretations are to be expected regarding compulsiveness of implementation of international standards in practice of Montenegrin courts and other state bodies. There is no explicit recommendation in the Constitution that ratified international agreements on human rights should be implemented in line with the practice of international bodies in charge for their interpretation.<sup>11</sup>

8. Recommendations:

- To pass the Law on Free Legal Aid
- To pass a comprehensive Anti-Discriminatory Law including all the categories that are mentioned in comparable European Union documents (i.e. sex, gender, age, nationality, race, economic or other status, religion or belief, civil status, pregnancy, sexual orientation, etc.), followed by a Plan of Action to ensure its proper implementation.
- To provide full legal protection for civil rights by guaranteeing through the law the right to habeas corpus, prohibition of imprisonment for non-fulfilled contractual obligation; prohibition of inhuman and humiliating punishment; right to legal defence and fair trial; guarantee to arrested persons that they will be brought to court in 48 hours after the arrest; right to *effective* remedy for human rights violations, including the obligation to address the consequences of the violation.
- To provide full legal protection for the right to life that is, to explicitly declare that the death penalty should not be applied in any circumstances.
- To incorporate all international human rights treaties ratified by the State in national law.

## **Situation of LGBT population**

### General overview

6. Generally speaking, at the level of policies and in society as a whole, no attention is devoted to the status and rights of the LGBT population, nor any notable measures have been taken in order to create a more tolerant and safe environment for their life, work and action. There are still no individuals or groups that are publicly declaring themselves as members of the LGBT community. The atmosphere in which it is possible to ignore the violation of rights and the fact that they are not punished by law are causes of concern. Also, cases of torture, threats and physical assaults towards some NGO activists working on LGBT issues have been reported (see paragraphs 19 to 22)

7. In Montenegrin society only NGOs are making an effort in order to raise awareness on rights of sexual minorities and to develop tolerance towards members of the LGBT

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<sup>10</sup> BHRN, HR Report Montenegro, 2007, Authors Tea Gorjanc Prelević and Aleksandar Saša Zeković.

<sup>11</sup> Comments to the Constitution of Action for Human Rights Podgorica, 2007.

population. In July 2007, a group called “Tolerance” has addressed the leadership of youth in several political parties inviting them to “Advocate in their party structures for Constitutional guarantees also for the rights of persons belonging to sexual minorities and especially, for provisions which would explicitly prohibit discrimination based on sexual orientation and thus improve the position of Montenegro in the European integration process”.<sup>12</sup>

### Constitution and other legal provisions

8. In the first, expert version of Constitution there was a provision that allowed marriage to all in Montenegro. This liberal solution was abandoned in later stages, so now the Constitution allows only marriage between man and woman.<sup>13</sup> Family law<sup>14</sup> defines both marital and de-facto unions as the union of a man and woman, which means that couples of the same sex cannot have a right to alimony and other rights which are granted to members of de-facto unions, contrary to the practice of the European Court for Human Rights (*Karner against Austria*, from 2003).

9. The Criminal Code contained a discriminatory provision establishing different ages for giving sexual consent -18 for male homosexuals and 14 for heterosexuals and lesbians - that was abolished in 2004.<sup>15</sup>

### 10. Recommendations

- To include explicit mentions of sexual orientation as a protected category against discrimination in the existing laws on Labour and Employment, as well as in the legislation on hate speech and hate crimes.
- To guarantee full legal equality to same-sex couples in stable unions.

### Education

11. The introduction of «Civic education» lessons in primary and secondary schools two years ago, significantly contributes to developing a society which cherishes a culture of human rights. These lessons have been introduced in order to promote, through pedagogical methods, democratic values with children and youth, and to contribute to empowering them to play a more active role in the democratic society from the early phases of their socialization. However, content-wise, even though significant attention is paid to minorities, tolerance, solidarity and gender equality in the curriculum and textbooks, the status and promotion of the rights of sexual minorities is not addressed at all. On the other side, civil society has developed several alternative and very successful educational programs on human and minority rights that include references to LGBT rights.

### 12. Recommendation:

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<sup>12</sup> Letter addressed to the Youth Council of DPS Montenegro, Youth of Social Democrats, Youth Council of SNP (Social People’s Party) and Youth Network of PZP dated 27 July 2007; documentation of the group „Tolerance“.

<sup>13</sup> Constitution of Montenegro, Article 71, par. 1 “Marriage may be entered into only on the basis of a free consent of a woman and a man“.

<sup>14</sup> Official Gazette of MNE No. 1/2007, from 9.1.2007.

<sup>15</sup> BHRN, HR Report Montenegro, 2007, Authors Tea Gorjanc Prelević and Aleksandar Saša Zeković.

- To work together with civil society organizations to incorporate sexual orientation contents to the existing school curricula on Civic Education

## Media

13. There are very few articles about this topic in the media, especially on public service media that has a legal obligation to contribute to the development of a tolerant society. Organisations and individuals which deal with the protection of human rights emphasize that the public service as well as the commercial media insufficiently publish their reports and releases which deal with the rights of sexual minorities, as well as their reactions on texts which shed negative light on this population.

14. In January 2007, the daily newspaper «Pobjeda» published a story called «Warm brothers should freeze» in which leading neuropsychiatrists in Montenegro and persons who occupy important positions in the national health system considered that »Homosexuality is a disturbance of instinct and as such it is cured through psychotherapy« and that »In Montenegro this is not a common disease and this topic does not call for a more detailed comment«. <sup>16</sup> Mr. Miodrag Vukovic, head of parliamentary group of the leading party DPS, was quoted saying: »Giving equal rights to heterosexuals and homosexuals is a practice of those countries which have made serious steps forward in protection of human rights, which are at this moment, for traditional Montenegro, hardly understandable and acceptable«. <sup>17</sup> The group «Tolerance» reacted to this text with a statement that failed to be published by «Pobjeda»

15. In August 2007 the daily newspaper »Dan« published an improper caricature about freedom of sexual orientation with the text »they support sexual freedoms, but they have protected themselves«. In the same edition of that newspaper, Dobrilo Dedeić – an MP from the coalition »Serb list« - stated, among other things, that »Social strength and religious and ideological resistance should be strengthened so that one marginal social group with expressly negative moral connotation, like homosexuals, should not be able to exist in institutional sense in Montenegro«. <sup>18</sup> In reaction to the text and the caricature, a women's NGO called »Anima« pointed out that the right to sexual orientation can be equated with the right to free national expression<sup>19</sup>, and several other NGOs appealed to the journalists' self-regulatory body to recommend to all media a more tolerant perspective towards all social and societal groups and the usage of more correct terms when writing about members of sexual minorities.

## 16. Recommendations:

- To strengthen the role of public service media as a tool to build a human rights culture in society, by opening a dialogue with civil society and particularly with groups working on human rights, including LGBT rights, and inviting these groups to provide sensitivity training for journalists and informed content for public service media.

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<sup>16</sup> Daily „Pobjeda”, “Warm brothers should freeze“, section „Society“, dated 11.01.2007.

<sup>17</sup> Ibid.

<sup>18</sup> „DPS supports warm brothers“, section „Main news of the day“, and caricature on the cover page, daily *Dan*, on 30.08.2007.

<sup>19</sup> Reaction of NGO Anima “Misuse of the right to sexual orientation”, on 01.09.2008, civil portal [www.odjek.com](http://www.odjek.com).

- To contribute to better standards of respect towards minorities in the commercial media by organizing sensitivity training on LGBT rights (and other human rights issues, as needed) for journalists and owners of commercial media.

### Public health sector

17. The opinions expressed by leading public health authorities and mental health professionals quoted in Paragraph 13 above raise serious concerns, as they express outdated opinions (the World Health Organization removed homosexuality of its lists of psychiatric disorders in 1974) that can result in human rights violations i.e. forced psychiatric treatment for persons who are, or are believed to be, homosexuals.

18. Recommendation:

- To conduct an assessment of the knowledge and attitudes of public health officials and professionals about homosexuality and, according to the results of such research, to institute the proper training mechanisms to guarantee that the Montenegrin public health system will be capable of dealing with this issue in an updated way, with full respect to the human rights of the homosexual population.

### Human rights violations perpetrated by the police against gay individuals

19. Cases have been registered in which members of the police have on several occasions used the term «faggot» to abuse prisoners, including in cases of serious torture. In other cases, prisoners have been threatened with being left at the mercy of «faggots» if they did not confess to a particular crime that the police wanted them to.”<sup>20</sup>. For this reason the Police Directorate was invited to include lessons on respect for all differences within regular police training and to prevent the practice of putting sexual orientation into any negative context.<sup>21</sup>

20. Several witnesses have reported that members of the police have brutally beaten two young men from the capital city of Podgorica and left them naked after catching them being intimate with each other in a suburban area of the town.<sup>22</sup> This incident has not been duly investigated, nor the responsible officers punished in any way.

21. In 2005, Serbian gay activist Atila Kovača visited Montenegro and was subjected to stoning because of his public appearances in which he defended the rights of sexual minorities including on national TV. Although the police has arrested three of the attackers, no charges were brought against them.<sup>23</sup>

22. Aleksandar Saša Zeković, an independent researcher on violations of human rights, was threatened by the police to withdraw from public life or the public would be presented with evidence about his sexual orientation. Police officers then proceed to

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<sup>20</sup> Cases of torture in Podgorica, Plav, Berane.

<sup>21</sup> »It is unacceptable that members of police service are so distant and full of prejudice they obviously cannot control, in a country which intends to become a member of European Union«, is said in the letter of Aleksandar Saša Zeković addressed to the Director of Police Directorate of the Government of Montenegro sent as a reaction to reported torture of the group of citizens from Kosovo in Plav and Berane, on 16.07.2007; documentation of the Council for civic control of police work.

<sup>22</sup> Documentation of the researcher of violation of human rights, Aleksandar Saša Zeković.

<sup>23</sup> BHRN, HR Report Montenegro 2007, Tea Gorjanc Prelević and Aleksandar Saša Zeković.

subject Mr. Zekovic to continuous and serious death threats and a several-month long surveillance and recording of his whereabouts. Several media broadcast the threats addressed to Mr. Zekovic, what allowed many citizens to identify the particular officer responsible whose name was in turn published in the media. Mr. Zekovic has presented criminal charges against the Police force, submitting the recording and the identification as evidence. But until now, Mr. Zeković has not been informed whether any investigative actions have been taken in this case, that was mentioned in the 2007 Annual Report about Human Rights Situation in Montenegro issued by the U.S. State Department. This case shows how the police and security structures in Montenegro can use sexual orientation as a weapon for discrediting a human rights activist, backed by the entrenched beliefs of the traditional society that Montenegro still is.

### 23. Recommendations:

- To immediately investigate all reported incidents of police abuse and harassment against individuals based on their sexual orientation and properly sanction those found responsible.
- To pass a law for the protection of human rights defenders, followed by proper training for law enforcement personnel and the creation of mechanisms that will allow civil society to monitor human rights violations against human rights defenders and to act against them immediately, with full support of the relevant state bodies.
- To provide training on human rights and particularly the rights of minorities, including sexual minorities, to law-enforcement personnel.