



Montenegro

Permanent Mission of Montenegro to the  
United Nations Office and other International Organizations  
in Geneva

No. 01/08/HRC

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honor to enclose herewith answers of Montenegrin National Human Rights Institution to the questionnaire of the Independent Expert on protection against sexual orientation and gender identity.

The Mission would highly appreciate if the later could be conveyed to the esteemed recipient.

The Permanent Mission of Montenegro avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration. *ju*

Geneva, 1 February 2023



**Office of the High Commissioner for Human Rights**

## GENDER EQUALITY, GENDER BASED VIOLENCE AND DISCRIMINATION ON THE GROUND OF SEXUAL ORIENTATION AND GENDER IDENTITY

### GENDER EQUALITY

Gender equality is one of the basic values of the European Union, which is contained in all agreements and the Charter of Fundamental Rights of the European Union, and the Protector points out the importance of integrating the gender aspect in all policies and segments of society.

In the past year, the focus of the Protector's institution has been sexism, misogynistic speech and hate speech directed at women in political and public life, which has unfortunately become more frequent in our public space. In that sense, the Protector stated his opinion through reactions directly, as well as through giving opinions in individual cases. The goal of such statements is to discourage women from participating in public and social life, and in that sense, the Protector is of the opinion that the reaction of all social factors is necessary. Although it is a prohibited act, from time to time one could get the impression that some subjects accepted hate speech and sexism as allowed, and even desirable and allowed means of political struggle. The Protector would like to use this opportunity to warn that it is inadmissible to encourage and approve by public factors and create a climate of intolerance and hatred, because in that way it does not contribute to the suppression of hate speech.

In addition to political entities, the responsibility for encouraging tolerant speech and prevention of hate speech lies with the media because of the content they publish, as well as the obligation to update comments on portals and remove inappropriate content with elements of hate speech. As the focus of the media has shifted to the online space in recent years, the pages of information portals and social networks have become a place flooded with discriminatory comments directed against various social groups. The most common comments are calls for hatred, violence and intolerance towards the LGBTI population. On the other hand, through clear statements, women are often sent a message about where they should be in the right place in society.

According to the Report on the Global Gender Gap for 2021, Montenegro is one of 156 countries in which the analysis of progress towards gender parity was conducted through four dimensions: economic participation and opportunities, scientific achievements, health and political empowerment in relation to our country ranked 48th out of 156 countries. As before, so in the past year it is among the worst ranked countries in the region, so Serbia is on the 19th, Albania on the 25th, Slovenia on the 41st and Croatia on the 45th place<sup>1</sup>.

### GENDER BASED VIOLENCE

More than two years ago, the Protector sent the Initiative for Amendments to the Law on Protection from Family violence<sup>2</sup>, on the occasion of which the relevant ministry formed a working group whose task is to

---

<sup>1</sup> Global Gender Gap Report 2021 INSIGHT REPORT MARCH 2021, available at: [https://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf), visited on March 2 2022

<sup>2</sup> Law on Protection from Domestic Violence ("Official Gazette of Montenegro", No. 046/10, 040/11)

prepare amendments to the said law. However, the Protector expects that the work on the drafting of this document will be accelerated, in order to more effectively combat family violence and gender-based violence.

In this light, it is necessary to keep in mind that the current provisions have prescribed mild penalties for perpetrators, which does not send a strong message for the implementation of a policy of zero tolerance for violence. Due to the evident frequency of violence, the Protector believes and continuously warns that this negative social phenomenon must be given special attention and that it is not enough to change the legislative framework, but also effective implementation of regulations, stronger coordination of bodies and services dealing with violence and penal policy in addition to protective measures, it practices adequate, proportionate and dissuasive sanctions for perpetrators of violence. In its work on citizens' complaints, it is noted that the entire system that looks at the phenomenon of combating family violence and gender-based violence is viewed only from the aspect of misdemeanour/criminal sanctions and almost exclusively through the judiciary, without other systemic, professional, continuous and long-term measures, prevention and re-socialization of perpetrators, which in the long run deters real victims of violence from reporting milder forms of violent behaviour. In addition, such a system gives the judiciary inadequate preventive work, causes very lenient sentences and ultimately a constant increase in misdemeanour/criminal proceedings, which could be seen in the statistics, brutalization of violence and increase in femicide.

**Example:**

XX she submitted the complaint is due to the procedure conducted before the urban planning and construction inspection, which is related to gender-based violence. Namely, before this Institution, the complainant initiated several proceedings starting in 2018, which referred to the inaction of state bodies within their competencies, and which were related to gender-based violence. She has been married to YY for many years since she suffered all forms of violence. The marriage was divorced by a ruling of the Basic Court in Podgorica, but as they still live in the same house, and in different housing units - the violence has not subsided. In May 2018, the complainant initiated a physical division procedure before the same court, and after the procedure was completed and the division decision became final, she started building a separate staircase on the common house, as she shared a common entrance with the perpetrator until the procedure became final. When the works on the construction of the staircase were completed, due to the lack of a building permit, the urban planning and construction inspection issued a decision on the demolition of the staircase.

The Protector understands that the construction and urban inspection in this case is acting on the submitted report, but he is of the opinion that this inspection should have borne in mind that the complainant has been a victim of gender-based violence for many years, which the complainant pointed out during the proceedings. Also relevant to this case is the fact that in 2018 the Protector already conducted proceedings on the complainant's complaints relating to the Police Administration of Montenegro – Police station Podgorica, the Centre for Social Work for the Capital Podgorica and the Basic Court in Podgorica in which gave opinions and recommendations to these bodies in order to combat gender-based violence. He emphasizes that this opinion was adopted in the light of the fullest possible protection of victims of gender-based violence and emphasizes that all social factors are responsible for suppressing this negative social phenomenon, and not in terms of avoiding obligations and disrespecting construction laws.<sup>3</sup>

## **DISCRIMINATION ON THE GROUND OF SEXUAL ORIENTATION AND GENDER IDENTITY**

The adoption of the Law on Life Partnership of Persons of the Same Sex<sup>4</sup> which legally recognized and regulated the community of life between two persons of the same sex, is a big step forward in the context of respecting the rights of LGBTIQ persons and improving the legal and social position of this population. However, in order to fully implement this act, it is necessary to adopt bylaws that regulate certain issues in

<sup>3</sup> Opinion no. 833/20, available at link: [https://www.ombudsman.co.me/docs/1636548453\\_26102021\\_prepeoruka\\_pg.pdf](https://www.ombudsman.co.me/docs/1636548453_26102021_prepeoruka_pg.pdf)

<sup>4</sup> Official Gazette of Montenegro, no. 067/20

more detail. It is also necessary to work intensively on the harmonization of other related legal acts with the provisions of this law, in order to prevent significant problems in the implementation of guaranteed rights and to preserve the compactness of the legal system of Montenegro and legal certainty.

Improving the normative framework is a necessary but not a sufficient condition for the full integration of LGBTIQ people in all spheres of social life. An equally important aspect is the effective implementation of adopted regulations. At the same time, it is necessary to continuously work on raising awareness of the rights of LGBTIQ people in order to reduce the level of homophobia and transphobia that is still largely present in society.

This situation in society discourages LGBTIQ people from freely expressing their gender identity and sexual orientation, and can lead to violations of a wide range of rights to the detriment of these people, such as: the right to work, education, health care and the like. Members of this population belong to the most endangered categories when it comes to the risk of exposure to discrimination.

It is especially important to work on the education of civil servants, because they act on behalf of the state and therefore have a greater awareness of the need to respect human rights and respect for diversity, because their proper conduct largely depends on the effective exercise of human rights and freedoms of citizens guaranteed by the Constitution and ratified international agreements. Crimes committed against LGBTIQ persons should be responded to by imposing effective, proportionate and dissuasive sanctions. A particular cause for concern is the increased presence of hate speech and abusive speech. Such phenomena lead to feelings of threat, humiliation, fear and hostility towards this endangered category.

With regard to the exercise of the right to health care, a particular cause for concern is the lack of hormone therapy for trans-women. Continuous hormone therapy is an indispensable part of therapy, so a regular supply of hormones is necessary. Lack of such therapy places trans-women in a state of risk and violates the right to respect for private life, from Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.