

MONTENEGRO

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?
Fully satisfactory ☐ Adequate ☒ Insufficient ☐ Absent ☐

Please explain your reply.

We are in the process of reviewing our legislation in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity. Also, we are fully committed to the implementation of the existing legislation in order to ensure respect for the human rights of LGBT people.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Government of Montenegro during the month of March 2013 will adopt a Strategy (plan of actions) to improve status of LGBT people, which is following CM/Rec(2010)5. For instance, the Government will continue with the intensive training for prosecutors, law enforcers, protectors of human rights and civil sector involved in the protection of LGBT people and the effective exercise of their rights. The Government will initiate the project to respond and approximate the international standards in regard to the same sex relationship and on which basis will continue to work on a proposal for appropriate solutions in the Montenegrin legal system. Also, in the Criminal Law, hate crime will be defined as prohibited ground of discrimination, as well as on the basis of sexual orientation.

Are there measures in place to redress any such discrimination?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Institutional framework:

- Ombudsman Office, as an national mechanism for protection against discrimination
- Parliamentary Council on human rights and freedom
- Ministry for Human and Minority Rights
- Anti-discrimination Council: Prime Minister, five (line) ministers and human rights adviser to the Prime Minister are involved in the work of the Council, and that particularly emphasizes the role that the Council has in combating every form of discrimination as well as in the affirmation of anti-discriminatory policy in Montenegro, and whose main aim is to protect human rights and freedom. The NGOs are also involved in the work of the Council.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Government of Montenegro during the month of March 2013 will adopt a Strategy (plan of actions) to improve status of LGBT people. The final document is being prepared. For more, please see the answer on question 2, as well as, Strategy to improve status of LGBT people which will be delivered to you, translated into English.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Ministry of Human and Minority Rights adopted the Rulebook on the contents and manner of keeping the records on cases of reported discrimination, ensuring accurate records and providing information to the Protector of Human Rights and Freedoms. Those information are included in the special report on discrimination submitted to the Parliament of Montenegro by the Protector¹. According to hate crime, data collection system, as well as to all relevant questions from above the legislative should be improved.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

¹ Pursuant to Article 33 paragraph 3 of the Anti-Discrimination Law (Official Gazette of Montenegro, 46/10), on 29th April 2012 the Ministry of Human and Minority Rights adopted the Rulebook on the contents and manner of keeping the records on cases of reported discrimination (Official Gazette of Montenegro, 23/11 of 6th May 2011). This Rulebook prescribes detailed content and manner of keeping the records on cases related to discrimination (hereinafter referred to as "the Record") in courts, inspection bodies and misdemeanour organs. The Report consists of the following information: (1) person filling the complaint or charge, (2) a basis of discrimination, (3) sex and age of discriminated person, (4) date of filling the complaint or charge, (5) date of rendition of the final decision; (6) request for review, (7) time of deciding (8) number of cases received; (9) number of rejected complaints or charges, and (10) number of accepted complaints or charges. The Record represents an electronically-driven database that provides direct access of the Protector of Human Rights and Freedoms in Montenegro to data. Data in the Record are being systematized and kept in the form of registry.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Good practices: good ongoing cooperation of the police forces and LGBT community

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

It is necessary always to continue to improve sensibility and capacity building related to the issue.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation is translated to Montenegrin language. But our intention also is to bring translation of Rec to all minority languages, that everybody have access to the Rec text.

On 19th March 2012 in Budva, under the auspices of former Prime Minister Igor Lukšić, took place the conference on the LGBT rights entitled "Together against Discrimination". This Conference was held just a week before the Conference organized under the auspices of the British Chairmanship of the Committee of Ministers of the Council of Europe with the same topic. Basic goal of the Conference was to provide the promotion of Recommendations of the Committee of Ministers of the Council of Europe (CM/Rec(2010)5) on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31st March 2010. The intention was to encourage all relevant state institutions and NGOs in the sphere of intensification of efforts towards further promotion of Recommendations, and to consider possibilities for the establishment of Regional network aimed at combating discrimination based on sexual orientation or gender identity. Further information about the Conference available at:

http://www.gov.me/en/Together_against_Discrimination.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Government of Montenegro will continue with the intensive training for prosecutors, law enforcers, protectors of human rights and civil sector involved in the protection of LGBT people and the effective exercise of their rights.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

<p>The Government took several steps to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them:</p> <p>1.1 The Police Directorate of Montenegro has established LGBT liaison officer, a person who is a contact point with the local LGBT community, as well as with the advisory role to organizations and government branches.</p> <p>1.2 The Government of Montenegro continues to provide support for hate crime prevention initiatives to reduce known risk factors for offences and victimization in hate crime areas and among vulnerable groups. Ensuring shelter services and violence prevention programming available to LGBT community is an important element to address the violence in this field, as well as to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them.</p> <p>1.3 In ongoing project, supported by Royal Netherlands Embassy in Belgrade, the Government of Montenegro is working with all relevant stakeholders to establish a Trust Team between Police forces and LGBT Community. Also, the Government of Montenegro continues intensive (massive) training for law enforcement in protection of LGBT people and the effective exercise of their rights.</p> <p>1.4 Further improving the capacity and sensitivity of police organizations to access, and protect the rights of lesbian, gay, bisexual and transgender persons (LGBT) and increase the confidence of the public in the work of the police service, the NGO LGBT Forum Progress and Police Directorate of Montenegro signed an Agreement on Cooperation and Understanding. The Agreement has been recognized as an example of good practice which should carefully develop and strengthen mutual capacities to preserve a constructive dialogue and build confidence of the LGBT community towards the police, cherish the existing political will and increase effective contacts to resolve individual cases and provide necessary assistance to the police in collecting evidence material and rounding up cases for the judiciary. Police Directorate, on the basis of the signed Agreement, expressed full readiness for its implementation, which implies that it is prepared to respond to the demands of the LGBT population.</p> <p>1.5 For instance, on 8th December 2011, joint delegation of Police Directorate, Council for civilian control of the police actions and LGBT Forum Progress participated in the conference "Joining the efforts in preventing homophobic and transphobic violence in Europe – cooperation between judicial authorities and civil society", organized in the Hague by the Government of the Kingdom of Netherlands, Dutch Police Academy and ILGA Europe. During the three-day conference, the challenges still dealt by LGBT community around Europe were presented, as well as numerous examples of good practice showing that the containment of strong confidence between the police service, LGBT community and civil society organizations, and assurance of maximum protection of LGBT persons from the hate speech and homophobic</p>
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violence is possible. At the conference and training in the Hague, the Agreement on cooperation and understanding, concluded between the LGBT Forum Progress and the Policy Directorate in June 2011, was recognized as an example of good practice.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On 5th and 6th May 2011, Ministry of Human and Minority Rights organized the workshop „General legal regime of anti-discrimination“ in order to discuss about the concept and forms of discrimination, typical discriminations in certain areas of social life and mechanisms of legal protection against discrimination.

From 27th to 30th May 2011 in Belgrade, five officers of Police Directorate of Montenegro, together with colleagues from the police of Serbia, participated in training about the work with LGBT persons, held under the auspices of international academic conference “Justice in the Balkans – equality of sexual minorities”. International Council of Conference decided to award the prize “Friends of Justice” to the Police Directorate, bearing in mind their actions and cooperation during the first LGBT conference in Montenegro in October 2009.

On 22nd and 23rd June 2011, Ministry of Human and Minority Rights organized a second workshop on homophobia and discrimination against LGBT population with reference to practices in the region.

From 2nd to 5th September 2011, Government of Montenegro organized an international conference “Toward Europe – Toward Equality”. The Conference was dedicated to human rights with special emphasis on the development of legislation and national policy, aimed at improving the human rights of LGBT population and combating discrimination against these persons, anti-discriminatory legislation and policy, as well as the need for rising awareness of the regime and public on these issues. During the Conference, trainings were organized in the area of law enforcement, judiciary and human rights for judges, prosecutors, law enforcers², protectors of human rights and civil sector.³

On 24th and 25th November 2011, Ministry of Human and Minority Rights organized the third workshop on the protection of human rights of LGBT persons, and it was related to education in the area of protection against discrimination.

On 8th December 2011, joint delegation of Police Directorate, Council for civilian control of the police actions and LGBT Forum Progress participated in the conference “Joining the efforts in preventing homophobic and transphobic violence in Europe – cooperation between judicial authorities and civil society”, organized in the Hague by the Government of the Kingdom of Netherlands, Dutch Police Academy and ILGA Europe. During the three-day conference, the

² At the international conference “Toward Europe - Toward Equality”, organized by the Government of Montenegro, the training of Police officers from all organizational units and regional units was held. During the Conference it was reiterated that the LGBT community can believe in the capacity of the Police and that all officers are ready to show the efficiency at work and a high degree of professionalism, and that the Police Directorate will adequately provide for “Pride Parade” when the LGBT community decides to organize it. It was emphasized that the Police Directorate supports the right of LGBT people to organize the parade. In this regard, the Police has taken a set of measures and activities in the preparation for protection the “Pride Parade” and developed a series of contacts with foreign police services, primarily with the police of the Republic of Croatia and Serbia in order to exchange information and experiences. On this occasion, the delegation of Police Directorate visited the Serbian police, and headquarter was also established for the preparation and maintenance of a safe parade.

³ Detailed information about the conference/training in English is available at the following link:

http://www.gov.me/en/homepage/Conference_Toward_Europe_Toward_Equality

challenges still dealt by LGBT community around Europe were presented, as well as numerous examples of good practice showing that the maintenance of strong confidence between the police service, LGBT community and civil society organizations, and assurance of maximum protection of LGBT persons from the hate speech and homophobic violence is possible.

On 26th and 27th January 2012, four representatives of the Police participated in training dedicated to the rights and position of the LGBT population, organized by the Centre for Civic Education (CGO) and LGBT Forum Progress under the project "It's okay to be different". The aim was to contribute to the culture of human rights and sustainable democratic society by enhancing social capacities in promoting LGBT rights and anti-discriminatory policies.

According to judiciary system in this issue, Montenegro has started the project with German IRZ Foundation, working to improve sensibility and capacity building related to the ECtHR judgments in the issue, as well as through Council of Europe LGBT project assistance.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The legal framework regulating the protection of the rights of the abovementioned persons in Montenegro - at the level of Constitutional provisions (Article 6 and 8) – guarantees and protects the rights and freedoms and prohibits all forms of direct and indirect discrimination on any grounds. In addition, system law in the area of enforcement criminal sanctions (Law on Enforcement of Criminal Sanctions) guarantees the protection of fundamental rights guaranteed under the Constitution and prohibits the placing into a mutually unequal position with regard to race, colour, sex, religion, political or other belief, national or social origin, property, origin, education, social status or other characteristics. At the same time, the by-laws which more closely regulate the enforcement of criminal sanctions guarantee the respect for rights and freedoms of all convicted persons.

At the Institution for Enforcement of Criminal Sanctions, through the work of the Department for Treatment, it was recorded that a certain number of gays and lesbians as well as bisexuals are serving the prison sentence. The treatment of these persons, as well as other measures implemented in the institution in the field of re-socialization takes place on the same regime as well as for other prisoners. So far, there have been no cases of discrimination based on sexual orientation recorded, nor any reports or complaints concerning the mutual relations of prisoners, and relations towards the staff of the Institution. There have been no cases recorded of denial of health care for this category of persons, neither have so far been any objections in this respect.

Finally, it should be noted that the Institution for Enforcement of Criminal Sanctions sets a good example how even in this type of institutions there is no (and should not be) cases of discrimination based on sexual orientation and that this policy will be continued in the future.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

It is unlawful to publish ideas, information and opinions that promote discrimination, hate or violence against a person, or a group of persons because of their sexual orientation, regardless of whether a criminal offence was committed by such publishing. The Law on Media stipulates that Montenegro provides for and guarantees the freedom of information at the level of standards contained in international documents on human rights and freedoms. In addition, Montenegro guarantees the right to free foundation and work of media based on the freedom of expression of thoughts, freedom of research, collection, dissemination, publishing and receiving information, free access to all sources of information, protection of person's personality and dignity, and free flow of information. Article 23 of the same Law prohibits dissemination of information and opinions that encourage discrimination, hatred or violence against persons or group of persons due to their race, religion, nationality, ethnical group, sex or sexual orientation. In addition, this Law stipulates that the state provides for certain amount of funds for exercise of rights of citizens guaranteed by the Constitution and the right to information, without discrimination. Program of the Ministry for Human and Minority Rights on the implementation of the Anti-Discrimination Law includes the education plan and media promotion plan of anti-discriminatory behavior which, among other things, includes LGBT group.⁴ Visual identity of the media campaign in the fight against discrimination of LGBT populations, persons with disabilities and based on gender identity has been developed. The campaign began with the implementation on 27th May 2011 and included television spots, radio jingles, newspaper ads, flyers and billboards throughout Montenegro. Special TV spot, newspaper ad, flyer and poster for billboards with the theme of discrimination against LGBT population have been issued. The Broadcasting Law stipulates that "broadcasters of public broadcasting services produce and broadcast programmes designed for all segments of the society, without discrimination whatsoever, specially taking into account specific social groups". The Law on Public Broadcasting Services of Montenegro stipulates the obligation of the Radio and Televisions of Montenegro (RTCG) to, while applying high standards of professional ethic and quality, regardless of any form of discrimination and social diversity, produce and broadcast programme contents that are designed for all segments of the society, specially taking into account members of minority groups and other minority national communities, and to contribute to the respect and promotion of fundamental human rights and freedoms.

A good practice also is a work of Anti-Discrimination Council.

The Anti-Discrimination Council:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

⁴ Education and promotion of anti-discrimination behavior, as well as the fight against homophobia in society will continue in 2013, covering the broadest possible population, in order to ensure the respect of all human rights, creating a supportive and tolerant environment,.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no limitations or exceptions related to the issue.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Anti-Discrimination Council:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Deputy Prime Minister and Minister of Justice Duško Marković, on 14th October 2011, held a meeting with representatives of civil society committed to the promotion and protection of human rights of LGBT persons. The meeting was held with an aim of establishing and strengthening forms of cooperation and mutual support that has been formalized by signing a Memorandum on cooperation between competent ministries and civil society organizations engaged in promoting and protecting human rights of LGBT persons. Special attention is given to the initiative of holding the first Pride Parade, when the Deputy Prime Minister Duško Marković and chief executive of LGBT Forum Progress Zdravko Cimbalević signed a joint public statement⁵. Also, as a result of the establishment of institutional cooperation between the Government and civil society representatives who are committed to the protection of LGBT rights in Montenegro, the Government has formed (a) Working team for developing the programme document for fighting homophobia with the Action Plan⁶, (b) Expert work group

⁵ Joint public statement available at:

<http://www.gov.me/en/News/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>

⁶ The task of the Working Team for developing the program document for fighting homophobia is the preparation of program document with the purpose of establishing guidelines for the improvement of government anti-discrimination policy, promotion of anti-discrimination and protection of human rights of LGBT community.

for preparation of the analysis of legislation from the aspect of LGBT rights⁷, and (c) Expert work group for preparation of the analysis of human rights of LGBT persons in the textbooks within the education system of Montenegro⁸. These bodies, composed of representatives of state institutions and civil society dedicated to strengthening the position of LGBT persons in Montenegro, will offer proposals, opinions and expert explanations that may be of assistance to the Government in further work in this area. Also, the NGOs, as well as representatives of LGBT community were included in Working Group of Antidiscrimination Council which has been drafted final proposal of LGBT Strategy, as an result of the (whole) consultation process.

Also, representatives of NGOs are fully and equally involved in work of Antidiscrimination Council, as well as to the different GOV's working groups related to the issue.

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no specific limitations or exceptions regarding questions in place.

19. Do 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?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law enforcement authorities were fully commitment to protect all participants on every organized peaceful demonstrations related to the issue.

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

⁷ Expert Working Group for preparation of the analysis of legislation from the aspect of LGBT rights is devoted to the development of analysis of the compatibility of national legal framework with international standards in this area.

⁸ The task of the Expert work group for preparation of the analysis of human rights of LGBT persons in the textbooks within the education system of Montenegro, in addition to the analysis, is to provide recommendations for improvement and raising awareness of human rights of LGBT population.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

This issue is part of the Strategy to improve status of LGBT people in Montenegro: LGBT Human Rights.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

Article 9, paragraph 1, item 7 of the Law on Protection of Personal Data (Official Gazette of Montenegro 79/08, 70/09 and 44/12) prescribes: "Special categories of personal data shall be the personal data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in trade unions, as well as data concerning health condition or sex life."

Article 13 of the Law on Protection of Personal Data (Official Gazette of Montenegro 79/08, 70/09 and 44/12) prescribes:

"Special categories of personal data may be processed only:

1. with the express consent of the person;
2. when the processing of personal data is necessary for employment in accordance with the law governing labour relations, while adequate safeguards must be prescribed;
3. when the processing of personal data is necessary for the purpose of detection, prevention, diagnosis and treatment of a person, as well as for the purpose of management of health care services, if these data are processed by a health care worker or other person who is under the obligation of confidentiality;
4. when that is necessary in order to protect life or other vital interests of a person to whom the personal data refer or another person who is unable to give consent in person, as well as in other cases provided by law;
5. if the person has in an obvious way made the personal data available to the public or the processing is necessary for the exercise or protection of legal interests of that person before a court or other authority;
6. when the processing of personal data is performed within the lawful activities of a non-governmental organization or association or other non-profit organization with a political, philosophical, religious or trade union objectives, if these data refer solely to the members of such organizations or the persons who have regular contact with it in connection with the purpose of its scope of activity and if such data are not disclosed without the consent of such persons.

Special categories of personal data are specially marked and protected to prevent unauthorized access to the data.

Method of labelling and protection of personal data referred to in paragraph 2 of this Article shall be determined by the Ministry in charge of public administration affairs."

Ministry of Interior issued the Rulebook on the method of labelling and protection of special categories of personal data (Official Gazette of Montenegro 11/11).

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Registers of Birth, Marriages and Deaths prescribes that a Montenegrin citizen can get a sex change. The entry of such facts, that is the sex change, is performed upon the request of a person on the basis of his/her medical record. Based on the person's requirement, the new identification number and the new name of the person is defined, and entered into the registers and into the citizens' register, and a new ID and passport is being issued to such a person.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

When gender reassignment has been completed, legally recognised and when the new documents are issued to a person, there are no legal obstacles, according to the Family Law, for such a person to enter into a marriage with a person of the opposite sex.

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

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please provide examples:

The Government will initiate the project to respond and approximate the European experience/international standards in this regard, and on which basis the competent Commission will continue to work on a proposal of appropriate solutions for the Montenegrin legal system.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Family Law of Montenegro stipulates that everyone shall act in the best interests of a child in all activities concerning the child, and therefore also when it comes to the decisions concerning the exercise of parental rights and adoption.

Since the Family Law stipulates that marriage shall be entered into by a man and a woman, as well as that the common-law marriage shall consist of a man and a woman, and that a child can be fully adopted by married or common-law spouses together, this indicates that homosexually oriented persons cannot completely adopt the child. The law also provides for the possibility that a person who is not married may, if there are special reasons, perform incomplete adoption of a child.

In practice, there have been no cases of adoption of children by homosexual persons.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The provision of Article 5 of the Labour Law (Official Gazette of Montenegro 49/08 and 59/11) prescribes that direct and indirect discrimination against job seekers and employees, with respect to sex, origin, language, race, religion, colour, age, pregnancy, health condition, namely disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, membership in political and trade union organizations or other personal characteristics shall be prohibited.

Article 6 of the same Law stipulates that direct discrimination, in the sense of this Law, shall be any action caused on any of the grounds referred to in Article 5 of this Law that a person seeking employment, as well as employees placed in a disadvantageous position compared to other persons in the same or similar situation.

Indirect discrimination, in the sense of this Law, shall exist when a certain provision, criterion or practice places or would place in a disadvantageous position compared to other persons, a person seeking employment and an employee, because of certain characteristic, status, affiliation or beliefs.

Furthermore, Article 7 of the Labour Law stipulates that discrimination referred to in Art. 5 and 6 of this Law shall be prohibited in respect of:

- 1) the conditions of employment and selection of candidates for a specific job;
- 2) conditions of work and all labour rights;
- 3) education, training and specialization;
- 4) promotion at work;
- 5) cancellation of employment contract.

The provisions of the labour contract whereby discrimination is established on any of the grounds referred to in Art. 5 and 6 of this Law shall be null and void.

Also, harassment and sexual harassment at work and in connection with work shall be prohibited, pursuant to the provision of Article 8 of the Labour Law.

Harassment, in terms of this Law, shall be any unwanted behaviour caused by any of the grounds referred to in Art. 5 and 6 of this Law, as well as harassment by audio and video surveillance, which has the purpose of or represents the violation of dignity of a person seeking employment or an employee, causing fear or creating a hostile, humiliating or offensive environment.

Sexual harassment, in the sense of this Law, shall be any form of unwanted verbal, non-verbal or physical conduct that aims at violating the dignity of a person seeking employment or employee in the sphere of sexual life, and causing fear or creating a hostile, humiliating, unpleasant, aggressive or offensive environment.

An employee shall not suffer adverse consequences in the case of reporting, testifying because of harassment and sexual harassment at work and in connection with work in the sense of paragraph 2 and 3 of this Article.

Pursuant to the provision of Article 8a of the Labour Law, any form of harassment (mobbing) at work, or any conduct towards an employee or group of employees at an employer that is repetitive and has the purpose of violating the dignity, reputation, personal and professional integrity, the position of an employee which causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions, or causes the employee to isolate him/herself or leads them to cancel the labour contract at their own initiative shall be prohibited.

Prohibition of harassment at workplace (mobbing), measures to prevent abuse, the procedure to protect persons exposed to abuse, and other issues of importance for the prevention and protection against harassment at work and in connection with the work shall be regulated in more detail by a special law.

Also, the Law on Prohibition of Abuse at Work (Official Gazette of Montenegro 30/12) stipulates the rights, obligations and responsibilities of employers and employees with regard to the prevention of abuse at work or in connection with work (mobbing), as well as other issues important for the prevention and protection against mobbing.

This law stipulates that mobbing is, in the sense of this Law, any active or passive behaviour at work or in connection with work towards an employee or a group of employees, which is repeated, and which aims at or represents a violation of dignity, reputation, personal and professional integrity of an employee and causing fear or creating a hostile, humiliating or offensive environment, deteriorates working conditions, or causes the employee to isolate him/herself or leads them to cancel the labour contract or other contract at their own initiative. Mobbing is also incitement or instigation of others to the conduct in the sense of paragraph 1 of this Article.

An employee who is not satisfied with the outcome of the procedure for protection from mobbing at the employer's may initiate procedure for the protection from mobbing with the Agency for the peaceful settlement of labour disputes or with the competent court.

Rulebook on Code of Conduct of the employer and employee on prevention and protection from abuse at work (Official Gazette of Montenegro 56/12), among other things, stipulates that, for the purpose of protection from and prevention of mobbing, an employer and an employee should avoid conduct that:

could be considered harassment, such as:

- unwanted conduct towards an employee or a person seeking employment, based on sex, origin, language, race, religion, colour, age, pregnancy, health condition, namely disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, membership in political and trade union organizations or other personal property;

could be considered sexual harassment, such as:

- degrading and inappropriate comments and actions of sexual nature,
- attempted or committed indecent and unwanted physical contact,
- incitement to acceptance of conduct of sexual nature with promising rewards, threats or blackmail etc. (Article 2).

Should, during the proceedings, the prosecutor or the party that submitted the proposal for peaceful settlement of the labour dispute make it probable that mobbing referred to in Article 2 of this Law was committed, the burden of proving that there had not been conduct which poses mobbing falls on the defendant, namely, the other party to the dispute (Article 27 of the Law).

Hence, labour legislation prohibits discrimination in employment in the public and private sectors on the basis of sexual orientation, prohibits discrimination in employment on the basis of gender identity, as well as in access to employment, working conditions and all rights arising from labour relation, education, training and specialization, promotion at work, cancellation of labour contract.

Also, the Law on Employment and Exercise of Rights to Unemployment Insurance (Official Gazette of Montenegro 14/10 and 45/12) stipulates that the exercise of the rights from unemployment shall be based on the following principles: freedom in the choice of occupation and workplace, anti-discrimination, gender equality, affirmative action oriented towards less employable individuals, impartiality of the entity in charge of employment affairs and free-of-charge character of performance of the employment affairs.

VI. Education

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

- ii) Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

- iii) Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

iv) School equality and safety policies and action plans

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In General Law on Education in Article 9a are proposed that are prohibited any kind of physical, psychological and social violence; abusing and neglecting of children; physical torture and insulting of person, sexual abusing of pupils and staff, and any other kind of discrimination.

Bureau for Education Services published Catalogue for professional development of teacher and staff, and offer different programs, such as topics related to the human and child rights, non-violence, antidiscrimination, fight against prejudice and inequality, intercultural competences, etc.

In education system topics of nondiscrimination on grounds of sexual orientation or gender identity are studied in the following curriculum:

Elementary school level:

1. Biology for IX grade;
2. Nature for VI grade;
3. Civic education for VI and VII grades;
4. Elective subject Healthy life styles for VIII and IX

Secondary school level:

1. Biology for III grade;
2. Sociology for IV grade;
3. Civic education, elective subject in I, II, III and IV grades of Gymnasium;
4. Civic education, elective subject in I IV grades of vocational school;

Schools through the annual plans that are detailed developed in monthly plans cover those issues, regarding development good school atmosphere and ethos.

The Project: "School without violence – safe school environment" is implemented in schools and covers pupils, staff, and parents. It includes trainings for the school mentors and educators, workshops with pupils, and for the parents. Activities are achieved through the 7 steps oriented to raise the level of knowledge and awareness about the problems of peer violence, to establish values and rules that will be respected and implement in the school, develop cooperation with other institutions in order to prevent and solve violent situations, etc. Manuals for use in schools and brochure for the parents have been prepared.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, there is. Action Plan HIV/AIDS, as well as health measures proposed in the Strategy to improve status of LGBT people.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

Law on Health Insurance ("Official Gazette of the Republic of Montenegro", Nos. 39/04 from 09.04.2004, 23/05 from 12.04.2005, 29/05 from 09.05.2005 and "Official Gazette of Montenegro", Nos. 12/07 from 14.12.2007, 13/07 from 18.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 14/12 from 07.03.2012)

Article 16b, par. 1(13): Gender reassignment covered by the health insurance (80% of the costs)

With respect of ensuring gender reassignment services, during 2013, Ministry of Health will adopt appropriate regulation on criteria for gender reassignment.

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Proposal of the Law on the Child and Welfare Protection, expected to be adopted in the second quarter of 2013 stipulates that the discrimination of beneficiary on the basis of race, gender, age, nationality, social origin, sexual orientation, religion, political, trade union or other affiliation, property, culture, language, disability, social exclusion, membership in a particular social group or other personal property shall be prohibited.

It is also prescribed that the welfare and child protection aims to support the social inclusion of individuals and families and that, in achievement of the objectives, among other things, an adult and an elderly person who is homeless shall be especially protected.

The abovementioned proposal of the Law, prescribes the service of accommodation in a social care institution and accommodation in a shelter. Accordingly, the right to accommodation services in social care institution and accommodation in a shelter, as a form of protection, shall pertain to the homeless, regardless of sexual orientation or gender identity.

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Sports - part of the Strategy to improve status of LGBT people, including measures how to take concrete (step-by-step) actions, in order to tackle discrimination on grounds of sexual orientation or gender identity in sports and in connection with sport. Also, the Government has supported LGBT community to participate at the LGBT Olympic games.

The proposed measures in the Strategy:

Encouraging dialogue and cooperation between LGBT community, the Montenegrin Olympic Committee and national sport organizations and fan clubs;

Supporting sports federations, clubs and fan groups in the development of activities to raise awareness of discrimination against LGBT people in condemning expressions of intolerance and violence against them;

Supporting LGBT sports individuals and organizations at the national and international level;

Conduct research on homophobia and transphobia in sport;

Understanding LGBT perspective in the development of strategic program documents and funding sports concepts from public sources.

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law on Asylum (Official Gazette of the Republic of Montenegro 45/06), Article 2, prescribes that a foreigner shall be recognized the refugee status if, from his or her asylum application, it is determined that he/she legitimately fears from persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion in the country of origin, and therefore, cannot or does not want to use the protection of the country of origin. Accordingly, sexual orientation or gender identity is perceived "as membership in a particular social group", which means that this criterion for the granting of refugee status is regulated by the Law. In previous practice, there were no cases that an asylum seeker was persecuted in their own country because of their sexual orientation or gender identity.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Law on Asylum, Article 6 stipulates that the person who has been granted asylum or whose asylum is terminated or revoked, must not be returned or expelled to the border of a state in which:

1. their life or freedom would be threatened on account of race, religion, nationality, affiliation to a particular social group or political opinion;
2. could be exposed to torture, inhuman or degrading treatment or punishment;
3. their life, safety or freedom would be threatened by violence of general scope, foreign aggression, internal conflicts, massive jeopardizing of human rights or other circumstances which seriously threaten life, safety or freedom.

In accordance with the abovementioned principles, a person who would be at risk because of their sexual orientation or gender identity will not be returned to their country of origin. So far, we have had no such cases in practice.

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

Institutional framework:

- Ombudsman Office, as an national mechanism for protection against discrimination
- Parliamentary Council on human rights and freedom
- Anti-discrimination Council
- Ministry for Human and Minority Rights

For instance, Ministry of Human and Minority Rights has in its organizational structure a special Section for Gender Equality whose activities are as follows: Coordinates activities aimed at establishing gender equality and participates in the preparation and adoption of action plans for the establishment of gender equality at all levels; Monitors the implementation of international documents and conventions, as well as adopted international standards in the field of gender equality, takes measures for their implementation in the legal system of Montenegro and creates a quality monitoring of the adherence to those documents; Prepares the Plan of Activities, proposes its adoption and monitors its implementation; Organizes the research and analysis on the state-of-affairs concerning gender equality and analysis for the implementation of the Plan of Activities, as well as collecting of data within the cooperation at national and international levels; Cooperates with the local government and provides support for the setting of mechanisms for establishment of gender equality at the local level; establishes the cooperation with the non-governmental organizations; Undertakes and encourages the activities concerning education on gender equality and organizes the issuance of occasional publications aimed at promoting gender equality; Proceeds by citizens' petitions that point out to direct or indirect discrimination based on sex, takes positions and gives opinions and recommendations, and when needed, informs the Ombudsman on existence of discrimination based on sex;

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

The measures related to: Hate crimes and other hate-motivated incidents; Freedom of association; Freedom of expression and peaceful assembly; Education; Health; Employment; National Human Rights Structure;

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Yes; Hate crimes and other hate-motivated incidents; Education; Health; Freedom of Expression and peaceful assembly.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

n/o