



DOPRINOS UNAPREĐENJU  
KVALITETA ŽIVOTA LGBT OSOBA  
U CRNOJ GORI



Publikacija je nastala u sinergiji sa projektom “Doprinos unapređenju kvaliteta života LGBT osoba u Crnoj Gori” podržanog od strane Evropske unije posredstvom Delegacije Evropske unije u Crnoj Gori.

# JEDNAK TRETMAN

IZVJEŠTAJ O PRAVIMA LGBT  
OSOBA U ZAVODU ZA IZVRŠENJE  
KRIVIČNIH SANKCIJA (ZIKS)



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## UVOD

Od trenutka kada se šira javnost susrela sa temom ljudskih prava LGBT osoba, 2003. godine<sup>1</sup>, pa sve do danas, crnogorsko društvo je ostvarilo veliki napredak u cilju prihvatanja različitosti. Ovaj napredak oslikava se kroz umanjen stepen diskriminacije i nasilja prema LGBT osobama, znatno većem stepenu prihvatanja LGBT osoba kako u svojim porodicama, tako i u društvu, većoj edukovanosti javnosti o LGBT temama koje su postale dio diskursa kako na institucionalnom, tako i na društvenom nivou. Iako su u domenu ljudskih prava LGBT osoba u Crnoj Gori mnogi pomaci evidentni, te unaprijeđen kvalitet života LGBT osoba u crnogorskom društvu, nivo homofobije i transfobije je i dalje visok, što ukazuje na neophodnost kontinuiranog sprovođenja aktivnosti i ulaganja dodatnih napora za smanjenje diskriminacije i nasilja prema LGBT osobama. Od naročitog značaja za unapređenje kvaliteta života LGBT osoba je razumijevanje položaja i potreba posebno ranjivih grupa unutar ove ranjive grupe, kao što su LGBT osobe koje su na izdržavanju kazne zatvora.

Zatvori često predstavljaju mjesta u kojima su prisutni razni oblici nasilja i diskriminacije, naročito prema osobama koje su drugačije seksualne orijentacije, rodnog identiteta i rodnog izražavanja. U ovakvoj sredini, LGBT osobe, naročito, mogu biti izložene raznim oblicima zlostavljanja, kako od strane drugih zatvorenika/ca, tako i od strane osoblja. Prema jednom istraživanju sprovedenom u Sjedinjenim Američkim Državama, više od 200 000 mladih i odraslih doživljava seksualno zlostavljanje u zatvorskim sistemima te države svake godine.<sup>2</sup> Ista studija je pokazala da su „ne-heteroseksualne osobe“ u 3 puta većem riziku od doživljavanja seksualnog nasilja u zatvorskim uslovima. Takođe, ova studija je pokazala da su transrodne žene u muškim zatvorima u 13 puta većem riziku da budu seksualno zlostavljane od strane drugih zatvorenika.<sup>3</sup> Ovakvi podaci prikazuju samo dio problema sa kojima se LGBT osobe susrijeću u zatvorskim sistemima.

U današnjem vremenu u kojem su ljudska prava i poštovanje ljudskih sloboda i dostojanstva prioritet, diskriminacija i nasilje koje doživljavaju najranjivije grupe ukazuje na neophodnost kreiranja jasnih protokola i standardizovanih procedura koje će na adekvatan način adresirati potrebe ovih grupa, smanjiti diskriminaciju i nasilje do njihovog samog iskorjenjivanja, te omogućiti poštujući tretman osoba koje su lišene slobode, te su stavljene u dodatno nepovoljan položaj zbog nekog ličnog svojstva. Istraživanje sprovedeno u Zavodu za izvršenje krivičnih sankcija ima za cilj upravo da ukaže na postojeće probleme sa kojima se LGBT osobe koje su na izdržavanju kazne zatvora susrijeću, kao i da ponudi efikasna rješenja koja će omogućiti siguran boravak LGBT osoba u zatvoru i kreiranje mogućnosti za njihovu uspješnu socijalnu reintegraciju nakon izvršenja kazne.

1 2003. godine je sa radom počela prva LGBT organizacija « Slobodna duga » koja je bila aktivna narednih nekoliko godina. Šira rasprava o pravima LGBT osoba u Crnoj Gori počinje krajem 2009. godine.

2 Allen J. Beck et al, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 (Bureau of Justice Statistics, May 2013), Dostupno na: [www.bjs.gov/content/pub/pdf/svpjri1112.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf).

3 Valerie Jenness et al., Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault (Center for Evidence-Based Corrections, 2007), Dostupno na: <http://www.wcl.american.edu/endsilence/documents/ViolenceinCaliforniaCorrectionalFacilities.pdf>.

## REGISTAR VAŽNIH POJMOVA

**POL:** odnosi se na biološke karakteristike polnog/reproduktivnog sistema i njegovog potencijala. Kao takav, pol uključuje 4 segmenta: hromosome, gonade (polne žlijezde), hormone i polne organe (genitalije). Pol može biti muški, ženski i interpolni.

**ROD:** predstavlja društveno/individualno konstruisane karakteristike koje proizilaze iz procesa socijalizacije, te (ne)identifikacije sa određenim polom. Rod je individualna samokoncepcija sopstvenog identiteta/izražavanja koji potvrđuje, negira i/ili nadilazi društveno zadate i formirane polne i rodne uloge muškarca i žene.

**RODNI IDENTITET:** subjektivni osjećaj pripadnosti ili nepripadnosti jednom ili više rodova. Nije nužno zasnovan na polu (pravom ili pripisanom), kao ni seksualnoj orijentaciji. S tim u skladu, osoba se može identifikovati kao muškarac, žena, oboje, nijedno ili nešto drugo.

**SEKSUALNA ORIJENTACIJA:** emocionalna i/ili fizička privlačnost ili naklonost koja može biti prema osobama istog i/ili različitog pola. Obuhvata heteroseksualnost, homoseksualnost i biseksualnost. Važno je naglasiti da su seksualna orijentacija i rodni identitet nezavisne kategorije, iako se u praksi često dešava greška da se LGBT osobe nazivaju „seksualnim manjinama“, što svjedoči o najmanjoj vidljivosti, nepoznavanju i diskriminaciji trans osoba.

**LGBT:** Skraćenica za lezbejke, gejeve, biseksualne i transrodne osobe.

**GEJ (MUŠKARAC):** Muškarac koji osjeća fizičku i/ili emotivnu privlačnost prema osobama istog pola/roda.

**LEZBEJKA:** Žena koja osjeća fizičku i/ili emotivnu privlačnost prema osobama istog pola/roda.

**BISEKSUALNA OSOBA:** Osoba koja osjeća fizičku i/ili emotivnu privlačnost prema više od jednog pola/roda.

**TRANSRODNA OSOBA:** osoba čiji rodni identitet i/ili rodno izražavanje izlazi iz okvira zadanih tradicionalnih društveno definisanih rodnih uloga i normi uslovljenih polom. Transrodne osobe mogu da se identifikuju kao muškarci, žene, nijedno, oboje ili nešto drugo, pri čemu taj identitet nije u podudarnosti sa polom pripisanim na rođenju. Transrodne osobe po seksualnoj orijentaciji mogu biti heteroseksualne, homoseksualne, biseksualne, panseksualne, aseksualne itd.

**TRANSPOLNA OSOBA:** Osoba koja ima jasnu želju i namjeru da prilagodi pol pripisan na rođenju svom rodnom identitetu, kao i osoba koja je djelimično ili potpuno modifikovala (uključuje fizičku i/ili hormonalnu terapiju i operacije) svoje tijelo i prezentaciju, izražavajući svoj rodni i/ili polni identitet i osjećaj sebe.

**TRANSMUŠKARAC:** muškarac kojem je na rođenju pripisan ženski pol. U literaturi na engleskom jeziku se često označava kao FTM (Female To Male, što znači “od ženskog ka muškom”).

**TRANS ŽENA:** žena kojoj je na rođenju pripisan muški pol. U literaturi na engleskom jeziku se često označava kao MTF (Male To Female, što znači “od muškog ka ženskom”).

**TRANZICIJA ILI PROCES PRILAGOĐAVANJA POLA:** proces prilikom kojeg osoba prilagođava pol svom rodnom identitetu. Ovo može uključivati i hormonsku terapiju i operativne zahvate, samo hormonsku terapiju, samo operativne zahvate ili samo neke operativne zahvate. Trans osobe koje se odluče za tranziciju mogu u različitoj mjeri da prolaze kroz istu i odlučuju se za one zahvate koje smatraju nužnim i prihvatljivim.

# PROBLEMATIKA LJUDSKIH PRAVA I TRETMANA LGBT OSOBA U ZATVORSKIM SISTEMIMA

LGBT osobe predstavljaju naročito vulnerabilnu grupu u pravosudnom sistemu i zatvorskim sistemima. Predrasude sa kojima društvo prisupa LGBT osobama u zajednici, u sistemu zatvorenih institucija su intenzivirane.<sup>4</sup>

LGBT osobe se u zatvorima širom svijeta suočavaju sa diskriminacijom koja može biti sistemska, ali i individualna, zatim fizičkim i psihičkim nasiljem, kao i seksualnim zlostavljanjem.

Istraživanja o seksualnom zlostavljanju u zatvorenim sistemima konstantno ukazuju na ranjivost muškaraca i žena čija je seksualna orijentacija drugačija od heteroseksualne (lezbejke, gejevi, biseksualne osobe), kao i osoba čiji rodni i polni identitet nije u podudarnosti sa polom pripisanim na rođenju (transrodnih i interpolnih osoba). Glavna i najvažnija potreba LGBT zatvorenika/ca je zaštita od seksualnog zlostavljanja i silovanja, uglavnom od strane drugih zatvorenika/ca. Uprkos uvriježenom mitu o “predatorskim homoseksualcima” LGBT zatvorenici/ce su mnogo češće žrtve seksualnog zlostavljanja i silovanja nego što su počinitelji takvih djela.<sup>5</sup>

Muški djelovi zatvorskih sistema često imaju rigidnu kulturu koja nagrađuje ekstremne oblike maskuliniteta i agresije, te održavaju negativne stereotipe prema onima koji se ponašaju ili izgledaju drugačije. U ovakvoj sredini, LGBT osobe su često žrtve seksualnog nasilja, upravo iz razloga jer dominantni „heteroseksualni“ muškarci očekuju i zahtijevaju submisivnost od žrtve. Dok svi muškarci koji su percipirani kao slabiji, a posebno oni koji su slabiji fizički, mogu biti podvrgnuti ovakvom nasilju i poniženju, gej i biseksualni muškarci su najzastupljeniji kao žrtve takvih seksualnih delikata<sup>6</sup>. Naročito ranjivu grupu kada je u pitanju fizičko i seksualno nasilje predstavljaju trans žene koje nisu prošle kroz operativne zahvate procesa prilagođavanja pola, te su smještene u muškim zatvorima usljed muške oznake pola u ličnim dokumentima. Njihovo rodno izražavanje ih često stavlja u povišen rizik od doživljavanja fizičkog i seksualnog nasilja, kako od zatvorenika, tako i od samog osoblja.<sup>6</sup> Lezbejke i biseksualne žene su takođe mete seksualnog nasilja u sistemima za izvršavanje sankcija. Jedna studija je pokazala da je više od četvrtine žena koje su seksualno zlostavljane u zatvorskim sistemima u Midwesternu bile upravo lezbejke i biseksualne žene, što predstavlja znatno veći procenat u odnosu na njihovu ukupnu zastupljenost u populaciji koja je pod supervizijom pravosudnog sistema. Većinu seksualnog nasilja nad lezbejkama počinili su muški članovi zatvorskog osoblja.<sup>6</sup>

Ono što dodatno otežava situaciju u kojoj se nalaze LGBT osobe koje su žrtve seksualnog nasilja jeste činjenica da istraživanja krivičnog pravosuđa pokazuju da neki službenici “pogrešno pretpostavljaju da zatvorenici koji su gej ili za koje se pretpostavlja da su gej, zapravo pristaju

4 UN, UNODC. Handbook on Prisoners with special needs, Beč 2012. Dostupno online na: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoners\\_with\\_Special\\_Needs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf)

5 United States National Prison Rape Elimination Commission Report, 2009. Dostupno online na: <https://www.ncjrs.gov/pdffiles1/226680.pdf>

6 Sickmund, M., Sladky, T. J., & Kang, W. (2008). Census of Juveniles in Residential Placement databook. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.



na takav seksualni čin”, što dovodi do toga da nadležni organi u zatvorima često zanemaruju pomenute incidente<sup>6</sup>.

Čak i ako zlostavljana osoba uspije da dà pritužbu, ostaje stigmatizovana kao žrtva silovanja, pa je u opasnosti od dalje viktimizacije. Kako su počinioci svjesni da se pritužbe najčešće ne podnose, ili prođu bez adekvatnog epiloga, seksualno zlostavljanje i silovanje nastavlja se nekažnjeno, i to često uz saučesništvo zatvorskih osoblja<sup>7</sup>.

Uzevši u obzir visok rizik od fizičkog i seksualnog nasilja nad LGBT osobama u zatvorskim sistemima, LGBT osobe čine grupu povišenog rizika od seksualno prenosivih infekcija, uključujući HIV.<sup>6</sup> HIV pozitivan status može doprinijeti dodatnoj stigmatizaciji u zatvorima, kako od strane zatvorenika/ca, tako i od strane osoblja. U mnogim zatvorima, osobe koje žive sa HIV-om, nemaju pristup adekvatnoj zdravstvenoj zaštiti, što ih dodatno stavlja u nepovoljan položaj u odnosu na ostale zatvorenike/ce.

Specifičnost problematike transrodnih osoba u zatvorskim sistemima, zahtijeva poseban pristup kada je u pitanju nekoliko oblasti. Adekvatna zdravstvena zaštita, koja se ogleda kroz pristup trans specifičnim uslugama zdravstvenog sistema, odnosno dostupnost potrebnih pregleda vezanih za proces prilagođavanja pola, dostupnost hormonske terapije, operativnih zahvata i slično, od presudnog je značaja za trans osobe u zatvorskim sistemima. Takođe, trans osobe koje su u procesu tranzicije, mogu imati potrebu za psihološkom podrškom od strane zdravstvenih radnika/ca u oblastima mentalnog zdravlja. Važno je da psihološka podrška bude dostupna svim LGBT osobama koje izraze potrebu za istom, usljed raznih oblika diskriminacije sa kojima se susrijeću kako prije, tako i tokom samog izvršenja krivičnih sankcija. LGBT zatvorenici/ca, koji su u velikoj mjeri izloženi diskriminatornim stavovima i poniženju u zatvorima, a posebno ako su bili seksualno zlostavljani, bilo prije zatvora ili u zatvoru, vjerovatno će biti potrebna psihološka podrška i pomoć u oblasti mentalnog zdravlja. LGBT zatvorenici koji su bili žrtve silovanja mogu biti u opasnosti od samopovređivanja ili samoubistva, što zahtijeva poseban nadzor i adekvatno zbrinjavanje<sup>6</sup>. Nedostatak ovih servisa može rezultirati intenziviranim stresom sa kojim se LGBT osobe nose, što uvećava rizik od samopovređivanja ili samoubistva, te otežava njihovu socijalnu reintegraciju nakon izvršenja kazne zatvora.

Smještaj LGBT osoba je poseban problem, pogotovo u zatvorima koji imaju manjak smještajnog kapaciteta i u kojima izostaje propisna klasifikacija zatvorenika. U ovakvim slučajevima, LGBT osobe mogu biti smještene u prostorije ili ćelije zajedno sa zatvorenici/ca koji imaju registrovanu istoriju nasilničkog ponašanja i/ili seksualnog zlostavljanja, što direktno povećava rizik od nasilja. Naročit problem predstavlja smještaj za transrodne osobe, koje se smještaju u određene sektore zatvorskog sistema u skladu sa polom koji je zabilježen u dokumentima, što skoro po pravilu izlaže trans osobe nasilju zbog njihovog rodnog izražavanja. Ovo je naročito izraženo u slučaju kada su trans žene smještene zajedno sa muškarcima, zbog muške oznake pola u dokumentima, što je često direktan put za seksualno nasilje i silovanje.<sup>8</sup>

7 Human Rights Watch. No Escape: Male Rape in U.S. Prisons, 2001. Dostupno online na: <https://www.hrw.org/reports/2001/prison/report.html>

8 International Human Rights References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity, International Commission of Jurists, Geneva, October 2006, p.9. Dostupno online na: <http://www.icj.org/wp-content/uploads/2006/10/Human-rights-violations-sexual-orientation-thematic-report-2006-eng.pdf>

Pored smještaja, postavlja se i pitanje zatvorskog tretmana, u koji ulaze način vršenja pretresa, posjedovanje i upotreba specifičnih predmeta, zatvorska odjeća itd. Smještaj, zatvorski tretman i medicinski tretmani su tri kompleksna, međusobno ispreplijetana procesa, koja je neophodno posebno adresirati u cilju obezbjeđenja adekvatnog i poštujućeg tretmana transrodnih osoba u zatvorima.

U sistemima, gdje su bračne posjete dozvoljene i vanbračnim partnerima, LGBT zatvorenici često ne uživaju ista prava. Tako je u mnogim pravnim sistemima kontakti LGBT zatvorenika sa njihovim porodicama i partnerima mogu biti izuzetno ograničeni, što pogoršava osjećaj izolacije u zatvoru, a što dalje utiče na njihovo mentalno zdravlje i prospekte socijalne reintegracije<sup>6</sup>.

Značajna ranjivost LGBT osoba u krivičnom sistemu zahtijeva jasno definisanje politika koje će adresirati potrebe ove grupe, kao i razvoj i implementaciju strategija koje će osigurati LGBT osobama pristup pravnom sistemu bez diskriminacije, kao i zaštitu od povrede osnovnih ljudskih prava usljed njihove seksualne orijentacije ili rodnog identiteta.

Kada se uzme u obzir povećana mogućnost diskriminacije, ponižavajućeg tretmana, fizičkog i/ili seksualnog nasilja prema LGBT osobama unutar zatvorskih sistema, jasna je neophodnost razvijanja efikasnih mehanizama zaštite LGBT osoba od pomenutih prijetnji, istovremeno olakšavajući socijalnu reintegraciju LGBT osoba na adekvatan način.

## MEĐUNARODNI STANDARDI

Uprkos tome što ne postoje posebna pravila koja se primjenjuju na LGBT zatvorenike/ce, sve odredbe koje se tiču osnovnih ljudskih prava se mogu primijeniti i na LGBT osobe.

Slijede međunarodni propisi u kojima su sadržani osnovni principi sistema zaštite prava zatvorenika/ca, a posebno imajući u vidu njihov tretman:

1. Univerzalna deklaracija o ljudskim pravima;
2. Standardna minimalna pravila UN-a za postupanje sa zatvorenima iz 1955. godine;
3. Međunarodni pakt o građanskim i političkim pravima iz 1966. godine;
4. Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda CETS No. 005;
5. Preporuka Komiteta ministara R(82)16 državama članicama o zatvorskom odsustvu;
6. Preporuka Komiteta ministara R(82)17 državama članicama o boravku u zatvoru i načinu postupanja prema opasnim zatvorenima;
7. Konvencija o transferu osuđenih osoba CETS No. 112;
8. UN Konvencija protiv mučenja i drugih nečovječnih ili ponižavajućih postupanja ili kažnjavanja iz 1984. godine;
9. Preporuka Komiteta ministara R(89)12 državama članicama o obrazovanju u zatvoru;
10. UN osnovni principi za tretman zatvorenika iz 1990. godine;
11. Preporuka Komiteta ministara R(97)12 državama članicama o osoblju zaduženom za sprovođenje sankcija i;
12. Preporuka Komiteta ministara R(99)22 državama članicama o prenaseljenosti u zatvorima;
13. Preporuka Komiteta ministara Rec(2003)23 državama članicama o postupanju sa zatvorenima osuđenim na doživotnu ili dugotrajnu kaznu zatvora;
14. Evropska zatvorska pravila – Preporuka Komiteta ministara (2006)2 državama članicama o Evropskim zatvorskim pravilima;
15. Preporuka Komiteta ministara Rec(2008)11 državama članicama o Evropskim pravilima o maloljetnim počiniocima krivičnih djela koji izdržavaju sankcije ili mjere;
16. Preporuka Komiteta ministara CM/Rec(2012)5 državama članicama o Evropskom kodeksu etike za zatvorsko osoblje;
17. Preporuka Komiteta ministara CM/Rec(2012)12 državama članicama o zatvorenima koji su strani državljanji;
18. Preporuka Komiteta ministara CM/Rec(2014)3 državama članicama o opasnim počiniocima krivičnih djela;
19. Evropska konvencija o sprečavanju mučenja i neljudskog ili ponižavajućeg postupanja ili kažnjavanja ECTS No. 126;
20. Standardi CPT-a.
21. Preporuka CPT-a iz Izvještaja Austrijskoj vladi o posjeti Austriji iz 2015. godine<sup>9</sup>

<sup>9</sup> Council of Europe. Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015:34. Dostupno online na: [www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf](http://www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf)

Od posebnog značaja je Preporuka Komiteta ministara zemljama članicama o evropskim zatvorskim pravilima (u daljem tekstu: Evropska zatvorska pravila). Ovaj dokument, između ostalog, propisuje osnovne principe izvršavanja kazne zatvora i uslove u zatvorima.

Potrebno je napomenuti da su kao izvori međunarodnih standarda, pored konvencija koje su pravno obavezujuće, navedene i preporuke koje nijesu pravno obavezujuće (u formalnom smislu) i spadaju u tzv. „meko“ pravo, ali se bez njih ne može govoriti o evropskom sistemu zaštite prava pritvorenih lica i lica koja izdržavaju kaznu zatvora. Relevantni standardi koji su u vezi sa tretmanom LGBT osoba u zatvorima su sumirani u **principu 9, pravno neobavezujućih, ali u praksi važnih, Jogakarta principa**<sup>10</sup>:

*„Pravo na humano postupanje u pritvoru*

*Sve osobe koje su lišene slobode trebaju biti tretirane humano i sa poštovanjem ljudskog dostojanstva. Seksualna orijentacija i rodni identitet su sastavni dio ličnog dostojanstva svih ljudi.*

*Države treba da:*

**A:** *Osiguraju da se smještanjem u pritvor izbjegne dalja marginalizacija osoba na temelju njihove seksualne orijentacije ili rodnog identiteta ili izlaganje nasilju, maltretiranju ili psihološkom, mentalnom ili seksualnom zlostavljanju;*

**B:** *Obezbijede adekvatan pristup zdravstvenoj njezi i savjetovanju prilagođenom potrebama onih u pritvoru, za potrebama onih u pritvoru, priznajući posebne potrebe osoba na temelju njihove seksualne orijentacije ili rodnog identiteta, uključujući prema potrebama reproduktivnog zdravlja, pristup HIV/AIDS informacijama i terapiji, kao i pristup hormonskoj ili drugim terapijama, kao i raspoređivanje po polu onako kako je traženo;*

**C:** *Obezbijede, u mjeri u kojoj je to moguće, da svi zatvorenici\_ce učestvuju u odlučivanju u vezi sa mjestom pritvora koje je pogodno njihovoj seksualnoj orijentaciji i rodnom identitetu;*

**D:** *Uspostave zaštitne mjere za sve zatvorenike\_ce koji\_e su dodatno osjetljivi\_e na nasilje ili zlostavljanje na temelju seksualne orijentacije, rodnog identiteta ili rodnog izražavanja i da obezbijedi, ukoliko je realno izvodljivo, da takve zaštitne mjere ne uključuju veća ograničenja njihovih prava od onih koje se inače odnose na zatvorsku populaciju;*

**E:** *Osiguraju da se bračne posjete, kada su dozvoljene, odobravaju na jednakim osnovama svim zatvorenicama\_cama i pritvorenicima\_cama, bez obzira na pol njihovog partnera\_ke;*

**F:** *Obezbijede nezavistan monitoring prostorija u kojima su pritvorenic\_i\_ce i zatvorenici\_ce, od strane državnih organa, kao i nevladinih organizacija, uključujući organizacije koje rade u oblasti seksualne orijentacije i rodnog identiteta.*

**G:** *Preduzmu programe obuke i podizanja svijesti za osoblje zatvora i sve ostale službenike\_ce u javnim i privatnim sektorima koji su uključeni u rad sa zatvorenicama\_cama, u pogledu međunarodnih standarda o ljudskim pravima i principa jednakosti i nediskriminacije, u odnosu na osobe s različitom seksualnom orijentacijom i rodnim identitetom.“*

<sup>10</sup> Jogakarta principi. Dostupno online na: <http://www.delme.ec.europa.eu/upload/Dzodzakarta%20principi.pdf>

## NACIONALNI PRAVNI OKVIR

Nacionalni pravni okvir tretira ljudska prava svih građana/ki Crne Gore, zatim specifično ljudska prava LGBT osoba, kao i ljudska prava osoba koja su na izvršenju kazni zatvora kroz nekoliko pravnih akata.

**Ustav Crne Gore**<sup>11</sup> propisuje zabranu diskriminacije po bilo kom ličnom svojstvu kroz član 8: „Zabranjena je svaka neposredna ili posredna diskriminacija, po bilo kom osnovu. Neće se smatrati diskriminacijom propisi i uvođenje posebnih mjera koji su usmjereni na stvaranje uslova za ostvarivanje nacionalne, rodne i ukupne ravnopravnosti i zaštite lica koja su po bilo kom osnovu u nejednakom položaju. Posebne mjere mogu se primjenjivati samo dok se ne ostvare ciljevi zbog kojih su preduzete.“

Ustav Crne Gore, takođe, garantuje „nepovredivost fizičkog i psihičkog integriteta čovjeka, njegove privatnosti i ličnih prava“ (član 28), kao i „poštovanje ljudske ličnosti i dostojanstva u krivičnom ili drugom postupku, u slučaju lišenja ili ograničenja slobode i za vrijeme izdržavanja kazne“, te zabranjuje nečovječno ili ponižavajuće postupanje nad licem lišenim slobode (član 31).

**Zakon o zabrani diskriminacije**<sup>12</sup> jasno zabranju diskriminaciju po osnovu rodnoeg identiteta i seksualne orijentacije:

### Član 19

„Svako pravljenje razlike, nejednako postupanje ili dovođenje u nejednak položaj lica po osnovu rodnoeg identiteta ili seksualne orijentacije smatra se diskriminacijom. Svako ima pravo da izrazi svoj rodni identitet i seksualnu orijentaciju. Rodni identitet i seksualna orijentacija su privatna stvar svakog lica i niko ne može biti pozvan da se javno izjasni o svom rodnom identitetu i seksualnoj orijentaciji.“

Izmjenama i dopunama **Zakona o rodnoj ravnopravnosti**<sup>13</sup> se u crnogorsko nacionalno zakonodavstvo direktno zabranjuje diskriminacija po osnovu prilagođavanja pola svom rodnom identitetu, naime „diskriminacijom se smatra svako postupanje kojim se žena zbog trudnode ili majčinstva, kao i drugo lice zbog promjene pola, dovode u nepovoljniji položaj u odnosu na druga lica, prilikom zapošljavanja, samozapošljavanja, ostvarivanja prava po osnovu socijalne zaštite i drugih prava.“

Istim zakonom je i predviđena novčana kazna za pravno lice u iznosu od 1000 do 10.000 eura ukoliko lice zbog prilagođavanja pola svom rodnom identitetu, dovede u nepovoljniji položaj u odnosu na druga lica, prilikom zapošljavanja, samozapošljavanja, ostvarivanja prava po osnovu socijalne zaštite i drugih prava (član 4 stav 3). Članom 1 se kao predmet zakona definiše „način obezbjeđivanja i ostvarivanja prava po osnovu rodne ravnopravnosti, u skladu sa međunarodnim

11 Ustav Crne Gore, Sl. List Crne Gore 01/2007. Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B70C61F26-B411-4FA2-BEF3-45A4E23C998A%7D>

12 Zakon o zabrani diskriminacije, Sl. List Crne Gore 46/2010, čl. 19. Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BD6457034-F84F-40E2-9422-F8E05FFA3590%7D>

13 Zakon o izmjenama i dopunama Zakona o rodnoj ravnopravnosti (Službeni list Crne Gore, broj 35/2015). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BE7389CBA-854C-4122-8510-720BA-6C989A3%7D>

aktima i opšte prihvađenim pravilima međunarodnog prava, kao i mjere za eliminisanje diskriminacije po osnovu pola i stvaranje jednakih mogućnosti za učešće žena i muškaraca, kao i lica drukčijih rodni identiteta u svim oblastima društvenog života“

Zabrana diskriminacije po osnovu rodnog identiteta i seksualne orijentacije navedena je i u članu 10, **Zakona o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti**<sup>14</sup>, kao i načelo humanosti po kojem se sankcije izvršavaju „na način kojim se jemči humano postupanje i poštovanje ljudskog dostojanstva svakog pojedinca.“ (član 4). Zakon takođe propisuje da „Zatvorenik ima pravo na zaštitu prava utvrđenih Ustavom, potvrđenih međunarodnim ugovorima, opšteprihvaćenim pravilima međunarodnog prava i ovim zakonom.“ (član 10), dok se ograničavanje prava definiše kroz član 11: „Zatvoreniku mogu biti ograničena određena prava u skladu sa potvrđenim međunarodnim ugovorima, u mjeri koja odgovara prirodi i sadržini izrečene sankcije i na način kojim se obezbjeđuje poštovanje njegove ličnosti i dostojanstva.“

**Zakon o zdravstvenoj zaštiti**<sup>15</sup> propisuje „pravo na zdravstvenu zaštitu u skladu sa najvišim mogućim zdravstvenim standardima i dostignućima savremene medicinske teorije i prakse“ (član 4), te garantuje da „u ostvarivanju prava na zdravstvenu zaštitu građani su jednaki, bez obzira na nacionalnu pripadnost, rasu, pol, rodni identitet, seksualnu orijentaciju, starosnu dob, invaliditet, jezik, vjeru, obrazovanje, socijalno porijeklo, imovno stanje i drugo lično svojstvo, u skladu sa zakonom.“ (član 5). Na osnovu Zakona o zdravstvenoj zaštiti, iz budžeta Crne Gore obezbjeđuju se sredstva za „zdravstvenu zaštitu lica koja su na izdržavanju kazne zatvora, lica kojima je izrečena mjera bezbjednosti obavezno psihijatrijsko liječenje i čuvanje u zdravstvenoj ustanovi, mjera obavezno liječenje alkoholičara i mjera obavezno liječenje narkomana“ (član 17).

**Zakon o pravima pacijenata**<sup>16</sup> kroz član 2 garantuje „jednako pravo na kvalitetnu i kontinuiranu zdravstvenu zaštitu garantuje se svakom pacijentu u skladu sa njegovim zdravstvenim stanjem, opšteprihvaćenim stručnim standardima i etičkim načelima, uz pravo na ublažavanje patnje i bola u svakoj fazi bolesti i stanja, na svim nivoima zdravstvene zaštite.“

Zdravstvena zaštita i način ostvarivanja prava na zdravstveno osiguranje u slučaju transrodnih osoba regulisani su **Zakonom o zdravstvenom osiguranju**<sup>17</sup>, član 16b, koji propisuje da se iz sredstava obaveznog zdravstvenog osiguranja osiguranim licima obezbjeđuje se 80% od cijene za zdravstvene usluge za promjenu pola iz medicinskih razloga. Način na koji se ostvaruje ovo pravo bliže je pojašnjeno **Pravilnikom o utvrđivanju medicinskih razloga za promjenu pola**<sup>18</sup>.

14 Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, Sl. List Crne Gore 36/2015, čl. 5. Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BF2AE6989-C2B9-4F19-BF57-FD7FFC7A7CE3%7D>

15 Zakon o zdravstvenoj zaštiti ("Sl. list CG", br. 3/2016, 39/2016 i 2/2017). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={10D9933D-9C3C-42F0-8AE5-4BC122569042}>, <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={C00947CD-C299-40DA-BBE9-79D7F932DE3A}>

16 Zakon o pravima pacijenata ("Službeni list Crne Gore, broj 40/2010"). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B4D91C70D-3065-428D-A6FB-F11351E3DF65%7D>

17 Zakon o zdravstvenom osiguranju, Sl. List Crne Gore 006/16. član 16b. Dostupno online na: [http://fzocg.me/docs/18/1.zakon\\_o\\_zdravstvenom\\_osiguranju.pdf](http://fzocg.me/docs/18/1.zakon_o_zdravstvenom_osiguranju.pdf)

18 Pravilnik o utvrđivanju medicinskih razloga za promjenu pola, ("Sl. list Crne Gore", br. 47/2014). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BF6A4E3A6-32E7-4A0E-94C3-76D1CFCEE87B%7D>

Zdravstvenu zaštitu LGBT osoba tretira specifično **Strategija za unapređenje kvaliteta života LGBT osoba za period 2013-2018. godine**<sup>19</sup>, prema kojoj su se definišu strateški ciljevi i programske mjere u oblasti zdravstvene zaštite koji jasno definišu unapređenje zdravstvenog sistema u pogledu pristupačnosti, kvaliteta usluga i edukacije zdravstvenih radnika/ca u odnosu na tematiku koja se tiče LGBT osoba. Poseban akcenat stavljen je na unapređenje trans-specifičnih zdravstvenih usluga, kao i informisanosti transrodnih osoba o funkcionisanju zdravstvenog sistema.

U nacionalnom pravnom okviru u odnosu na ljudska prava LGBT osoba, još uvijek ne postoji adekvatno pravno rješenje za dva krucijalna pitanja koja se postavljaju i u slučaju lica lišenih slobode, a koja podrazumijevaju: prepoznavanje građanskog partnerstva istopolnih partnera, kao i pravno priznanje roda transrodnim osobama.

Naime, Ustav Crne Gore prepoznaje da se „*brak može zaključiti samo uz slobodni pristanak muškarca i žene*“, pa samim tim, istopolna partnerstva još uvijek nisu zakonski prepoznata. Međutim, **prijedlog Zakona o građanskom partnerstvu**, predložen od strane NVO „Juventas“, Instituta za pravne studije i LGBTIQ Asocijacije „Queer Montenegro“, prepoznaje mogućnost sklapanja građanskog partnerstva bez obzira na pol partnera/ki, što između ostalog omogućava određeni opseg prava i istopolnim partnerima, u svim oblastima izjednačavajući ih sa bračnim i vanbračnim zajednicama, izuzev u pravu na usvajanje djece i pravu na azil.

U pogledu pravnog prepoznavanja prilagođavanja pola u **Zakonu o matičnim registrima**<sup>20</sup> članom 6 reguliše se mogućnost izmjene matičnog registra rođenih u pogledu „promjene pola“, odnosno izmjene ličnih podataka transrodnih osoba. Članom 14 istog zakona je propisano da se podatak upisan u matični registar mijenja, dopunjava ili briše na osnovu izvršne, odnosno pravosnažne odluke organa nadležnog za odlučivanje o promjeni ličnog stanja. Procedura donošenja i kriterijumi za odlučivanje nijesu propisani podzakonskim aktima, a ni zakonskim tekstom, što ostavlja pravnu prazninu u pogledu primjene odredbe člana 6 Zakona o matičnim registrima u dijelu izmjene registra u slučaju „promjene pola“.

Članom 9 **Zakona o ličnom imenu**<sup>21</sup> propisuje se mogućnost promjene ličnog imena po zahtjevu crnogorskog državljanina. Ova odredba, iako neodređena, daje mogućnost promjene imena transrodnoj osobi, što može dovesti do situacije da transrodne osobe u dokumentima imaju lično ime koje je u skladu sa njihovim rodnim identitetom, dok oznaka pola, usljed nemogućnosti promjene, ostaje ista. Nepostojanje adekvatne pravne regulative koja bi omogućila transrodnim osobama promjenu ličnog imena i oznake pola bez medicinskih intervencija kao preduslova, stavlja trans osobe u nepovoljan položaj i povišen rizik od diskriminacije, kako u društvu, tako i u sistemu.

Upravo iz ovog razloga, od velikog značaja za pravno prepoznavanje roda transrodnih osoba bilo bi usvajanje **Prijedloga Zakona o rodnom i polnom identitetu**, takođe predstavljenom od strane NVO „Juventas“, Instituta za pravne studije i LGBTIQ Asocijacije „Queer Montenegro“, koji pruža

19 Strategija za unapređenje kvaliteta života LGBT osoba za period 2013-2018. godine, Ministarstvo za ljudska i manjinska prava, 2013. Dostupno online na: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=130140&rType=2&file=LGBT%20Strategija%20i%20AP.pdf>

20 Zakon o matičnim registrima, ( "Sl. listu CG", br. 47 /2008, 41/10, 40/11, 55/16). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B955FAEDA-E3ED-460E-835F-9A568EA85863%7D> ;

21 Zakon o ličnom imenu, ( "Sl. list CG", br. 47 /2008, 40/11, 55/16). Dostupno online na: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B439BDF19-1C13-4332-B25A-61BAE411099F%7D>

mogućnost trans osobama da promijene oznaku pola u ličnim dokumentima bez zahtijevanja bilo kakvih medicinskih intervencija kao preduslova za pravno priznanje roda, te samim tim poštovanje njihovih ljudskih prava i sloboda.

Važnu ulogu u zaštiti od diskriminacije ima Zaštitnik/ca ljudskih prava i sloboda čiji je rad regulisan **Zakonom o zaštitniku/ci ljudskih prava i sloboda**<sup>22</sup>, koji propisuje članom 2:

*„Zaštitnik/ca samostalno i nezavisno, na načelima pravde i pravičnosti, preduzima mjere za zaštitu ljudskih prava i sloboda, kad su povrijeđena aktom, radnjom ili nepostupanjem državnih organa, organa državne uprave, organa lokalne samouprave i lokalne uprave, javnih službi i drugih nosilaca javnih ovlašćenja (u daljem tekstu: organi), kao i mjere za sprječavanje mučenja i drugih oblika nečovječnog ili ponižavajućeg postupanja i kažnjavanja i mjere za zaštitu od diskriminacije.“*

Posebna ovlašćenja Zaštitnika/ce ljudskih prava i sloboda u odnosu na lica lišena slobode regulisana su kroz članove 24 i 25:

#### *„Član 24*

*Zaštitnik/ca, zamjenik/ca, kao i glavni/a savjetnik/ca Zaštitnika/ce i savjetnik/ca Zaštitnika/ce koga/ koju Zaštitnik/ca ovlasti, ima pravo da:*

- bez najave, izvrši pregled prostorija u organima, organizacijama, ustanovama i drugim mjestima gdje se nalazi ili se može nalaziti lice lišeno slobode;*
- bez prethodne najave i odobrenja, posjeti lice lišeno slobode i provjeri poštovanje njegovih prava;*
- bez prisustva službenog ili drugog lica, lično ili preko prevodioca, razgovara sa licem lišenim slobode, kao i sa drugim licem za koje smatra da može da pruži potrebne informacije.*

#### *Član 25*

*Zaštitnik/ca vrši poslove nacionalnog preventivnog mehanizma za zaštitu lica lišenih slobode od mučenja i drugih oblika surovog, nečovječnog ili ponižavajućeg postupanja ili kažnjavanja (u daljem tekstu: poslovi prevencije torture), u skladu sa ovim zakonom i Opcionim protokolom uz Konvenciju protiv torture i drugih surovih, neljudskih ili ponižavajućih kazni ili postupaka.*

*Radi vršenja određenih poslova prevencije torture za koje su neophodna posebna specijalistička znanja Zaštitnik/ca obrazuje radno tijelo od stručnjaka iz odgovarajućih oblasti.*

*Aktom o obrazovanju radnog tijela iz stava 2 ovog člana utvrđuju se zadaci i način rada tog tijela.“*

Zaštitnikova/cina uloga u zaštiti ljudskih prava i sloboda lica lišenih slobode, naročito LGBT osoba čija su ljudska prava često ugrožena u različitom stepenu u društvu, sistemu, a samim tim i u zatvorskim sistemima koja su karakteristična postojanju većeg stepena diskriminacije i nasilja u odnosu na opštu zajednicu, od izuzetnog je značaja, te podrazumijeva dodatne napore u cilju stvaranja uslova koji će u potpunosti obezbijediti adekvatan boravak lica lišenih slobode u zatvorenom sistemu i što uspješniju socijalnu reintegraciju nakon služenja kazne zatvora.

<sup>22</sup> Zakon o zaštitniku/ci ljudskih prava i sloboda Crne Gore ("Sl. list CG", br. 42/2011 i 32/2014). Dostupno online na: [http://www.ombudsman.co.me/docs/Zakon\\_o\\_zastitniku\\_ci\\_ljudskih\\_prava\\_i\\_sloboda\\_Crne\\_Gore.pdf](http://www.ombudsman.co.me/docs/Zakon_o_zastitniku_ci_ljudskih_prava_i_sloboda_Crne_Gore.pdf)



# ANALIZA POSTOJEĆEG STANA U ZAVODU ZA KRIVIČNO IZVRŠENJE SANKCIJA

Kada su u pitanju prava i tretman LGBT osoba u zatvorskom sistemu Crne Gore, analiza je pokazala da ne postoje određeni propisi koji tretiraju temu ljudskih prava LGBT osoba, kao ni njihovu zaštitu. U razgovoru sa zaposlenima ZIKS-a, uočeno je nedovoljna informisanost o opštoj problematici vezanoj za LGBT osobe, kao i nedostatak informacija o postojanju slučajeva LGBT zatvorenika/ca. Pri pružanju informacija, pravna služba je ukazala na podatak da seksualni odnosi među zatvorenicima nisu više zabranjeni i ne podliježu disciplinskoj mjeri, pod pretpostavkom da u djelovima zatvora gdje su smješteni zatvorenici/ce istog pola, neće biti slučajeva istopolnih seksualnih odnosa. Uklanjanje zabrane seksualnih odnosa među zatvorenicima/cama je početak dobre prakse, uzevši u obzir da zabrane ovog tipa dodatno stigmatizuju LGBT osobe u zatvorenim sistemima, međutim nevidljivost LGBT osoba i nepostojanje jasnih informacija o postojanju ovakvih slučajeva, takođe ukazuje na visok rizik od diskriminacije i nasilja prema LGBT osobama u zatvorima, a samim tim i neprijavlivanje i neprocesuiranje istih.

Imajući u vidu trenutnu situaciju i nepostojanje propisa koji bi regulisali mehanizme zaštite LGBT osoba u zatvoru od daljnje diskriminacije i nasilja, potrebno je kreirati protokole koji će obezbijediti adekvatne mehanizme zaštite, a zatim i uložiti dodatani napor za primjenu istih kako bi svi/e zatvorenici/ce bili/e tretirani/e na human način uz potpuno poštovanje njihovog ljudskog dostojanstva i integriteta. Kod realizatora programa uviđa se spremnost za saradnju i razmatranje uvođenja programa za osobe koje se rodno ne konformišu, koji se smatraju ugroženim članovima zajednice, kako bi se zaštitili od nasilja i raznih vidova diskriminacije i očuvala njihova ljudska prava.

Polazne osnove za analizu trenutnog stanja su bili aktuelni međunarodni standardi kad je u pitanju tretman LGBT zatvorenika/ca u zatvorskim sistemima, kao i opšti nacionalni zakonski akti koji se tiču svih građana/ki Crne Gore, bez obzira na seksualnu orijentaciju i rodni identitet.

Analiza je vršena u okviru nekoliko oblasti koje je neophodno regulisati kada je u pitanju poštovanje ljudskih prava i tretman LGBT osoba u zatvorskim sistemima, koje uključuju: mjere zaštite od diskriminacije i nasilja, dostupnost adekvatne zdravstvene zaštite, uslove smještaja, poštujuće pretrese u odnosu na rod, ostvarenje određenih prava u odnosu na rodni identitet, posjete i pogodnosti.

## MJERE ZAŠTITE OD DISKRIMINACIJE I NASILJA

Iako nacionalni pravni okvir garantuje zaštitu od diskriminacije po osnovi seksualne orijentacije i rodnog identiteta, uzevši u obzir specifičnost zatvorskog sistema, ali i same problematike ljudskih prava LGBT osoba u zatvoru, analizom je utvrđeno da u Zavodu za izvršenje krivičnih sankcija ne postoje propisi koji definišu mjere zaštite za LGBT osobe od diskriminacije, nasilja i seksualnog uznemiravanja. Uzevši u obzir činjenicu da LGBT osobe i dalje doživljavaju diskriminaciju i nasilje u velikoj mjeri van zatvorskih sistema, kao i da su ove pojave, prema nalazima naučnih istraživanja u drugim zemljama, često intenzivirane u samom zatvoru, potrebno je posebnu pažnju posvetiti mjerama zaštite LGBT osoba od nasilja, nečovječnog ili degradirajućeg ponašanja drugih zatvorenika ili zatvorskog osoblja.

**Evropska zatvorska pravila** po pitanju zatvorskog režima propisuju:

*„25.4. Posebna pažnja posvetiće se zatvorenicima koji su pretrpjeli fizičko, duševno i seksualno zlostavljanje.“*

Takođe, nacionalni pravni okvir Crne Gore, kako kroz Ustav, tako i Zakon o zabrani diskriminacije, prepoznaje potrebu uvođenja posebnih mjera zaštite od diskriminacije prema naročito ranjivim grupama. Stoga, uvođenje posebnih mjera zaštite od diskriminacije i nasilja prema LGBT osobama u zatvoru bi bilo od velikog značaja za osiguravanje sigurnih uslova za boravak LGBT osoba tokom služenja kazne zatvora.

**U kreiranju mjera zaštite od diskriminacije i nasilja, posebnu pažnju treba posvetiti predviđanju edukacija i obuka kako osoblja, tako i samih zatvorenika/ca o opštoj problematici LGBT osoba, njihovim ljudskim pravima, adekvatnom tretmanu u zatvoru, kako bi ova ranjiva grupa bila što manje izložena negativnim iskustvima u samom zatvorskom sistemu i dobila mogućnost za što efikasniju socijalnu reintegraciju nakon izvršenja kazne zatvora.**

## ZDRAVSTVENA ZAŠTITA

Zatvorenici/ce imaju pravo na zdravstvenu zaštitu u skladu sa zakonom Crne Gore.

U **Zakonu o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti**, član 47 propisano je da „Zatvorenik ima pravo na zdravstvenu zaštitu u skladu sa zakonom. Na prava zatvorenika u vezi sa ostvarivanjem zaštite shodno se primjenjuje zakon kojim se uređuju prava pacijenata.“

**Zakon o zdravstvenoj zaštiti** propisuje „pravo na zdravstvenu zaštitu u skladu sa najvišim mogućim zdravstvenim standardima i dostignućima savremene medicinske teorije i prakse“ (član 4), te garantuje da „u ostvarivanju prava na zdravstvenu zaštitu građani su jednaki, bez obzira na nacionalnu pripadnost, rasu, pol, rodni identitet, seksualnu orijentaciju, starosnu dob, invaliditet, jezik, vjeru, obrazovanje, socijalno porijeklo, imovno stanje i drugo lično svojstvo, u skladu sa zakonom.“ (član 5). Na osnovu Zakona o zdravstvenoj zaštiti, iz budžeta Crne Gore obezbjeđuju se sredstva za „zdravstvenu zaštitu lica koja su na izdržavanju kazne zatvora, lica kojima je izrečena mjera bezbjednosti obavezno psihijatrijsko liječenje i čuvanje u zdravstvenoj ustanovi, mjera obavezno liječenje alkoholičara i mjera obavezno liječenje narkomana“ (član 17). **Adekvatna i dostupna zdravstvena zaštita naročito je značajna kad su u pitanu ranjive grupe, kao što su LGBT osobe u zatvorima, posebno uzevši u obzir stepen rizika od diskriminacije, kao i fizičkog, psihičkog i seksualnog nasilja. Rizik od različitih vrsta nasilja, može LGBT osobe izložiti povišenom riziku od krvno prenosivih infekcija, kao što su HIV i hepatitisi. U tom pogledu, veoma je važno obezbijediti preventivne mjere zaštite, kao što su dijeljenje kondoma i sterilnih igala i špriceva, kao i omogućiti dobrovoljno i povjerljivo testiranje na HIV i hepatitise B i C, uz potpuno poštovanje privatnosti prilikom saopštavanja rezultata testa i daljeg čuvanja informacija o zdravstvenom statusu zatvorenika/ca.**

Pitanje zdravstvene zaštite, specifično je u slučaju tranrodnih osoba i dostupnosti intervencijama prilagođavanja pola. U skladu sa **Zakonom o zdravstvenom osiguranju**, član 16b<sup>23</sup>, iz sredstava obaveznog zdravstvenog osiguranja osiguranim licima obezbjeđuje se 80% od cijene za zdravstvene usluge za promjenu pola iz medicinskih razloga.

U Crnoj Gori postoje stručnjaci/kinje koji obavljaju psihološku procjenu transrodnih osoba u cilju pristupanja procesu prilagođavanja pola, kao i endokrinolog koji ordinira hormonsku terapiju, međutim, hirurški tim koji obavlja operativne zahvate ne postoji. Pravna služba ZIKS-a pružila je podatak da, uzevši u obzir činjenicu da je Fond zaključio ugovor za obavljanje ovih intervencija sa klinikom iz Beograda, za pristupanje zdravstvenim uslugama koje podrazumijevaju hirurške intervencije prilagođavanja pola transrodne osobe koja su lišena slobode, neophodno bi bilo dobiti rješenje za prestanak izvršavanja zatvorske kazne radi upućivanja zatvorenika\_ce na liječenje van Crne Gore.

23 Zakon o zdravstvenom osiguranju, Sl. List Crne Gore 006/16. član 16b. Dostupno online na: [http://fzocg.me/docs/18/1.zakon\\_o\\_zdravstvenom\\_osiguranju.pdf](http://fzocg.me/docs/18/1.zakon_o_zdravstvenom_osiguranju.pdf)

**Zakon o izvršenju kazni zatvora**, članom 47 reguliše način ostvarenja zdravstvene zaštite lica lišenih slobode u slučaju nepostojanja iste u Crnoj Gori:

*„Zatvorenik koji zdravstvenu zaštitu ne može ostvariti u Zavodu, ostvaruje je u zdravstvenoj ustanovi, u skladu sa zakonom.*

*Vrijeme provedeno na liječenju van Zavoda, uračunava se u vrijeme izvršenja kazne zatvora ili kazne zatvor od četrdeset godina, osim u slučaju prekida izvršenja kazne, u skladu sa ovim zakonom.“*

*Zakon o izvršenju kazni zatvora, član 36:*

*„U slučaju kad je zahtjev za prekid izvršenja kazne zatvora ili kazne zatvor od četrdeset godina podnio zatvorenik, pribavlja se mišljenje starješine Zavoda, a ako se zahtijeva prekid izvršenja kazne zbog liječenja, dostavljaju se i nalaz i mišljenje vještaka medicinske struke.*

*Troškove vještačenja iz stava 5 ovog člana snosi zatvorenik.“*

*Pravilo 24 revidiranih Pravila o Minimumu standarda:*

**1.** *Pružanje zdravstvene zaštite zatvorenicima je odgovornost države. Zatvorenici treba da uživaju iste standarde zdravstvene zaštite koji su dostupni u zajednici, i treba da imaju pristup posebnim zdravstvenim uslugama besplatno, bez diskriminacije po osnovu njihovog pravnog statusa.*

**2.** *Pružanje zdravstvenih usluga treba organizovati u bliskoj povezanosti sa opštim sistemom javnog zdravstva, i na način koji osigurava kontinuitet liječenja i njege, uključujući HIV, tuberkulozu i druge zarazne bolesti, kao i za bolesti zavisnosti.*

U skladu sa ovim pravilom i preporukama CPT iz Izvještaja austrijskoj Vladi o posjeti Austriji 2015. godine, od strane Evropskog komiteta za Prevenciju torture i nehumanog ili ponižavajućeg postupanja ili kažnjavanja, **potrebno je da državne vlasti preuzmu potrebne korake kako bi se osiguralo da transrodne osobe u zatvorima (i, kada je to potrebno, u drugim ustanovama zatvorenog tipa) imaju pristup procjeni i tretmanu pitanja rodnog identiteta i, ukoliko to žele, i postojećim zakonskim procedurama prilagođavanja pola.**

U skladu sa ovim mišljenjem CPT-a, osobe lišene slobode ne treba isključiti iz mogućnosti korišćenja tih tretmana i pravnih procedura, koje su predviđene *Pravilnikom o utvrđivanju medicinskih razloga za promjenu pola* za transrodne osobe u Crnoj Gori.

Nadalje, CPT naglašava da je potrebno donijeti i sprovesti politike i strategije za borbu protiv diskriminacije i isključenosti sa kojima se suočavaju transrodne osobe u zatvorenim institucijama.

Posebnu pažnju trebalo bi posvetiti očuvanju mentalnog zdravlja LGBT osoba u zatvoru kroz obezbjeđivanje adekvatne psihološke podrške svim LGBT osobama koje su na izdržavanju kazne zatvora, koje izraze potrebu za istom, imajući u vidu diskriminaciju i/ili nasilje sa kojom se susrijeću van zatvora, kao i intenziviranim stresom sa kojim se mogu susresti u zatvoru tokom izdržavanja kazne. Ova psihološka podrška bi trebala biti pružena od strane edukovanog i senzibilisanog osoblja, dok bi takođe trebalo razmotriti uspostavljanje sistema i grupne psihološke podrške u okviru koje bi se radilo na zajedničkom osnaživanju LGBT osoba unutar zatvora.

## PRIJEM U ZATVOR I SMJEŠTAJ

Prijem i smještaj tranrodnih osoba koje su lišene slobode je još jedno specifično pitanje u zatvorskom sistemu.

Zaposleni/e u pravnoj službi ZIKS-a su dali informaciju da se sa transrodnim osobama postupa kao i svim drugim osobama, u skladu sa oznakom pola u ličnim dokumentima. Ovo je od posebnog značaja uzevši u obzir informaciju da je bilo slučajeva trans osoba čije rodno izražavanje nije u skladu sa oznakom pola u dokumentima, što često izaziva konfuziju kod policijskih službenika/ca, a zatim i dodatnu diskriminaciju usljed nepoznavanja pravilnog načina postupanja u datim situacijama.

**Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, član 22** definiše način identifikacije lica lišenog slobode, što je naročito važno kada su u pitanu transrodne osobe koje nisu prošle operativne zahvate prilagođavanja pola, pa samim tim imaju oznaku pola u ličnim dokumentima koja je u suprotnosti sa njihovim rodnim identitetom:

*„Prilikom javljanja na izvršenje kazne zatvora ili kazne zatvora od četrdeset godina utvrđuje se identitet i zdravstveno stanje osuđenog. Osuđeni se identifikuje na osnovu lične karte, pasoša ili druge javne isprave iz koje se može utvrditi identitet, uzimanjem otisaka prstiju i dlana, fotografisanjem, utvrđivanjem spoljnih fizičkih karakteristika i uzimanjem mjera tjelesne težine i visine.“*

Nepoznato je da li se u datim slučajevima transrodnih osoba koje su lišene slobode, ispituju fizičke karakteristike osobe prilikom utvrđivanja identiteta, kao i na koji način, što ostavlja prostor za dodatnu stigmatizaciju trans osoba i narušavanje ličnog dostojanstva i integriteta.

**Pravilnik o kućnom redu u Zavodu za izvršenje krivičnih sankcija, član 3** dalje propisuje:

*„U slučaju da ne može da se utvrdi identitet, osuđeni će se smjestiti u posebnu prostoriju u organizacijskoj jedinici Zavoda u kojoj se izvršava kazna zatvora i kazna zatvor od četrdeset godina o čemu se obavještava organ uprave nadležan za poslove policije.“*

**Pravilo 7 Pravila o Minimumu standardsa za tretman zatvorenika Ujedinjenih Nacija**<sup>24</sup> propisuje:

*„Niko ne može biti primljen u zatvor bez validnog naloga sudije. Sljedeće informacije će se unijeti u datoteku zatvorenika, pri prijemu svakog zatvorenika:*

- (A) *Precizne informacije koje omogućavaju zatvoreniku određene njegovog/njenog jedinstvenog identiteta, poštujući njegov/njen samoodređeni rod“*

**Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, član 27:**

<sup>24</sup> United Nations, Economic and Social Council, Commission on Crime Prevention and Criminal Justice. United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015. Dostupno online na: [https://www.unodc.org/documents/justice-and-prison-reform/Brochure\\_on\\_the\\_UN\\_SMRs.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf)

*„Zatvorenik kaznu zatvora ili kaznu zatvor od četrdeset godina, po pravilu, izdržava zajedno sa drugim zatvorenicima, a odvojeno samo kad to zahtijeva njegovo zdravstveno stanje, kad je to propisano ovim zakonom ili u slučaju kad zatvorenik uživa zaštitu na osnovu programa zaštite svjedoka, propisanog posebnim zakonom. Zatvorenici i zatvorenice kaznu zatvora ili zatvor od četrdeset godina izdržavaju odvojeno.*

*Prilikom smještaja zatvorenika uzimaju se u obzir starost zatvorenika, dužina kazne, ranija osuđivanost, fizičko i mentalno zdravlje, **zahtjevi za posebnim tretmanom**, prebivalište, odnosno boravište uže porodice, **njegova bezbjednost** i bezbjednost drugih zatvorenika, kao i druge okolnosti od značaja za resocijalizaciju i reintegraciju u društvo.“*

Ovo član zakona bi trebalo uzeti u obzir kao način da se omogući smještaj transrodnih zatvorenika u muškim ili ženskim objektima, zavisno od njihovog izbora, uzimajući u obzir razne faktore kao što su: individualnu subjektivnu percepciju sigurnosti, rodni identitet osobe, rizike za bezbjednost od strane drugih zatvorenika, mentalno zdravlje, institucionalnu istoriju (postojeću viktimizaciju ili potencijalno nasilno ponašanje), mišljenje stručnjaka iz oblasti mentalnog zdravlja, te ostale sigurnosne i druge faktore.<sup>25</sup>

Definišući smještaj zatvorenika/ca, Zakon ne uzima u obzir specifičnost smještaja transrodnih osoba, međutim treba uzeti u obzir specifičnost rodnog izražavanja trans osoba, kao i moguće nasilje visokog stepena u zatvorenim sistemima, naročito kada su u pitanju trans žene smještene u muškom dijelu zatvora, što za njih često znači skoro sigurno fizičko i/ili seksualno nasilje od strane drugih zatvorenika.

**Smještaj transrodnih osoba u zatvorskim sistemima je veoma kompleksno pitanje, koje zahtijeva individualan pristup i temeljnu procjenu, ne samo u cilju poštovanja rodnog identiteta trans osoba, već i razvijanja mehanizama za očuvanje njihove bezbjednosti, te zaštitu njihovog fizičkog i mentalnog zdravlja. Pitanje smještaja je važno pitanje za sve LGBT zatvorenike/ce, pri čemu treba obratiti posebnu pažnju da se ne rasporede u prostorije sa drugim zatvornicima/cama koji pokazuju povišen rizik od nasilničkog ponašanja u odnosu na seksualnu orijentaciju ili rodni identitet osobe.**

<sup>25</sup> National Center for Transgender Equality, Standing with LGBT prisoners: An Advocate's Guide for Ending Abuse and Combating Imprisonment. 2013. Dostupno online na: <https://static1.squarespace.com/static/566c7f0c2399a3bdab-b57553/t/566ca02705f8e2cb2d77d537/1449959463528/NCTE-Standing-with-LGBT-Prisoners.pdf>

## TRETMAN U ZATVORU

Kada su u pitanju pretresi, službenici pravne službe su nas uputili na **Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, član 24** po kojem:

*„Pretres iz stava 1 ovog člana, vrši službenik obezbjeđenja **istog pola** kao zatvorenik. U slučaju da postoji sumnja da zatvorenik iz stava 1 ovog člana u tjelesnim otvorima drži stvari čije držanje i upotreba nisu dozvoljeni u zatvoru, pretres zatvorenika uključuje skidanje odjeće i pregled njegovih tjelesnih otvora. Pregled tjelesnih otvora zatvorenika može da vrši samo **zatvorski doktor ili kvalifikovani medicinski tehničar.**“*

*Zakon o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, član 87:*

*„U slučaju kad postoji opasnost po bezbjednost i red u zatvoru, kao i u drugim opravdanim slučajevima kad se procijeni da je to potrebno, može se izvršiti pretres zatvorenika, njegovih stvari i prostorija u kojima boravi.*

*U slučaju kad postoji sumnja da zatvorenik u tjelesnim otvorima drži stvari čije držanje i upotreba nisu dozvoljeni u zatvoru, pretres zatvorenika uključuje skidanje odjeće i pregled njegovih tjelesnih otvora.*

**Prilikom pretresa, vodi se računa o poštovanju dostojanstva zatvorenika.**

*O izvršenom pretresu sačinjava se službena zabilješka koja se dostavlja licu koje rukovodi zatvorom.“*

Ovakva regulativa ne prepoznaje transrodne zatvorenike/ce, pa se može desiti prilikom pretresa trans osobe neće biti prepoznate u skladu sa svojim rodnim identitetom, već u skladu sa oznakom pola u ličnim dokumentima ili percipiranog pola, što dovodi u situaciju da na primjer, trans ženu pretresa osoblje muškog pola. Ovakvi slučajevi upravo treba da budu podsticaj upravi zatvora da razvija i primjenjuje specifične politike za pretraživanje transrodnih zatvorenika/ca.<sup>26</sup>

**Pravilo 51 revidiranih Pravila o Minimumu standarda:**

*„Pretresi se neće koristiti za uznemiravanje, zastrašivanje ili nepotrebno zadiranje u privatnost zatvorenika.“*

**Od izuzetnog je značaja da se pretresi ne vrše na diskriminatornoj osnovi, kao i da je način sprovođenja pretresa standardizovan. Pretresi isključivo u svrhu utvrđivanja pola rodno nekonformišućih zatvorenika/ca su nedopustivi.**

*Pravilo 51 revidiranih Pravila o Minimumu standarda za tretman zatvorenika* takođe se odnosi i na obavezno vođenje evidencije pretresanja u zatvorima – uvid u evidenciju bi mogao biti od posebne pomoći u prepoznavanju diskriminatornog postupanja.

<sup>26</sup> Association for the Prevention of Torture, Penal Reform International. LGBTI persons deprived their liberty: a framework for preventive monitoring, 2015. Dostupno online na: [http://www.ap.torture-reform.org/content/files\\_res/thematic-paper-3\\_lgbti-persons-deprived-of-their-liberty-en.pdf](http://www.ap.torture-reform.org/content/files_res/thematic-paper-3_lgbti-persons-deprived-of-their-liberty-en.pdf)

## POSJETE I POGODNOSTI

Bračne i vanbračne posjete, kao i pogodnosti koje su vezane za partnere/ke osoba koje su lišene slobode, od izuzetnog su značaja kako za partnere različitog pola, tako i za istopolne partnere. Prilikom analize, od pravne službe ZIKS-a je dobijen podatak da slučajeva dozvoljavanja vanbračnih posjeta istopolnim partnerima do sada nije bilo, kao i da ne mogu sa sigurnošću da tvrde da bi ovakva posjeta bila dozvoljena.

Porodične posjete od strane bračnog ili vanbračnog partnera su regulisane **Zakonom o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti, član 74:**

*„Zatvorenik ima pravo na porodičnu posjetu od strane bračnog ili vanbračnog partnera i djece, koja se obavlja u posebnoj za to namijenjenoj prostoriji, bez nadzora, jednom mjesečno u trajanju do tri časa.“*

Pitanje istopolnih partnera je takođe važno u slučaju odobravanja pogodnosti. Pogodnosti su regulisane **članom 31 Zakona o izvršenju kazni zatvora, novčane kazne i mjera bezbjednosti:**

*„Radi poboljšanja položaja zatvorenika, održavanja odnosa sa članovima uže porodice i drugim licima, podsticanja učešća u ostvarivanju programa tretmana i reintegracije zatvorenika i jačanja odgovornosti i samopouzdanja, zatvorenik može ostvariti određene pogodnosti.“* Ove pogodnosti uključuju između ostalog dužu posjetu člana uže porodice, posjeta teško bolesnom članu uže porodice, kao i prisustvo sahrani člana uže porodice, što može uključivati istopolnog partnera/ku. **Iako u nacionalnom pravnom okviru, pitanje istopolnih partnera još uvijek nije definisano, prepoznavanje LGBT osoba u protokolima Zavoda za izvršenje krivičnih sankcija, te kreiranje jasnih pravila koja omogućavaju vanbračne posjete i pogodnosti LGBT osobama, od izuzetnog je značaja za njihovo mentalno zdravlje tokom boravka u zatvoru, kao i socijalnu reintegraciju nakon služenja kazne.**



## PREPORUKE

1. Omogućiti LGBT zatvorenicima/cama pristup zaštiti od diskriminacije i nasilja od strane drugih zatvorenika na način koji će najefikasnije garantovati njihovu bezbjednost uz neograničavanje njihovih prava i nesmetano obavljanje aktivnosti u zatvoru. Zaštita LGBT osoba može biti omogućena kroz kreiranje jasnog protokola koji će tretirati ljudska prava i tretman LGBT osoba u zatvoru.
2. U okviru nove Nacionalne strategije za unapređenje kvaliteta života LGBT osoba potrebno je predvidjeti donošenje i sprovođenje politika za borbu protiv diskriminacije i isključenosti sa kojima se suočavaju transrodne osobe u zatvorenim institucijama.
3. Pratiti putem istraživanja stavova i iskustva zatvorenika i zatvorskog osoblja stepen zaštite prava LGBT osoba u zatvorima i njihove izloženosti diskriminaciji.
4. Uključiti pitanje položaja LGBT zatvorenika/ca u izvještaje Nacionalnog preventivnog mehanizma (NPM).
5. Omogućiti edukaciju lica zaposlenih u Zavodu za izvršenje krivičnih sankcija, posebno za rad sa LGBT osobama, sa posebno organizovanim obukama namijenjenim službi tretmana. Teme obuke treba da obuhvate: opštu problematiku LGBT osoba, ljudska prava, adekvatan tretman u zatvoru, kako bi ova ranjiva grupa bila što manje izložena negativnim iskustvima u samom zatvorskom sistemu i dobila mogućnost za što efikasniju socijalnu reintegraciju nakon izvršenja kazne zatvora.
6. Omogućiti kontinuiranu senzibilizaciju zatvorenika/ca o ljudskim pravima u zatvoru, uključujući prava LGBT osoba.
7. Posebnu pažnju trebalo bi posvetiti očuvanju mentalnog zdravlja LGBT osoba u zatvoru kroz obezbjeđivanje adekvatne psihološke podrške svim LGBT osobama koje su na izdržavanju kazne zatvora, koje izraze potrebu za istom, imajući u vidu diskriminaciju i/ili nasilje sa kojom se susreću van zatvora, kao i intenziviranim stresom sa kojim se mogu susresti u zatvoru tokom izdržavanja kazne. Ova psihološka podrška bi trebala biti pružena od strane edukovanog i senzibilisanog osoblja, dok bi takođe trebalo razmotriti uspostavljanje sistema i grupne psihološke podrške u okviru koje bi se radilo na zajedničkom osnaživanju LGBT osoba unutar zatvora.
8. Kao i svim ostalim zatvorenicima/cama, LGBT osobama je potrebno obezbijediti sistem zdravstvenih usluga u zatvoru koji je ekvivalentan kvalitetu zdravstvenih usluga dostupnih u društvu. Naročit akcenat potrebno je staviti na kontinuirano sprovođenje prevencije krvno prenosivih bolesti kao što su HIV i hepatitis B i C, kroz dijeljenje besplatnih kondoma i kontinuiranu edukaciju zatvorenika/ca o načinima prenošenja ovih infekcija.
9. Potrebno je obezbijediti pristup transrodnim zatvorenicima/cama adekvatnoj i kontinuiranoj trans-specifičnoj zdravstvenoj zaštiti, koja podrazumijeva psihološku procjenu i tretman, hormonsku terapiju, kao i nesmetano upućivanje na liječenje van Crne Gore u slučaju hirurških intervencija procesa prilagođavanja pola.

10. Omogućiti siguran smještaj LGBT zatvorenica/cama koji će ih štititi od dalje diskriminacije i nasilja. Pri smještaju LGBT zatvorenika/ca treba obratiti posebnu pažnju da se ne rasporede u prostorije sa drugim zatvornicima/cama koji pokazuju povišen rizik od nasilničkog ponašanja u odnosu na seksualnu orijentaciju ili rodni identitet osobe.
11. Pri određivanju smještaja transrodnim osobama, treba uzeti u obzir njihov rodni identitet kao osnov pri klasifikaciji, kao i same želje osobe u skladu sa rizicima od doživljavanja nasilja i diskriminacije. Smještanje transrodnih osoba u skladu sa polom (naročito trans žene u muški zatvor) može dovesti osobu u situacije visokog rizika od diskriminacije, fizičkog i/ili seksualnog nasilja.
12. Smještanje transrodnih zatvorenika/ca treba posmatrati isključivo individualno i u skladu sa potrebama i željama zatvorenika/ce, uzevši u obzir kompleksnost samog pitanja. Ovo je naročito važno u pogledu transrodnih osoba, s obzirom na činjenicu da ne pristupaju sve trans osobe operativnom prilagođavanju pola, dok njihov izgled u zavisnosti od same tranzicije može u različitoj mjeri korelirati sa društvenom percepcijom njihovog rodnog identiteta. Samim tim neke trans osobe će izgledati potpuno u skladu sa rodnim identitetom, a ne biološkim polom, dok će neke izgledati rodno nekonvencionalno, što ih ostavlja izloženijim nasilju i diskriminaciji.
13. Pri dodjeljivanju smještaja osigurati da ne postoji diskriminacija po osnovu seksualne orijentacije i rodnog identiteta. U cilju što efikasnije implementacije preporuka koje se tiču poštovanja ljudskih prava i tretmana trans osoba, potrebno je u što kraćem roku usvojiti Zakon o rodnom identitetu, koji će omogućiti pravno priznanje roda trans osobama, bez zahtjeva za medicinskim intervencijama i dijagnozama u oblasti mentalnog zdravlja.
14. Omogućiti transrodnim zatvorenica/cama izbor pola službenika koji će izvršiti pretres osobe kako bi se omogućio pretres koji će minimalno narušavati lično dostojanstvo osobe. Striktno zabraniti skidanje transrodnih zatvorenika/ca u svrhe utvrđivanja identiteta.
15. Omogućiti posjete istopolnim partnerima/kama na isti način i u istoj količini kao i heteroseksualnim zatvorenica/cama. U cilju implementacije ove preporuke, neophodno je usvajanje Zakona o građanskom partnerstvu, kojim će se stvoriti mogućnost za pravno prepoznavanje zajednica istopolnih partnera/ki.







DOPRINOS UNAPREĐENJU  
KVALITETA ŽIVOTA LGBT OSOBA  
U CRNOJ GORI



Publication made in synergy with the project “Contributing to the improvement of LGBT people’s quality of life in Montenegro” supported by European Union via Delegation of European Union to Montenegro.

# EQUAL ACCESS TO JUSTICE

REPORT ON THE RIGHTS OF  
LGBT PERSONS IN THE INSTITUTE  
FOR EXECUTION OF CRIMINAL  
SANCTIONS (IECS)



An EU funded project managed by Delegation of the European Union to Montenegro.



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## INTRODUCTION

From the moment wider public started to get familiar with human rights of LGBT people, from 2003 onwards<sup>1</sup>, Montenegrin society has made great progress towards diversity acceptance. This progress is reflected in the significantly reduced level of discrimination and violence against LGBT persons, significantly higher degree of acceptance of LGBT people in their families, but also in society as a whole, as well as higher level of public knowledge about LGBT persons related issues that have become a part of the institutional and social agenda. Although many breakthroughs are evident in the field of human rights of LGBT people, and quality of LGBT people's lives improved in the Montenegrin society, the level of homophobia and transphobia still remains high, which indicates the necessity of continuing the implementation of activities and additional efforts to reduce discrimination and violence against LGBT persons. Of particular importance is the subject of particularly vulnerable groups, existing within this out on a limb group, like LGBT persons serving prison sentences.

Prisons are often the places that are characterized by various forms of violence and discrimination, particularly against people who are of different sexual orientation, gender identity and gender expression than heterosexual and cis. In this environment, LGBT persons are particularly vulnerable to various forms of abuse, both by other prisoners as well as prison staff. According to a study implemented in United States of America, more than 200 000 young people and adults are experiencing sexual abuse in prison systems each year.<sup>2</sup> The same study found that "non-heterosexual persons" are 3 times more likely to experience sexual violence. Furthermore, the study showed that transgender women in male prisons are 13 times more likely to be sexually abused by other prisoners.<sup>3</sup> Such data, as well as many other, show only a part of the problems that LGBT people face in prison systems

Today, when human rights and respect for human rights and dignity are a priority, discrimination and violence experienced by vulnerable groups points to the necessity of creating clear protocols and standardized procedures that will adequately address the needs of these groups, reduce discrimination and violence to the level of these negative phenomena being completely eradicated, but also enable respectful treatment of persons deprived of their liberty and in addition disadvantaged due to a personal characteristic. Research conducted in the Institute for execution of criminal sanctions is intended precisely to point out the existing problems that LGBT persons serving a prison sentence are experiencing and to offer effective solutions that will enable them a safe stay in prison as well as create opportunities for their successful social reintegration upon serving the sentences.

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1 In 2003 a first LGBT organization named "Free Rainbow" started its work and was active for the following several years. A more comprehensive discussion on LGBT human rights started at the end of 2009.

2 Allen J. Beck et al, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 (Bureau of Justice Statistics, May 2013), Available at: [www.bjs.gov/content/pub/pdf/svpjri1112.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf).

3 Valerie Jenness et al., Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault (Center for Evidence-Based Corrections, 2007), Available at: <http://www.wcl.american.edu/endsilence/documents/ViolenceinCaliforniaCorrectionalFacilities.pdf>.

## SUMMARY AND CONCLUSIONS

According to the general discrimination related survey that we conducted in the last quarter of 2016, which included a sample of 175 persons (8 women) who were serving a sentence in the Correctional prison in Podgorica, a high degree of their personal perception has been expressed on stigma and discrimination based on their prisoner status. The reasons respondents are giving in describing the grounds based on which they are feeling discriminated are mostly personal characteristics: race/skin color, nation, family background, religion, mental illness, addiction, health problems, unfavorable financial situation, sex, age, lack of education, type of offense and sentence length, or simply because he/she is a prisoner.<sup>4</sup>

Despite the fact that sexual orientation and gender identity are not recognized amongst the most common reasons for discrimination by prisoners, alarming data has been obtained in relation to personal perception of discrimination of prisoners based on presumed sexual orientation. Out of the total number of respondents 17,02% said they have been present when insults and psychological violence were done by staff and directed to a person who looks gay or lesbian, while this percentage is higher when it comes to psychological violence done by other prisoners 21,27 %. The survey also showed that 16% of prisoners attended incidences of physical violence done by staff towards persons looking gay or lesbian, while 23% of prisoners attended physical violence based on the same personal characteristics by other prisoners.<sup>4</sup>

Analysis of data obtained from the Legal Department of the Institute for Execution of Criminal Sanctions has shown that there are no protocols that specifically relate to respect of human rights and treatment of LGBT people in the prison system.<sup>5</sup> The data on the existence of a small number of visible cases of LGBT people in the Institute is completely understandable when you take into account the fact that the prison system is a specific hipermasculine space in which to express different sexual orientation and gender identity in many cases is strongly condemned and often results in various forms of violence. Discrimination and violence that LGBT people experience in a society, often intensifies in prison systems, therefore requiring specific protection measures which will enable LGBT persons' safe stay, adequate health care and necessary psycho-social support in order to preserve their mental and physical health and a more successful reintegration into society upon sentence serving.

A place for innovation is seen primarily in the education of persons employed in the treatment service related to working with the LGBT community, as well as in the implementation of the program of adapted psycho-social support. Situations that transgender people may find themselves into also require attention. Their treatment is not specifically regulated, and this relates particularly to persons who did not underwent gender reassignment surgeries and still have the gender mark in their identification documents which is not in accordance with their gender identity. It is necessary to deal with the issue of accommodation, admission and body searches of transgender people in order to make their stay in the institution as safer as possible. In implementers of the program we recognize the willingness to cooperate and consider the introduction of programs for people who are gender non-conforming and considered to be vulnerable members of the community, so that they could be protected from violence and various forms of discrimination and their human rights safeguarded.

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<sup>4</sup> ATTITUDES TOWARDS LGBT COMMUNITY, Juventas and Queer Montenegro, Survey implemented by IPSOS, September 2016.

<sup>5</sup> Interview with representatives of the Institute for Execution of Criminal Sanctions

Due to the fact that the staff of the Department for treatment of persons serving prison sentences deems necessary to develop guidelines for working with particularly vulnerable groups of prisoners and perform permanent education of employees, not only of this, but all other services/departments of IECS, we recommend such activities, but also the inclusion of officials from this departments in the training for other services, related to specific topics of work in prisons.

## GLOSSARY

**SEX:** related to biological characteristics of sexual/reproductive system and its potential. As such sex includes 4 segments: chromosomes, gonads, hormones and sex organs (genitalia). Sex can be male, female and intersex.

**GENDER:** represents socially/individually constructed characteristics that come from the process of socialization, and (non)identification with a certain sex. Gender is an individual self-conception of personal identity/expression which affirms, negates and/or surpasses socially given and formed sex and gender roles of men and women.

**GENDER IDENTITY:** subjective feeling of belonging or non-belonging to one or more genders. Not necessarily based on sex (real or assigned), as well as sexual orientation. Accordingly, person can identify as a man, woman, both, neither or something else.

**SEXUAL ORIENTATION:** emotional and/or physical attraction or sympathy for persons of same and/or different sex. It implies heterosexuality, homosexuality and bisexuality. It is important to note that sexual orientation and gender identity are independent categories, although practice often shows that LGBT persons are often called „sexual minorities“ which witnesses of least visibility, lack of knowledge and discrimination of trans persons.

**LGBT:** an acronym for lesbian, gay, bisexual and transgender persons.

**GAY (MAN):** a man who feels physical and/or emotional attraction to persons of the same sex/gender.

**LESBIAN:** a woman who feels physical and/or emotional attraction to persons of the same sex/gender.

**BISEXUAL PERSON:** a person who feels physical and/or emotional attraction to persons of more than one sex/gender.

**TRANSGENDER PERSON:** a person whose gender identity and/or gender expression overcomes the boundaries of traditionally and socially defined gender roles and norms conditioned by ones' sex. Transgender persons can be identified as men, women, none, both or something else, whereas that identity is not in accordance to sex assigned at birth. When speaking about their sexual orientation, trans persons can be heterosexual, homosexual, bisexual, pansexual, asexual, etc.

**TRANSEXUAL PERSON:** a person with a clear wish and intention to adjust its sex assigned at birth to its gender identity, as well as a person who partially or completely modified its body and presentation (including physical and hormonal therapy and operations) expressing its gender and or sexual identity and feeling of self.

**TRANS MAN:** a person with a female sex assigned at birth, but lives and identifies itself as a man. In literature in English language as FTM (Female To Male).

**TRANS WOMAN:** a person with a male sex assigned at birth, but lives and identifies itself as a woman. In literature in English language as MTF (Male To Female).

**TRANSITION OR THE PROCESS OF GENDER REASSIGNMENT:** a process during which a person adjusts its sex to its gender identity. This may include hormonal therapy and surgeries, only hormonal therapy, only surgeries or only some surgeries. Trans persons that decide to transition can go through this process in different ways and can decide to go for aspects of it that think are the most important and acceptable for them. ze kroz istu i odlučuju se za one zahvate koje smatraju nužnim i prihvatljivim.

## THE ISSUE OF LGBT HUMAN RIGHTS AND TREATMENT IN PRISON SYSTEMS

LGBT people are a particularly vulnerable group in the justice system and prison systems. Prejudices that society shows in communication with LGBT persons in the community, are intensified in the system of closed institutions<sup>6</sup>.

LGBT persons face discrimination in prison that may be systemic and individual, but also physical and psychological violence and sexual abuse.

Research on sexual abuse in closed systems continuously indicate the vulnerability of men and women whose sexual orientation is different from heterosexual (lesbian, gay, bisexual), as well as people whose gender and sexual identity is not in conformity with sex assigned at birth (transgender and intersex person). The main and most important need of LGBT prisoners is protection from sexual abuse and rape, mostly by other prisoners. Despite the popular myth of “predatory homosexuals” LGBT prisoners are more often victims of sexual abuse and rape than the perpetrators of such acts.<sup>7</sup>

Male wards of prison systems often have a rigid culture that rewards extreme forms of masculinity and aggression, and upholds negative stereotypes of those that act or appear differently. In such an environment, LGBT persons are often victims of sexual violence, precisely because the dominant “heterosexual” men expect and require submissiveness from their victims. While all men who are perceived as weaker, especially those who are physically weaker, can be subjected to this kind of violence and humiliation, gay and bisexual men are the most frequent victim of such sexual deeds. A particularly vulnerable group, when it comes to physical and sexual violence, are trans women who have not gone through gender reassignment surgeries and placed in men’s prisons due to the male gender mark in identity documents. Their gender expression often puts them at an increased risk of experiencing physical and sexual violence done by prisoners, but prison staff as well.<sup>6</sup> Lesbian and bisexual women are also victims of sexual violence in the systems of execution of sanctions. A study showed that more than a quarter of women who were sexually abused in prison systems in Midwestern were lesbian and bisexual women - significantly higher percentage than their overall representation in the correctional population. Most of sexual violence against lesbians were committed by male members of the prison staff.<sup>8</sup>

A circumstance that further complicates the situation of LGBT persons, victims of sexual violence is the fact that studies of criminal justice system show that certain officials “wrongly assume that prisoners who are gay or are assumed to be gay, actually agree to such violence” which leads to competent authorities in prisons often ignoring such incidents.<sup>6</sup>

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6 UN, UNODC. Handbook on Prisoners with special needs, Vienna 2012. Available online at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoners\\_with\\_Special\\_Needs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf)

7 United States National Prison Rape Elimination Commission Report, 2009. Available online at: <https://www.ncjrs.gov/pdffiles1/226680.pdf>

8 Sickmund, M., Sladky, T. J., & Kang, W. (2008). Census of Juveniles in Residential Placement databook. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Even if a victim succeeds in making a complaint, it remains stigmatized as the rape victim, and at risk of further victimization. As the perpetrators are aware that complaints usually do not occur, or go without adequate epilogue, sexual abuse and rape, continue with impunity and often with the complicity of prison staff.<sup>9</sup>

Given the high risk of physical and sexual violence against LGBT people in prison systems, LGBT persons represent a group of high risk of sexually transmitted infections, including HIV.<sup>6</sup> HIV positive status may contribute to additional stigma in prisons, both by prisoners as well as staff. In many prisons, people living with HIV do not have access to adequate health care, which additionally places them at a disadvantage position in comparison to other prisoners.

The specificity of problems transgender people encounter in prison systems, requires distinctive approach when it comes to several areas. Adequate health care, which is reflected in the accessibility to trans-specific services in the health care system, i.e. accessibility to necessary checkups in the process of gender reassignment, the availability of hormone therapy, surgeries, etc., is essential for trans persons in prison systems. Furthermore, trans people who are in the process of transition, may need psychological support from health workers working in the area of mental health. It is important that psychological support is available to LGBT individuals who express the need for the same due to various forms of discrimination they encounter both before and during the execution of criminal sanctions. LGBT prisoners, which have been largely exposed to discriminatory attitudes and humiliation in prisons, and especially if have been sexually abused either before or during imprisonment, will probably need psychological support and assistance in relation to their mental health. LGBT prisoners who were victims of rape may be at risk of self-harm or suicide, which requires special supervision and adequate care.<sup>6</sup> Lack of these services can result in intensified stress LGBT persons experience, which increases the risk of self-harm or suicide, and hinders their social reintegration after the execution of the prison sentence.

Accommodation of LGBT persons is a separate problem, especially in prisons which lack accommodation capacities and proper classification of prisoners. In such cases, LGBT persons can be placed in premises or cells together with prisoners who have a registered history of violent behavior and/or sexual abuse, which directly increases the risk of violence. Additional issue arises around the accommodation of transgender persons, who are placed in specific prison departments in accordance with the gender mark in their personal documents, which almost always exposes trans people to violence based on their gender expression. This is especially problematic in case of trans women that are placed together with men, due to male gender mark in their personal documents, which is often a direct route to sexual violence and rape.<sup>10</sup>

In addition to accommodation issues, there is the question of prison treatment, which includes method of carrying out the search, possession and use of specific items, prison clothing, etc.. Accommodation, prison treatment and medical treatments are three complex, intertwined processes, which need to be specifically addressed in order to ensure adequate and respectful treatment of transgender persons in prisons.

In systems where conjugal visits are allowed even to unmarried partners, LGBT prisoners often do not enjoy the same rights. Thus, in many legal systems contacts of LGBT prisoners with

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9 Human Rights Watch. No Escape: Male Rape in U.S. Prisons, 2001. Available online at: <https://www.hrw.org/reports/2001/prison/report.html>

10 International Human Rights References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity, International Commission of Jurists, Geneva, October 2006, p.9. Available online at: <http://www.icj.org/wp-content/uploads/2006/10/Human-rights-violations-sexual-orientation-thematic-report-2006-eng.pdf>

their families and partners can be extremely limited, which exacerbates the sense of isolation in prison, which in continuation affects their mental health, and social reintegration prospects.<sup>6</sup>

Significant vulnerability of LGBT people in the criminal justice system requires a clear definition of policies that will address this group's needs, as well as the development and implementation of strategies that will ensure LGBT people's access to legal system without discrimination as well as protection from human rights violations due to their sexual orientation or gender identity .

When we take into account increased possibility of discrimination, degrading treatment, physical and / or sexual violence against LGBT people within the prison system, there is a clear need to develop effective protective mechanisms, while simultaneously facilitating adequate social reintegration of LGBT people.



## INTERNATIONAL STANDARDS

Despite the fact that there are specific rules applying to LGBT prisoners, all provisions related to basic human rights are valid for LGBT persons as well.

Here are the international documents containing basic principles of prisoners' protection systems, putting a special emphasis on their treatment:

1. Universal Declaration on Human rights
2. UN Standard Minimum Rules for the Treatment of Prisoners from 1955
3. International Covenant on Civil and Political Rights from 1966
4. European Convention for Protection of Human Rights and Fundamental Freedoms CETS No. 005
5. Prison Leave Recommendation R(82)16
6. Council of Europe Committee of Ministers Recommendation R(82)17 concerning custody and treatment of dangerous prisoners;
7. Convention on transfer of sentenced persons CETS No. 112;
8. UN Convention against Torture and Other Inhumane and Degrading Treatment or Punishment from 1984;
9. Council of Europe Committee of Ministers Recommendation R(89)12 on education in prison;
10. UN Basic Principles for the Treatment of Prisoners from 1990;
11. Council of Europe Committee of Ministers Recommendation R(97)12 on staff concerned with the implementation of sanctions; and
12. Council of Europe Committee of Ministers Recommendation R(99)22 concerning prison overcrowding and prison population inflation;
13. Council of Europe Committee of Ministers Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long term prisoners;
14. European Prison Rules- Committee of Ministers' Recommendation to Member States on European Prison Rules;
15. Council of Europe Committee of Ministers Recommendation Rec(2008)11 to member states on European Rules for juvenile offenders subject to sanctions or measures;
16. Committee of Ministers Recommendation CM/Rec(2012)5 to member states on the European Code of Ethics for Prison Staff;
17. Committee of Ministers Recommendation CM/Rec(2012)12 to member states concerning foreign prisoners;
18. Committee of Ministers Recommendation CM/Rec(2014)3 to member states concerning dangerous offenders;
19. European Convention against Torture and Other Inhumane and Degrading Treatment or Punishment ECTS No. 126;
20. CPT Standards;
21. CPT Recommendation from the Report Report to the Austrian Government on the visit to Austria from 2015<sup>11</sup>

<sup>11</sup> Council of Europe. Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015:34. Available online at: [www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf](http://www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf)

Special significance lies in the Committee of Ministers' Recommendation to Member States on European Prison Rules. This document proscribes, among the rest, basic principles of execution of a prison sentence and prison conditions.

It is necessary to note that beside conventions that are legally binding, we mentioned recommendations that are not (formally) binding and belong to the so called „soft law“. Nevertheless, without them we can not speak about European system of protection of prisoners and detainees.

Relevant standards in relation to treatment of LGBT persons in prison are summarized in the **principle 9 of Yogyakarta principles**<sup>12</sup>:

#### The Right to Treatment with Humanity while in Detention

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

- A)** *Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;*
- B)** *Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;*
- C)** *Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;*
- D)** *Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;*
- E)** *Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;*
- F)** *Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;*
- G)** *Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity."*

<sup>12</sup> Yogyakarta principles. Available online at: <http://www.delme.ec.europa.eu/upload/Dzodzakarta%20principi.pdf>

## NATIONAL LEGAL FRAMEWORK

National legal framework treats human rights of all Montenegrin citizens, then specifically human rights of LGBT people, as well as human rights of persons who are serving prison sentences throughout several legal documents.

**Constitution of Montenegro**<sup>13</sup> prohibits discrimination based on any personal characteristic in its Article 8:

*“Any direct or indirect discrimination based on any ground is prohibited. Regulations and introduction of special measures aiming at creating conditions for achieving national, gender and overall equality and protection of persons which are in an unequal position due to any ground, won’t be considered as discrimination. Special measures may be applied only until the achievement of objectives for which they were implemented. “*

*Montenegrin Constitution also guarantees “the inviolability of physical and psychological integrity of a person, his privacy and personal rights” (Article 28) and “respect for human personality and dignity in criminal or other proceedings, in case of liberty deprivation or freedom limitation as well as during sentence serving” and prohibits inhuman or degrading treatment against persons deprived of liberty (Article 31).*

**Anti-Discrimination Law**<sup>14</sup> clearly prohibits discrimination based sexual orientation and gender identity:

*“Article 19*

*Any distinction, unequal treatment or bringing persons in an unequal position on the basis of gender identity or sexual orientation is considered to be discrimination. Everyone has the right to express their gender identity and sexual orientation. Gender identity and sexual orientation are a private matter of each person and no one can be called to publicly declare his gender identity and sexual orientation. “*

Amendments to the **Law on Gender Equality**<sup>15</sup> introduced direct prohibition of discrimination on the basis of gender reassignment in the Montenegrin national legislation, namely “Discrimination means any act by which women due to pregnancy or maternity, as well as another person due to gender reassignment, is led to a disadvantaged position in comparison to other persons during employment, self-employment, exercising rights on the basis of social care and other rights.”

The same law proscribes a fine for legal entities amounting from 1000 to 10 000 EUR if a person is put in a disadvantaged position in comparison to other persons on the basis of gender reassignment, during employment, self-employment, exercising rights on the basis of social care and other rights (Article 4 Paragraph 3). Article 1, as a subject of the law, defines “the manner of providing and exercising rights on the basis of gender equality, in accordance with

13 Constitution of Montenegro, Official Gazette of Montenegro 01/2007. Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B70C61F26-B411-4FA2-BEF3-45A4E23C998A%7D>

14 Law on prohibition of discrimination, Official Gazette of Montenegro 46/2010, Art. 19. Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BD6457034-F84F-40E2-9422-F8E05FFA3590%7D>

15 Law on changes and amendments of the Law on gender equality (Official Gazette of Montenegro, No. 35/2015). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BE7389CBA-854C-4122-8510-720BA6C989A3%7D>

international documents and generally accepted rules of international law, as well as measures to eliminate discrimination based on sex and creation of opportunities for equal participation of women and men, as well as persons of different gender identities in all areas of social life “

Prohibition of discrimination based on gender identity and sexual orientation is named in Article 10 of the **Law on the execution of prison sentences, fines and security measures**<sup>16</sup>, as well as the principle of humanity according to which sanctions are carried out “*in a way that guarantees humane treatment and respect for the human dignity of each individual.*”(Article 4). The Law also stipulates that “*A prisoner has the right to t protection of rights established in the Constitution, ratified by international treaties and generally accepted rules of international law and this law.*” (Article 10), while rights limitations have been identified by the Article 11: “*Prisoner can be restricted certain rights in accordance with ratified international treaties, to the extent appropriate to the nature and content of the sanction imposed in a way that ensures respect for his personality and dignity.* “

**Law on Health Care**<sup>17</sup> stipulates “the right to health care to the highest attainable standard of health and achievements of modern medical theory and practice” (Article 4) and guarantees that “in exercising the right to health care, all citizens are equal, regardless of their nationality, race, sex, gender identity, sexual orientation, age, disability, language, religion, education, social background, financial status and other personal characteristics, in accordance with the law.”(Article 5). According to the Law on Health Care, the budget of Montenegro provides funds for “health care of persons serving a prison sentence, people who were given a security measure of compulsory psychiatric treatment and custody in a medical institution, a measure of mandatory treatment of alcoholics and the measure of compulsory treatment of persons using drugs “(Article 17).

**Law on Patients’ Rights**<sup>18</sup> in its Article 2 states that “equal right to quality and continuous health care is guaranteed to each patient according to his medical condition, generally accepted professional standards and ethical principles, with the right to be relieved of pain and suffering at every stage of a disease and condition, within all levels of health care. “

Health care and manner of exercising the right to health insurance in case of transgender persons is regulated by the **Law on Health Insurance**<sup>19</sup>, Article 16b, which proscribes that 80% of health services costs related to gender reassignment for medical reasons are provided from the compulsory health insurance. The way to exercise this right is more closely defined by the **Ordinance on establishing medical reasons for gender reassignment.**<sup>20</sup>

16 Law on execution of prison sentences, fines and security measures, Official Gazette of Montenegro 36/2015, Art. 5. Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BF2AE6989-C2B9-4F19-BF57-FD7FFC7A7CE3%7D>

17 Zakon o zdravstvenoj zaštiti ("Official Gazette of Montenegro ", No. 3/2016, 39/2016 and 2/2017). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={10D9933D-9C3C-42F0-8AE5-4BC122569042}>, <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={C00947CD-C299-40DA-BBE9-79D7F932DE3A}>

18 Law on patients rights ("Official Gazette of Montenegro, number 40/2010"). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B4D91C70D-3065-428D-A6FB-F11351E3DF65%7D>

19 Law on Health Insurance, Official Gazette of Montenegro 006/16. Art 16b. Available online at: [http://fzocg.me/docs/18/1.zakon\\_o\\_zdravstvenom\\_osiguranju.pdf](http://fzocg.me/docs/18/1.zakon_o_zdravstvenom_osiguranju.pdf)

20 Rulebook on identification of medical reasons for gender reassignment, ("Official Gazette of Montenegro ", No. 47/2014). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BF6A4E3A6-32E7-4A0E-94C3-76D1CFCEE87B%7D>

LGBT persons' health care is also a separate topic within the *Strategy for improvement of LGBT people's life quality for 2013-2018*<sup>21</sup>. The strategy defines strategic goals and program measures in the area of health care and clearly underlines improvement of the health care system in terms of accessibility, service quality and education of health care providers in relation to LGBT persons. Special emphasis is put on the improvement of trans specific health services, as well as trans persons' knowledgeability on health care system functioning.

In relation to human rights of LGBT people, there is still no adequate legal solutions within the national legal framework for two crucial issues that have influence on cases of persons deprived of their liberty, which include: recognition of civil partnerships of same-sex partners, as well as legal gender recognition for transgender persons.

The Constitution of Montenegro recognizes that "marriage can be made only with the free consent of a man and a woman", therefore, same-sex partnerships are still not legally recognized. However, the proposal of the **Law on Registered Partnership** proposed by NGOs "Juventas", Institute for Legal Studies and LGBTIQ Association "Queer Montenegro", recognizes the possibility of entering into civil partnership regardless of sex, which among other things allows a certain range of rights to same-sex partners in all areas of social life, equating them with marital and common law partnerships, except in the right to adopt children and the right to asylum.

In terms of legal gender recognition the Law on Civil Registers<sup>22</sup> and its Article 6 regulates the ability to modify the registry of births when it comes to "change of sex", or alteration of personal data of transgender persons. Article 14 of the same Law stipulates that the data entered into the civil registry, can be altered, amended or erased on the basis of executive, i.e. final decision of the authority competent to decide on the amendment of a personal state. The procedures and criteria for deciding are not prescribed with bylaws, or any legal text, which leaves a legal void regarding the application of Article 6 of the Law on Civic Registers in case of changing the register due to "gender reassignment".

Article 9 of the **Law on Personal Name**<sup>23</sup> stipulates the possibility of changing personal name by request of a Montenegrin citizen. This provision, although vague, gives the possibility of a name change to transgender persons, which can lead to a situation where transgender people have their desired name in personal documents, while gender mark remains the same, due to being impossible to change. Lack of adequate legislation that would allow transgender people to change their personal names and gender marks without medical interventions as a precondition, puts trans people at a disadvantaged position and an increased risk of discrimination, both in society as well as in the system.

For this reason, it would be of great importance for the legal recognition of transgender people's gender the adoption of the Law on gender and sexual identity, also presented by NGOs Juventas, Institute for Legal Studies and LGBTIQ Association "Queer Montenegro", which provides the possibility to trans people to change the gender mark in their personal documents without requiring any medical intervention as a precondition for legal gender recognition, therefore respect for their human rights and freedoms.

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21 Strategy for improvement of LGBT people's life quality for 2013-2018, Ministry of Human and Minority Rights, 2013. Available online at: <http://www.minmanj.gov.me/ResourceManager/FileDownload.aspx?rid=130140&rType=2&file=LGBT%20Strategija%20i%20AP.pdf>

22 Law on Civil Registers, ("Official Gazette of Montenegro", No. 47 /2008, 41/10, 40/11, 55/16). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B955FAEDA-E3ED-460E-835F-9A568EA85863%7D> ;

23 Law on personal name, ("Official Gazette of Montenegro", No. 47 /2008, 40/11, 55/16). Available online at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7B439BDF19-1C13-4332-B25A-61BAE411099F%7D>

The Protector of Human Rights and Freedoms has an important role in the protection against discrimination and its' work is regulated by the **Law on the Protector Human Rights and Freedoms**<sup>24</sup>. In its Article 2 the Law defines the following:

“The protector, individually and independently, based on principles of justice and fairness, undertakes measures to protect human rights and freedoms when the same are violated by a document, action or inaction of state authorities, state administration, local authorities and local government, public services and other public power holders (hereinafter: authorities), as well as measures to prevent torture and other forms of inhumane or degrading treatment and punishment and measures for protection of discrimination. “

Special authorities of the Protector of Human Rights and Freedoms in relation to persons deprived of their liberty are regulated through Articles 24 and 25:

*„Article 24*

*The Protector, Deputy, as well as the Chief Advisor of the Protector and Advisor authorized by the Protector has the right to:*

- *- inspect premises in authorities, organizations, institutions and other places where there is or may be a person deprived of its liberty without prior notification;*
- *- visit the person deprived of its liberty and verify respect of its rights, without prior notification and approval;*
- *- talk to the person deprived of liberty, as well as the other persons for whom believes that can provide necessary information, in the absence of an official or other persons, personally or through an interpreter.*

*Article 25*

*Protector performs the tasks of the National Preventive Mechanism for the protection of persons deprived of liberty from torture and other forms of cruel, inhumane or degrading treatment or punishment (hereinafter tasks of torture prevention), in accordance with the law and Optional protocol to the Convention against torture and other cruel, non-human or degrading treatment and punishment.*

*In order to perform certain tasks of torture prevention which find specialized knowledge necessary, the Protector will establish a working group of experts in relevant fields.*

*Act on establishing working bodies referred to in paragraph 2 of this Article shall determine the tasks and manner of operation of this body. “*

*Protector’s role in upholding human rights and freedoms of persons deprived of liberty, particularly LGBT people whose human rights are often violated in different levels in society, system, and therefore in the prison systems which are characterized by the existence of a higher level of discrimination and violence than in the general community is of paramount importance, and means additional efforts in order to create conditions that will completely provide adequate stay of prisoners in a closed system and an effective reintegration into society after serving a prison sentence.*

<sup>24</sup> Law on the protector of human rights and freedoms of Montenegro ("Official Gazette of Montenegro", No. 42/2011 and 32/2014). Available online at: [http://www.ombudsman.co.me/docs/Zakon\\_o\\_zastitniku\\_ci\\_ljudskih\\_prava\\_i\\_sloboda\\_Crne\\_Gore.pdf](http://www.ombudsman.co.me/docs/Zakon_o_zastitniku_ci_ljudskih_prava_i_sloboda_Crne_Gore.pdf)

## THE ANALYSIS OF THE EXISTING SITUATION IN THE INSTITUTE FOR EXECUTION OF CRIMINAL SANCTIONS

When it comes to the rights and treatment of LGBT people in the IECS, the analysis showed that there are no regulations that deal with the topic of human rights of LGBT people, nor their protection. In an interview with the employees of IECS we noted lack of information on general issues related to LGBT people, as well as lack of information on the existence of cases of LGBT prisoners. In providing pieces of information, legal service pointed out the fact that sexual relations between prisoners are no longer prohibited and are not a subject to disciplinary action, assuming that in prison wards, where prisoners of the same sex are housed, there will be no cases of sexual relations between same sex partners. Removing the ban on sexual relations between prisoners is the beginning of a good practice, considering that the prohibition of this type further stigmatizes LGBT persons in closed systems. On the other hand, the invisibility of LGBT people and lack of clear information on the existence of such cases also indicates a high risk of discrimination and violence against LGBT persons in prisons, and therefore failure to report and prosecute them.

Given the current situation and the lack of legislation to regulate the mechanisms for the protection of LGBT people in prison from further discrimination and violence, it is necessary to create a protocol that would ensure adequate protection mechanisms, after which it is of utmost importance to make an additional effort for their implementation so that all prisoners will be treated humanely with full respect of their human dignity and integrity. In implementers of the program we can say we recognize the willingness to cooperate and to consider the introduction of a program for people who are gender non-conforming, who are considered to be vulnerable members of the community in order to protect themselves from violence and various forms of discrimination and safeguard their human rights.

Starting points for the analysis of the current situation were current international standards when it comes to treatment of LGBT persons in prison systems, as well as general national legal documents that concern all citizens of Montenegro, regardless of sexual orientation and gender identity.

The analysis was carried out in several areas that need to be regulated when it comes to respect for human rights and treatment of LGBT people in prison systems, including measures to protect against discrimination and violence, access to adequate health care, housing, prison treatment that involves searches as well as fulfilment of certain rights in relation to gender identity, visits and benefits.

## MEASURES OF PROTECTION AGAINST DISCRIMINATION AND VIOLENCE

Although national legal framework guarantees protection from discrimination based on sexual orientation and gender identity, taking into account the specificity of the prison system, but also the overall issue of LGBT human rights in prison, the analysis showed that in the Institute for Execution of Criminal Sanctions there are no regulations that lay down measures of protection for LGBT people from discrimination, violence and sexual harassment. Taking into account the fact that LGBT people continue to suffer discrimination and violence largely outside the prison system, and that these phenomena are often intensified in the prison, it is necessary to pay special attention to measures for protection of LGBT persons from further violence.

With regard to prison system **European Prison Rules** proscribe the following:

*„25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.“*

In addition, Montenegrin national legal framework, through Constitution and Law Against Discrimination, recognizes the need for special measures of protection against discrimination of particularly vulnerable groups. Therefore, the introduction of special measures for protection from discrimination and violence against LGBT persons in prison would be of great importance for ensuring safe staying conditions for LGBT people during their imprisonment.

**In creating measures of protection from discrimination and violence, special attention should be paid to forecasting education and training of the staff, but prisoners as well on general issues related to LGBT persons, their human rights, adequate treatment in prison, so that this vulnerable group was less exposed to negative experiences in the prison system and given the opportunity for more efficient social reintegration after the execution of the prison sentence.**



## HEALTH PROTECTION

Prisoners are entitled to health care in accordance with Montenegrin law. The **Law on the Execution of Prison Sentences, Fines and Security Measures**, and its Article 47 stipulates that “A prisoner has the right to health care in accordance with the law. Rights of prisoners in relation to exercising care are defined by the law regulating the rights of patients. “

**Law on Health Care** stipulates “the right to health care in accordance to the highest attainable standard of health and achievements of modern medical theory and practice” (Article 4) and guarantees that “in exercising the right to health care, all citizens are equal, regardless of their nationality, race, sex, gender identity, sexual orientation, age, disability, language, religion, education, social background, financial status and other personal characteristics, in accordance with the law. “(Article 5). According to the Law on Health Care, the budget of Montenegro provides for “health care of persons who are serving a prison sentence, people who were given the security measure of compulsory psychiatric treatment and custody in a medical institution, the measure of mandatory treatment of alcoholics and the measure of compulsory treatment of drug addicts “(Article 17).

**Adequate and accessible health care is especially important when you vulnerable groups are in question, such as LGBT persons in prisons, especially taking into account the degree of risk of discrimination and physical, psychological and sexual violence. The risk of different types of violence, can expose LGBT people to an increased risk of blood-borne infections such as HIV and Hepatitis. In this regard, it is important to provide preventive protection measures, such as condoms and sterile needles and syringes, and provide voluntary and confidential testing for HIV and Hepatitis, while fully respecting privacy when communicating test results and further storage of information on prisoners’ health status.**

The issue of health care, specifically in case of transgender persons and availability of gender reassignment interventions. In accordance with the **Law on Health Insurance**, Article 16b<sup>25</sup>, out of recourses from the compulsory health insurance persons insured are provided 80% of costs for health service of gender reassignment for medical reasons.

In Montenegro, there are experts who carry out psychological assessment of transgender people in order to access the gender reassignment process and an endocrinologist who administers hormone therapy. However, the surgical team that performs surgeries does not exist. Legal department of the IECS provided an information according to which it would be necessary for a transgender person, deprived of its liberty and wanting to access health services, to acquire a decision on stopping the execution of a prison sentence in order to be referred to a treatment outside Montenegro, especially when taking into account the fact that the Health Fund has concluded a contract for the performance of gender reassignment interventions with a clinic in Belgrade.

**Law on the Execution of Prison Sentences, Fines and Security Measures**, Article 47 regulates the way health care of persons deprived of their liberty can be exercised in the absence of the same in Montenegro:

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<sup>25</sup> Law on Health Insurance, Official Gazette of Montenegro 006/16. Article 16b. Available online at: [http://fzocg.me/docs/18/1.zakon\\_o\\_zdravstvenom\\_osiguranju.pdf](http://fzocg.me/docs/18/1.zakon_o_zdravstvenom_osiguranju.pdf)

“Prisoner that cannot exercise the right to health care in the Institute, can exercise it in a medical institution, in accordance with the law.

Time spent on treatment outside the Institute, shall be included in the time of prison sentence execution or a forty years prison sentence, except in cases of sentence execution interruption, in accordance with this law. “

Law on the Execution of Prison Sentences, Fines and Security Measures, Article 36:

“In a case where a prisoner submitted a request for the interruption of a prison sentence execution or a forty years prison sentence, an opinion of the Institute’s manager is to be obtained, and if the interruption is requested due to medical treatment, findings and opinion of medical experts shall be submitted.

*The costs of expertise referred to in paragraph 5 of this Article shall be covered by the prisoner. “*

*Rule 24 of the revised Rules on the Minimum Standards:*

*“1. Providing health care to prisoners is the responsibility of the state. Prisoners should enjoy the same standards of health care available in the community, and should have access to special health services for free, without discrimination on the basis of their legal status.*

*2. Providing health services should be organized in close connection with the general system of public health, and in a manner that ensures continuity of treatment and care, including HIV, tuberculosis and other infectious diseases, as well as substance abuse.*

In accordance with this rule and CPT recommendations from the Report<sup>26</sup> to the Austrian Government on the visit to Austria in 2015, by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, **it is required that national authorities take the necessary steps to ensure that transgender persons in prisons (and, when necessary, in other closed institutions) have access to assessment and treatment of issues related to gender identity and, if they wish, existing legal procedures of gender reassignment.**

**In accordance with the opinion of the CPT, persons deprived of their liberty should not be excluded from the possibility of using these treatments and legal procedures, which are required by the Ordinance on determining medical reasons for gender reassignment for transgender persons in Montenegro.**

**Furthermore, the CPT stressed that it is necessary to adopt and implement policies and strategies to combat discrimination and exclusion faced by transgender persons in closed institutions<sup>24</sup>.**

**Particular attention should be paid to preserving mental health of LGBT people in prison throughout the provision of adequate psychological support to all LGBT people who are serving a prison sentence, who express the need for the same, given the discrimination and/or violence which they encounter outside prison, and intensified stress they may encounter in prison while serving their sentence. This psychological support should be provided by the educated and sensitized staff, and should consider establishing a system and group psychological support which \ could emphasize joint empowerment of LGBT people in prison.**

<sup>26</sup> Council of Europe. Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2015:34. Available online at: [www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf](http://www.cpt.coe.int/documents/aut/2015-34-inf-eng.pdf)

## ADMISSION AND ACCOMMODATION IN PRISON

Admission and accommodation of transgender persons deprived of their liberty is another specific question in the prison system.

Employees in the Legal department of IECS provided the information that transgender persons are treated like any other person, in accordance with the gender mark in their personal documents. This is especially important when taking into account the information that there were cases of trans people whose gender expression was not in line with the gender mark in their documents, which often causes confusion among police officers, as well as additional discrimination due to ignorance about the proper course of conduct in a given situation.

**Law on Execution of Prison Sentences, Fines and Security Measures**, Article 22 defines means of identification of a person deprived of liberty, which is especially important when considering transgender persons who have not undergone gender reassignment surgical procedures, therefore having gender mark on their identity documents contrary to their gender identity.

*“When reporting to the execution of a prison sentence or a forty years prison sentence the identity and medical condition of the person convicted are being determined. A convicted person is identified on the basis of an identity card, passport or any other document from which one can determine the identity, finger and palm prints, photographing, **external physical characteristics and measures of body weight and height.**”*

*It is unknown whether in cases of transgender persons deprived of their liberty, physical characteristics are being examined and in what way, which leaves room for further stigmatization of trans people and violation of personal dignity and integrity.*

**House Rules of the Institute for the Execution of Criminal Sanctions**, Article 3 further provides that:

*“In case one cannot determine the identity, a convicted person will be placed in a special room in the organizational unit of the Institute in which a prison sentence and a forty years prison sentence is being executed, on which the managing authority in charge for police matters is being informed about.”*

**Rule 7 of the Rules on minimum standards for the treatment of prisoners of the United Nations<sup>27</sup>** provides:

No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:

(a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;

*Law on Execution of Prison Sentences, Fines and Security Measures, Article 27:*

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<sup>27</sup> United Nations, Economic and Social Council, Commission on Crime Prevention and Criminal Justice. United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015. Available online at: [https://www.unodc.org/documents/justice-and-prison-reform/Brochure\\_on\\_the\\_UN\\_SMRs.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf)

*“A prisoner is serving a sentence of imprisonment or imprisonment of forty years, as a rule, together with other prisoners, and separately only when required by his condition, when it is prescribed by law or in a case where a prisoner enjoys protection under the witness protection program, prescribed by a special law. Male and female prisoners are separated in serving imprisonment or imprisonment of forty years.*

During the accommodation of prisoners certain characteristics are taken into account: prisoners’ age, sentence length, previous convictions, physical and mental health, requirements for special treatment, permanent or temporary residence of the immediate family, his safety and the safety of other prisoners, as well as other circumstances relevant for the re-socialization and reintegration into the society.”

This article of the Law should be taken into account as a way to enable the accommodation of transgender prisoners in male or female facilities, depending on their choice, taking into account various factors such as individual’s own perception of security, gender identity of the person, risks to safety by other prisoners, mental health, institutional history (existing victimization or potentially violent behavior), the opinion of experts in the field of mental health, and other security and other factors.<sup>28</sup>

In defining the placement of prisoners, the Law is not taking into account the specificity of accommodation of transgender persons. However, it should take into account the specificity of gender expression of trans people, as well as possible high degree violence in a closed system, especially in terms of trans women located in the male prison ward, which for them often means almost certain physical and/or sexual violence by other prisoners.

**Accommodation of transgender people in prison systems is a very complex issue, which requires an individual approach and thorough examination, not only in order to respect the gender identity of trans people, but also to develop mechanisms to preserve their security and the protection of their physical and mental health. The issue of accommodation is an important issue for all LGBT prisoners, with the need to pay special attention on them not being placed in rooms with other prisoners showing an increased risk of violent behavior in relation to sexual orientation or gender identity of the person.**

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28 National Center for Transgender Equality, Standing with LGBT prisoners: An Advocate’s Guide for Ending Abuse and Combating Imprisonment. 2013. Available online at: <https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/566ca02705f8e2cb2d77d537/1449959463528/NCTE-Standing-with-LGBT-Prisoners.pdf>

## TREATMENT IN PRISON

As far as searches are concerned, Legal Department of the IECS referred us to the **Law on the execution of prison sentences, fines and security measures**, Article 24, under which:

“The search referred to in paragraph 1 of this Article, is being performed by a security officer of the same sex as the prisoner. In the event of a suspicion that the prisoner, referred to in paragraph 1 of this Article, keeps things whose possession and use are not allowed in prison in its body orifices, the search will involve removing of clothes and the examination of body orifices. This examinations can be performed only by the **prison doctor or a qualified nurse**. “

*Law on Execution of Prison Sentences, Fines and Security Measures, Article 87:*

*“In a case where there is a threat to security and order in the prison as well as in other justified cases, when it is deemed necessary, a search of a prisoner, his stuff and premises in which resides can be performed.*

*In a case where there is a suspicion that a prisoner keeps things whose possession and use are not allowed in prison in its body orifices, the search involves removing clothes and the examination of the orifices.*

***During the search, the respect for the dignity of prisoners is being taken care of.***

*An official note on the search shall be made and submitted to the manager of the prison.”*

This regulation does not recognize transgender prisoners, as it can happen that during the search trans people are not recognized in accordance with their gender identity, but in accordance with the gender mark in their personal documents or perceived sex, which leads to the situation where, for example, trans woman is being searched by male staff. Such cases should just be an incentive to the prison management to develop and implement specific policies for search of transgender prisoners.<sup>29</sup>

### ***Rule 51 of the Revised Rules on Minimum Standards***

*„Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy.“*

It is crucial that searches are not made on a discriminatory basis, and that the manner of conducting them is standardized. Searches solely for the purpose of determining sex of gender non-conforming prisoners are inadmissible.

Rule 51 of the revised Rules on Minimum Standards for the Treatment of Prisoners also applies to mandatory record keeping on searches in prisons - an insight into the records could be particularly be helpful in identifying discriminatory treatment.

Pursuant to Article 87 of the Law on the Execution of Prison Sentences, Fines and Security measures, all officers in the IECS are required to keep records of all searches. Legal Department gave an information according to which all employees are encouraged to record searches properly, but they cannot say with certainty that all the procedure are followed.

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<sup>29</sup> Association for the Prevention of Torture, Penal Reform International. LGBTI persons deprived their liberty: a framework for preventive monitoring, 2015. Available online at:[http://www.appt.ch/content/files\\_res/thematic-paper-3\\_lgbti-persons-deprived-of-their-liberty-en.pdf](http://www.appt.ch/content/files_res/thematic-paper-3_lgbti-persons-deprived-of-their-liberty-en.pdf)

## VISITATION AND BENEFITS

Marital and extramarital visits, as well as benefits related to the partners of persons deprived of their liberty, are of great importance for partners of different sexes, but also same-sex partners. In doing the analysis IECS's Legal Department explained that there were no cases of allowing unmarried same-sex partners to visit their partners, and that they cannot say with full certainty that such visits would be allowed.

Family visits by the spouse or common-law partner are regulated by the **Law on Execution of Prison Sentences, Fines and Security Measures, Article 74:**

*„A prisoner has the right to a family visit by the spouse or a common law partner and children, that is performed in a separate room intended for such purpose, without supervision and once in a month for up to three hours.“*

The issue of same-sex partners is also important in the case of granting benefits. The benefits are regulated by Article 31 of the Law on Execution of Prison Sentences, Fines and Security Measures:

“To improve the position of prisoners, maintaining relationships with close family members and other persons, to encourage participation in treatment programs and reintegration of prisoners and strengthening of responsibility and self-confidence, a prisoner may realize certain benefits.” These benefits among others things include: a longer visit of an immediate family member, visit to a seriously ill family member, presence at a funeral of an immediate family member, which may include same-sex partners. Although the national legal framework, still doesn't cover the issue of same-sex partners, the recognition of LGBT people in protocols of the Institute for Execution of Criminal Sanctions, and the creation of clear rules that allow extramarital visits and benefits to LGBT people, is of great significance for their mental health while in prison and social reintegration after serving the sentence.

## RECOMMENDATIONS

1. Enable LGBT prisoners' access to protection from discrimination and violence by other prisoners in a way that will most effectively guarantee their safety without restriction of their rights and smooth implementation of activities within the prison. The protection of LGBT people can be enabled through creation of a clear protocol to treat human rights and treatment of LGBT people in prison.
2. **Forsee creating and implementation of policies concerning fight against discrimination and exclusion of trans persons in closed institutions within the new National Strategy for the improvement of LGBT people's life quality.**
3. Track the level of LGBT people's human rights protection and their exposure to discrimination through researches on attitudes and experiences of prisoners and prison staff.
4. **Include the question of LGBT prisoners into report of the National Prevention Mechanism (NPM).**
5. Provide LGBT issues related trainings for IECS employees with a special emphasis on the treatment service. Themes that these trainings should include are the following: general issues related to LGBT persons, human rights, and adequate treatment in prison, in order for this group to be exposed to negative experiences in the prison system the least possible and to have the opportunity for the most efficient social reintegration upon serving prison sentence.
6. Provide continuous sensitization of prisoners in relation to human rights and treatment of LGBT persons in prison.
7. **Special attention should be paid on preserving mental health of LGBT persons in prison through provision of adequate psychological support to all LGBT persons that are serving prison sentences and express the need for it, having in mind discrimination and/or violence they experienced outside prison as well as intensified stress level they may have during prison sentence serving. This psychological support should be given by educated and sensitized staff, while setting up of a group psychological support ought to be considered as a possibility within which it can be worked on joint empowerment of LGBT persons inside prison.**
8. It is necessary to provide health care services LGBT persons in prison, equivalent in quality to health care services available in the community. Special emphasis should be placed on continuous implementation of blood transmitted infections' prevention, emphasizing HIV and Hepatitis C, by distributing free condoms and continuous training to prisoners on ways these infections are transmitted.
9. It is necessary to provide access to adequate and continuous trans-specific health care for transgender prisoners, which includes psychological evaluation and treatment, hormone therapy, as well as smooth referral to treatment outside Montenegro, in cases of surgical gender reassignment interventions.
10. Provide safe accommodation of LGBT prisoners to protect them from further discrimination and violence. When accommodating LGBT prisoners, special attention should be paid for these persons not to be placed with prisoners showing an increased risk of violent behavior in relation to sexual orientation or gender identity.

- 11.** In determining accommodation for transgender people, their gender identity should be taken into account as a basis for classification, as well as the very wishes of the person in accordance with the risk of experiencing violence and discrimination. Placement of transgender persons according to gender (especially trans women in a male prison) can lead to situations of higher risk of discrimination, physical and/or sexual violence.
- 12.** Placement of transgender prisoners has to be observed exclusively as an individual matter and in accordance with the needs and wishes of prisoners, given the complexity of the issues. This is particularly important, due to the fact that not all trans people undergo gender reassignment surgeries, while their appearance depending on the transition itself can correlate to varying degrees with the social perception of their gender identity. Therefore, some trans people will look completely in line with their gender identity, rather than biological sex, while some may seem unconventional, which leaves them more vulnerable to violence and discrimination.
- 13.** It is important that in the issues of accommodation there is no discrimination based on sexual orientation and gender identity. It is necessary to adopt the Law on Gender Identity as soon as possible in order to implement this recommendation as it is the only way which will enable legal gender recognition to trans persons without requiring medical interventions and mental health related diagnosis.
- 14.** Provide transgender prisoners the choice of gender the officer performing the search belongs to in order to minimally disturb personal dignity. Strictly prohibit strip search of transgender prisoners for the purpose of establishing identity.
- 15.** Allow visits to same-sex partners in prison in the same way and in the same quantity as to heterosexual prisoners. It is necessary to adopt the Law on Registered Partnership in order to implement this recommendation as it is the only way which will enable legal recognition of same sex partners' unions.