

1. General prohibition of discrimination in Montenegro

- 1.1 New 2007 Constitution of Montenegro incorporates a broad prohibition of discrimination by banning every "direct or indirect discrimination based on any ground" (Art. 8). This general prohibition is supplemented by provisions guaranteeing "equality in law", "equality before the law" (Arts. 17, 19) and gender equality (Art. 18). Temporary special measures aimed at achieving *de facto* equality of persons belonging to disadvantaged groups (affirmative action) are explicitly allowed, while persons with disabilities are guaranteed special protection (Arts. 8, 68). Incitement of hatred on any grounds is prohibited (Art. 7). Prohibition of discrimination cannot be derogated in time of war or other public emergency nor can derogation of human rights and freedoms be based on grounds such as sex, ethnic origin, race, religion, or any other personal characteristic (Art. 25).
- 1.2 All forms of discrimination have long since been qualified as crimes, also allowing for punishment of offenders committing violence against persons of different religion, race, nationality, political affiliation, sexual orientation, etc. However, prosecution of offenders on such grounds in practice has not been recorded.¹ Laws, such as the Labor Act, Employment Act, Health and Social Care Act and other, prescribe the principle of equality and generally prohibit discrimination.
- 1.3 Although already in 2005 the Montenegrin government adopted the Draft Citizens Equality Act (general anti-discriminatory legislation), providing for the innovative mechanisms of protection against discrimination including effective redress procedures, the Draft never reached the Parliament.² Apparently, a new draft law is currently in process of preparation by the Ministry of Human Rights and Minorities.³ Such general anti-discrimination law is much needed to improve means of effectively proving discrimination and securing redress for the victims.

2. Protection of national and ethnic minorities

- 2.1 Constitution guarantees important rights to protect the identity and prohibit assimilation "of members of minorities and other minority ethnic groups" although there is no consensus in Montenegro as to who belongs to this category. The Constitution Preamble states that members of nations and minority groups living in

¹ One example is lack of prosecution of football fans who instigated violence before and after the match between Croatia and Montenegro held in Montenegro in July 2007 ("Pocrnjeli od pendreka, a ne od sunca", *Dan Daily*, 26 July 2007; "Navijaci su posebna fela", *Vijesti*, 21 July 2007).

² Human Rights Committee insisted as early as 2004 that Montenegro and Serbia start work on the adoption of anti-discriminatory legislation and it is also Montenegro's priority task under European Partnership (*Council Decision on the principles, priorities, and conditions contained in the European Partnership with Montenegro*, 17 January 2007, p. 7).

³ Information received from the representative of the Ministry in November 2008.

Montenegro include: “Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats, and others”. Naming of constituting nations was avoided on request of the CoE and to the disappointment of particularly Serbian and Bosniak political parties. The Constitution prescribes Montenegrin language as the official language, whereas Serbian, Bosnian, Albanian and Croat languages are “in official use”.

- 2.2** The Constitution guarantees the right to authentic representation of minorities in the Parliament of Montenegro and local government councils in units where they make a significant proportion of the population, in line with the affirmative action principle, as well as proportional representation in public services, public administration agencies and local government. However, the existing electoral legislation governs the representation of Albanian minority in the Parliament only, not giving the same opportunity to the other minority groups.⁴ This problem has recently been intensified as the ruling coalition announced its intention to organize elections in spring 2009, with the electoral legislation not yet amended in accordance with the Constitution.
- 2.3** Representatives of minorities and NGO sector were dissatisfied with participation of minorities in decision making processes, development of experts among members of minorities in all areas, staff representation in cultural affairs, particularly at the national level.⁵
- 2.4** Montenegro submitted its first report on the implementation of the European Charter on Minority and Regional Languages in June 2007.⁶ With the Charter ratification, accepted were only the commitments related to Albanian and Roma as minority languages. The exclusion of recognition of the Bosnian and Croat languages was seen in public as ill-treatment of these languages, although the Government saw it differently in its report.⁷ The Constitution had later designated those two as languages “in official use”. However, the instruction in minority languages apart from Albanian has not yet been organized in Montenegro.
- 2.5** Non-enrollment in schools or drop-out of is a characteristic of the Roma community. According to estimates, some 50% of the Roma children are not included within the educational system, while relevant NGO researches report on some 80% of Roma

⁴ The OSCE observation mission concluded that the existing electoral system “favors just one national minority in Montenegro while at the same time making it dependent on the parliamentary majority that determines these voting stations before any election”. The authorities were invited to consider the existing system of allocating a number of mandates based on results in previously determined voting stations as well as to improve Roma participation in public and political life (*OSCE/ODIHR Observation Mission Final Report*, 10 September 2006, p. 15 and 22).

⁵ An example presents the National Library of Montenegro with only 3% of its staff from minority groups. Although the library stocks books in Albanian, none of its staff speak Albanian. Instead of a teacher of Albanian language and literature, who is a representative of the minority herself, other individual not meeting the requirements has been given the job (archives of A. Zekovic).

⁶ <http://www.minmanj.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=284>

⁷ In the Report, the Government points out that “the failure to include the Bosnian and Croat languages in the list does not mean, of course, that the state is denying the existence of these languages. The absence of use of these languages is a consequence of an absence of legally respectable requests or activities towards the introduction of these languages in the official, public, educational, or media usage” (p. 3).

children dropping out of schools at the level of I-III grade.⁸ There is no data on any parent ever being punished for not sending a child to school. In practice, an acute problem is also lack of access to textbooks, affecting particularly the Roma community and other poor citizens.⁹

2.6 The Ministry for the Protection of Human and Minority Rights has so far been dealing exclusively with minority rights and was subject to criticism for that work, particularly by representatives of minority political parties and NGOs.¹⁰

2.7 Minority political parties and NGOs warn about inadequate participation of minorities in the police, state prosecutor office, judiciary and education in particular, and the Government also confirms in its first state report on the implementation of the Framework Convention that the public administration human resources structure does not reflect the national population structure. In the Parliament, minority representatives make 20%. Deputy President of the Parliament and Ombudsman are members of minorities, and out of 17 members of the Government, two are members of minorities.

3. Roma, Ashkali and Egyptians (RAE)

3.1 Roma, Ashkali, and Egyptians are the most disadvantaged ethnic group suffering, together with Albanians, the strongest ethnic and racial distance.¹¹ According to official data, the size of RAE population in Montenegro is 2,826, or 0.46% of the total population.¹² The data from the field, however, indicate that there is between 15,000 and 20,000 Roma (around 3%). Also, out of the total number of refugees and displaced persons in Montenegro, some 24%, or 4,300, are RAE.¹³ Lack of reliable data has a negative effect on the exercise of certain rights, use of funds from the state Minority Fund and awareness of the political significance of this minority.¹⁴ RAE is the only ethnic group not mentioned in the new Constitution.

3.2 Government joined the regional program “Decade of Roma Inclusion” and adopted the Action Plan 2005-2015 defining education, health care, employment and housing

⁸ SOS Niksic in partnership with UNICEF, „Research on the Inclusion of the Roma Children into the Educational System“, Niksic, 2006.

⁹ Over 50% of Roma students in primary schools in Podgorica, Nikšić and Berane in the school-year 2006/07 did not have required textbooks (Documentation of the Roma NGO Coalition „The Roma Circle“).

¹⁰ The Minister, Fuad Nimani, is Albanian, from Democratic Union of Albanians, belonging to the ruling coalition. Complaints of the civil sector and opposition political parties relate to insufficient transparency and efficiency in the work of the Ministry and the fact that it is mainly related to one rather than all minorities. General human rights issues do not seem to be within the scope of interest of the Ministry.

¹¹ “Ethnic distance in Montenegro”, public opinion poll, CEDEM, 2007.

¹² 2003 Census, publication “Stanovništvo – nacionalna ili etnicka pripadnost”, MONSTAT, Podgorica, September 2004.

¹³ Agency for Protection of Refugees, November 2006.

¹⁴ According to the *SOS Phone of Niksic* research, members of this population avoided the 2003 census, were either disinterested or identified themselves as members of more populous population groups, that is likely to cause them to lose a mandate in the Parliament. (“Statistika ostavila Rome bez poslanika”, *Vijesti Daily*, 3 December 2007).

as priorities. The Action Plan has not been implemented because organizational, technical, human resources and financial requirements were not in place.¹⁵ In late 2007, the "Strategy for Improvement of Roma Position in Montenegro 2008-2012" was adopted and funds for its implementation provided.

- 3.3** According to official state statistics, poverty rate among RAE population in Montenegro is 4.5 times higher than the national poverty rate and 5.5 times higher than the poverty rate among the local population.¹⁶ RAE is also recognized as the group with the highest rate of economic disadvantage (75.6%).¹⁷
- 3.4** RAE is a category with very limited employment opportunities, low competition and mobility in the labor market due to generally low level of education and due to discrimination.¹⁸ Unemployment tends to last longer and the gender gap in employment is wider than with the other groups.¹⁹ The Roma Scholarship Foundation (RSF) registered numerous cases of citizens rejecting services provided by Roma who had undergone professional development courses through Employment Agency training programs.²⁰ School drop out phenomenon is mostly manifested from ages 12 to 14, mainly due to decision of male family members and the government does not have a strategy to suppress this problem. Some estimate that 50% of Roma children stay out of school, while it has not been recorded that any parent was ever sanctioned for not sending a child to school. Montenegro also witnesses intergeneration poverty transmission that particularly affects children.²¹
- 3.5** RAE members are generally allowed access to public health care institutions. It is noted, however, that they tend to wait longer for the service and that health care staff treat them differently than other patients.²² Another problem for them is the payment for medications and co-payment required for some medical treatments. Introduction of Roma health care mediators has been proposed so as to ensure medical services of better quality and an improved access to health care services.
- 3.6** As for the improvement of housing conditions for Roma, the state authorities have done nothing yet in spite of the plans envisaged by strategic documents (Action plan

¹⁵ National conferences on Roma inclusion, held in 2006 and 2007 in Podgorica by international and local governmental and nongovernmental organizations, showed that the Government did not develop a mechanism of monitoring the implementation of the Action Plan "Decade of Roma Inclusion", nor has it envisaged any responsibility for failure to fulfill tasks within the given deadlines.

¹⁶ Average poverty rate for entire Montenegro is 12.2, among the local population 9.6, RAE 52.3, and refugees and IDPs 38.8 and 38.6 respectively; Source: ISSP and UNDP, Development and Poverty Reduction Strategy, Ministry of Labor and Social Care, Podgorica, 2003.

¹⁷ "Living standard and poverty in Montenegro", Institute for Strategic Studies and Prognosis and World Bank, 2002.

¹⁸ Report on Roma Employment in Montenegro, Council of Europe 2005.

¹⁹ The number of self-employed women is around five times smaller than that of men in RAE population; UNDP "Vulnerable groups: Social vulnerability of Roma, refugees, and IDPs in Montenegro", 2006.

²⁰ "The moment employers or citizens see we have 'chocolate colored' skin they do not hire us" is just one of the comments; RSF Documentation.

²¹ "Break up the chain of exclusion – Roma children in SEE", UNICEF, Serbia, Belgrade, 2007.

²² Documentation of NGO "Association of Roma and Locksmiths – Women's Heart" from Podgorica.

in the field of housing). Roma mostly live in suburban settlements with poor sanitation, with no sewage system or access to potable water. Publication “Contributions to the Social Inclusion of Roma in Montenegro”, co-authored by Mr. Sabahudin Delic, deputy minister for protection of human rights and rights of national minorities and Aleksandar Zekovic, human rights researcher, states that more than 30% of Roma homes is not connected to waterworks system, and 86% lives in slums (barracks). The authors also emphasize the problem of legal status of many Roma that do not have identification documents.

4. Refugees and Internally Displaced Persons (IDPs)

4.1 Montenegro hosts around 16,200 IDPs from Kosovo and around 8,500 refugees from Croatia and Bosnia and Herzegovina.²³ Persons from Kosovo are still counted as IDPs although Montenegro became independent from Serbia in June 2006. Approximately 3,000 displaced persons made claims for a resident status in 2008, but none was fully adjudicated by the year's end.²⁴

4.2 Although Montenegro adopted an ambitious national Strategy for Durable Solution to the Problems of Refugees and IDPs in 2005 with a view to securing optimum solutions to these two categories by early 2008, enjoyment of their rights remained limited in 2008. This was primarily due to the fact that the legal framework prevented them from registering permanent residence, which was an essential requirement for being accepted into Montenegrin citizenship. Without citizenship and ID documents many refugees and IDPs experienced problems registering with the local employment offices and accessing *inter alia* higher education, social welfare and property rights.²⁵ As a consequence, majority of them experience difficult living conditions which gave rise to serious concerns on the part of the European Commission over their status.²⁶ There is also some information that the government was reluctant to register all births of refugees and IDPs, also resulting in statelessness and denial of some public services.²⁷ On a positive note, new Montenegro Citizenship Law²⁸ makes the naturalization requirements less stringent by insisting on “lawful and habitual residence” instead of “permanent residence”, as envisaged by the 1999 Citizenship Law. This citizenship reform may end a long nightmare for thousands of refugees and IDPs who found safe haven in Montenegro in the 90's.

4.3 The Asylum Law, adopted in June 2006, took effect on January 25, 2007. This is the first law of this kind in Montenegro and has been assessed as being in line with

²³ According to the Agency for Protection of Refugees.

²⁴ Tv IN, Impuls, “Novi zakon o crnogorskom državljanstvu počeo da se primjenjuje 1. septembra (New Law on Montenegrin Citizenship in Implementation since 1 September”;

²⁵ Information provided by the Legal Aid Center, NGO from Podgorica. Also, see PACE, “Situation of Longstanding Refugees and Displaced Persons in South East Europe”, Doc. 11289, Report, Committee on Migration, Refugees and Population, 24 May 2007.

²⁶ *Montenegro 2007 Progress Report*, Commission of the European Communities, Brussels, 11/6/2007.

²⁷ US State Department, Report on State Human Rights Practices 2007.

²⁸ Law on Montenegrin Citizenship, *Official Gazette of RoM*, No. 13/2008, see Art. 8.

international and European standards.²⁹ The Office for Asylum, which forms part of the Ministry of the Interior and Public Administration, decides upon asylum applications, while the State Asylum Appeals Commission, appointed by the Government, hears appeals on first instance decisions. Both bodies have been established by the end of the year. Decisions of the latter body are final and no recourse to judicial proceedings to challenge such decisions is permitted.³⁰

4.4 In 2007, the authorities decided on three asylum requests (one was accepted).³¹ Due to lacking financial resources, works on the construction of the asylum-seekers reception centre, envisaged by the Law, were suspended in 2007.

5. Women

5.1 Despite being stronger in number than men,³² women in Montenegro remain underrepresented in decision-making processes, in Parliament, Government and corporate management. The Vice Prime Minister for European Integration is the only female-held position in the Government, while the number of women MPs totals nine, or 11 %. No political party is headed by a woman. As a consequence, Montenegro is at the bottom of the world scale in political participation of women and only Albania in this part of the world has a lower percentage.³³ Furthermore, a research done by the Human Resources Management Authority of Montenegro shows that while they make 60% of governmental employees, women occupy only 10% of management positions in the Government structures.³⁴

5.2 The Constitution guarantees gender equality, development of „equal opportunities policy“ and allows for affirmative action measures. The Gender Equality Act, adopted in July 2007³⁵ aims at eliminating gender-based discrimination and creating equal opportunities for men and women in all areas of life. However, the Act provides more recommendations for action than it orders institutions to take concrete measures. As it also does not provide for any sanctions its effective implementation remains doubtful.³⁶

5.3 In practice, women are generally paid less than men for equal work and equal qualifications. Montenegro tops European states in the level of a variant in the socio-economic coefficient, since the gender wage gap has risen to 19%.³⁷

²⁹ *The Republic of Montenegro Migration Profile*, International Organization for Migration, 2007, p. 36

³⁰ Art. 17, Para. 3, Asylum Law, *Official Gazette of RoM*, No. 45/2006.

³¹ Deputy Minister of Interior, Osman Subasic, MBC television report, 5 January 2008.

³² According to the 2003 census, there are almost 10,000 more women than men.

³³ http://www2.undp.org.yu/montenegro/si/projects/Gender%20Programme/Gender%20Project_prodac.pdf

³⁴ *Daily Vijesti*, 20 April 2008, p. 2.

³⁵ *Official Gazette of RoM*, 31 July 2007.

³⁶ “Women NGOs Network believes the Law is only a show for Europe”, *Dan*, 14 July 2007.

³⁷ “For the same qualification and knowledge lesser payment”, *Dan*, 15 October 2007

- 5.4 The new 2008 Labor Act does not provide for the right of a father to use maternity leave instead of a mother, except in extraordinary cases (when mother abandons a child, dies, is in prison, etc.).³⁸
- 5.5 Domestic violence remains a cause of serious concern, with every second woman in Montenegro experiencing verbal abuse and every third being exposed to physical violence.³⁹ Nonetheless, the number of cases brought to the attention of the police is significantly smaller, though a 7.3 % increase in such cases was reported in 2007.⁴⁰ Apart from police records, there are no reliable data on the scope and forms of domestic violence, as there are no legal obligations for the relevant state institutions (hospitals, social work centers, courts, schools) to take record or report on such cases. According to data provided by NGOs, the number of telephone reports or visits they received largely outnumbered the reported crimes.⁴¹ While domestic violence is a criminal offence under Art. 220 of the Criminal Code, penal policy towards the offenders remains mild.⁴² Specific legislation on domestic violence has been under governmental consideration since 2005.⁴³
- 5.6 According to the director of the Police Directorate, in 2007 the police detected two cases of human trafficking where four victims had been women.⁴⁴ One first instance judgment was delivered for the crime of trafficking against family M., where father, mother, and a son deprived of their liberty a woman and a minor and used them as prostitutes in their restaurant. All three were sentenced to 5 years in prison respectively, which is a minimum penalty for the crime.⁴⁵
- 5.7 Women NGOs believe that investigation of such crimes and identification of victims of trafficking is a problem in Montenegro, although the number of processed and adjudicated cases remains negligible. In October 2007 a reformed Cooperation Agreement on the Combat Against Human Trafficking was signed by the Prosecutor General, Ministry of Health, Labour and Social Care, Ministry of Education and Science and three NGOs: Women's Shelter, Montenegrin Women's Lobby and Centre Plus. The investigation of the famous 2002-2003 trafficking case involving a Moldavian victim S.C. and senior state officials of Montenegro has never been reopened, in spite of a strong OSCE recommendation to that end. However, the prime

³⁸ Labor Act, Article 111 (Official Gazette No. 49/08).

³⁹ According to detailed research by the *SOS telephone Podgorica* in 2003. Some 74.5% of women participating in the survey stated to have endured some form of family violence.

⁴⁰ Senior Police Commissioner at the Police Directorate of Montenegro, M. Bulatovic, *Stop Violence Against Women Conference*, December '07: <http://www2.undp.org.yu/montenegro/home/archive/viol.html>; According to the director of the Police Directorate, the police processed 565 reported cases of domestic violence in 2007, 55 more than in 2006 (*Daily Dan*, 22 April 2008, p. 12).

⁴¹ Information obtained from *SOS telephone* and *Women's Shelter*.

⁴² The Head of the Gender Equality Office, Nada Drobnjak, *Stop Violence Against Women conference*, December 2007 report available at: <http://www2.undp.org.yu/montenegro/home/archive/viol.html>.

⁴³ A draft working version of the Law against Family Violence has been prepared. NGOs Women's Shelter and SOS for Women and Children Victims of Violence delivered critical comments to the Ministry of Justice.

⁴⁴ *Daily Dan*, 22 April 2008, p. 12.

⁴⁵ "Five Years in Jail Each", *Daily Republika*, 27 December 2007.

suspect, former Deputy Prosecutor General who had been dismissed from office as a result of the investigation against him and other three men that never led to indictments, initiated criminal proceedings for forgery against the victim S.C., who remains resettled in a third country. The criminal investigation against S.C. was officially instituted by the Basic Court in Podgorica on 22 January 2009.

6. Persons with disabilities

6.1 World Health Organisation assessment reports that Montenegro has a minimum of 62,000 persons with some disability.⁴⁶ The Constitution guarantees special protection to persons with disabilities (Art. 68). Montenegro's legislative framework in this area is lagging behind other former Yugoslav republics and Albania.⁴⁷ Law on Professional Training and Employment of Persons with Disabilities and Law on the Use of Guide Dogs and Assistant Dogs were adopted in 2008⁴⁸. The Law on the Protection of Persons with Disabilities from Discrimination has not been adopted yet although the draft of this law is in preparation procedure since 2006.

6.2 On 10 December 2008 (International Human Rights Day), the mayor of Podgorica denied access to office premises to Marijana Mugosa with her guide dog, as her colleague complained about the dog's smell. Mrs. Mugosa continued to appear for work every day and report her presence at the reception desk of the Town Hall, but was prohibited from entering the office space with her dog. In spite of numerous protests from NGOs and prominent individuals, the mayor remained resilient, convinced that the rights of people with disabilities should not be exercised „to the detriment of others“⁴⁹. Mrs. Mugosa initiated a labor suit claiming discrimination that is currently pending. The competent Ministry of health, labor and social security to which Marijana filed a request for initiation of misdemeanor procedure against the Town Hall authorities in accordance with the Law on the Use of Guide Dogs and Assistant Dogs, did not initiate such procedure to date although more than a month passed since a request had been filed.

6.3 According to the data from the National Strategy, not a single health care institution in the country is fully accessible to persons with disabilities, nor adjusted to their needs. The Strategy recommends that all large hospitals should hire sign language interpreters. No health care institution has done that so far. This creates difficulties for persons using this as their means of communication, which in turn makes it extremely difficult for them to exercise their right to health care.

⁴⁶ According to the WHO assessment, at least 10% of the total population are persons with a disability. The National Strategy for Persons with a Disability points to the fact that the Republican Pension and Disability Fund has registered 26,365 users of disability pensions. The Employment Agency of Montenegro records around 2,700 unemployed persons with a disability. Montenegro's Social Exclusion and Poverty Reduction Strategy points that around 60% of persons with a disability live on or below the poverty line.

⁴⁷ According to Vesna Simovic, Assistant Professor of Labour Law at Podgorica Law School, http://www.b92.net/srbija2020/vesti/region.php?yyyy=2007&m08&d31&nav_id=261547&fs=1.

⁴⁸ The Act on the Use of Guide Dogs and Assistance Dogs was adopted in February 2008.

⁴⁹ Radio Free Europe, „Protests against misbehaviour with Marijana Mugoša“
<http://www.slobodnaevropa.org/content/Article/1359264.html>

- 6.4 Architectural barriers are a major concern. Although the Spatial Planning and Design Act and the Building Construction Act make it obligatory upon investors and owners of residential and public facilities to adjust the designs to persons with disabilities, this is rarely observed today, particularly in the absence of penalties for noncompliance. The local and intercity public transport remain unadjusted to persons with disabilities.
- 6.5 The University is left without specialized programmes or tools for students with sight or hearing impairments.⁵⁰
- 6.6 The National Strategy points to a need to amend secondary legislation so that health insurance should cover 100% of the price of rehabilitation services at stationary health care institutions, while full health care should be provided without any co-payment required to all categories of persons with disabilities, and without any distinctions made according to the level and origin of disability.⁵¹
- 6.7 The Law on Education of Children with Special Needs from 2004, intended to promote inclusive education, has not been consistently implemented due to lack of professional teaching staff in regular schools to work with children. The Ombudsman also indicated this problem with examples of schools refusing to admit children with special needs into inclusive education.⁵² In addition, while many municipalities have not formed the Commissions for direction of children with special needs, in some already formed Commissions there are no adequate experts.⁵³ Also, lack of andragogy experts presents a particular hindrance to adequate development of the adults education.⁵⁴
- 6.8 To date, Montenegro has not yet ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol that it signed in September 2007.

7. Sexual minorities

- 7.1 In Montenegro only NGOs make efforts to raise awareness on the rights of sexual minorities and promote tolerance towards members of LGBT⁵⁵ population. The initial, expert version of the new constitution included a provision allowing marriage to everyone in Montenegro. This liberal provision was later abandoned with the

⁵⁰ HRA survey.

⁵¹ At present, this insurance covers 15% of the cost of a tool, and the wheelchair costs over €1,000, and hearing aid even €2,000.

⁵² „Principals Claim They Are in Need of Teaching Staff“, *Dan*, 27 July 2007; HRA documentation.

⁵³ Data of *Youth with Handicap Association*, March 2008, HRA archive.

⁵⁴ Montenegro has less than 10 andragogy experts and some of them are not even employed in their profession.

⁵⁵ Lesbian, Gay, Bisexual, Transsexual.

Constitution allowing for marriage between a man and a woman only.⁵⁶ The new Family Act,⁵⁷ in effect since 1 September 2007, defines both marital and extra-marital community as between a man and a woman, meaning that same sex couples may not exercise rights to benefits and else recognized to extra-marital partners, in contravention to the case law of the European Court of Human Rights (*Karner v. Austria*, 2003). However, the Constitution prohibits all forms of discrimination as well as instigation and incitement of hatred on any grounds. A discriminatory provision of the Criminal Code was eliminated in 2004 as it envisaged different age of sexual consent for homosexuals (18 yrs.) on the one hand than that for heterosexuals and lesbians (14 yrs.) on the other.

7.2 Several cases have been recorded with police officers calling victims of abuse “faggots” and threatened them with “faggots” in prison. Several police officers after having found two young men of Podgorica having sex on the outskirts of the town, had brutally beaten them and left them without clothing.⁵⁸ No criminal prosecution ever took place for stoning of Mr. A. Kovac in Podgorica in 2005 for his public appearances intended to protect the rights of sexual minorities, although the police did initially arrest three attackers.

7.3 As the public generally condemns sexual minorities and sees them as amoral or sick, members of this population in Montenegro conceal their identity and tend to avoid reporting discrimination cases and physical assaults.

⁵⁶ Constitution of Montenegro, Art. 71(2) “Marriage can only be concluded with mutual consent of a woman and a man”.

⁵⁷ *Official Gazette of the RoM*, No. 1/2007, 9 January 2007.

⁵⁸ Documentation of A. Zekovic, human rights researcher.