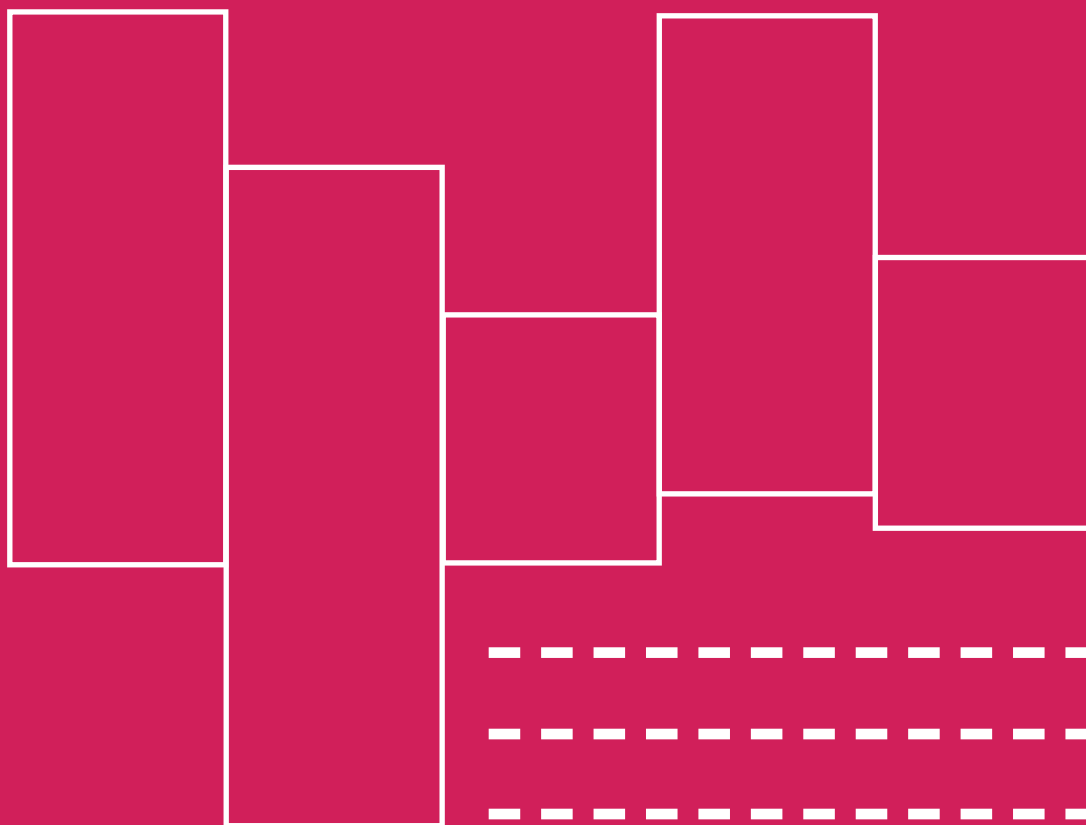


GRASP THE TRUTH BASED ON FACTS!

Report on hate-motivated incidents against LGBT + people in Serbia from January 2017 to June 2020



Miloš Kovačević, Nikola Planojević



Kingdom of the Netherlands



This project is funded by The European Union.



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TABLE OF ABBREVIATIONS

ECHR	European Court for Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ADL	Anti-Discrimination Law
LPOP	Law on Public Order and Peace
CPC	Criminal Procedure Code
LP	Law on Police
CC	Criminal Code of the Republic of Serbia
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
CRS	Constitutions of the Republic of Serbia

SUMMARY OF TERMS

Asexual

An adjective describing people who do not experience sexual attraction (asexual people). A person can also be aromantic, implying a person who experiences no romantic attraction.

Bisexuality

A bisexual person is the one who is able to form long-lasting emotional, physical and romantic relationships with people of the same and opposite sex. Over the course of their lives, bisexual people may experience variations in terms of the sex they are attracted to and to what extent.

Biphobia

Intolerance, aversion and prejudice towards bisexual people.

Gay

An adjective used to describe people who are attracted to members of the same sex in physical, emotional, and romantic sense (gay men, gay people). Though used for women as well, the term lesbian is the preferred one (the adjective is lesbian). The use of the adjective “homosexual” should be avoided, which in the eyes of many gay people and lesbians, is considered anachronistic and offensive..

Hate speech

Forms of expression motivated by hostility, or demonstrating and/or encouraging hostility towards a certain group, or towards a person because of their belonging to a certain group. Since hate speech can encourage or accompany hate crimes, these two concepts are interrelated.

Offences against property

- Each attack aimed at destroying property, which is not life-threatening. This also implies writing offensive slogans or symbols, placing stickers or posters, graffiti or any other damage to the property, where the property appears to be specifically targeted due to the fact that there is a perception of a connection between the owner and the queer community.
- Damage to cars or other personal property of members of the queer community, in cases where it is obvious that they were targeted for that very reason.

Documenting

The term documenting may have different meanings depending on the geographical context and / or the scope of its application. It is important to emphasize that documenting is a process that involves different steps, which can vary depending on the purpose of documenting. In general, documenting is a process of organizing and classifying collected data so that it is available both short-term and long-term. This implies the classification of the collected data according to certain criteria (such as the profile of offenders/perpetrators, categories of incidents, indicators of prejudice). Documenting also makes the data available and provides opportunities for analysis. Data analysis involves processing statistical data and creating charts and tables to have the outcomes as visible as possible. Proper documenting poses the foundation for proper reporting and dissemination to relevant stakeholders (national authorities, European / international institutions, human rights institutions, etc.), who can then take further action. Proper documenting may also be used for the design of effective advocacy tools that support the change of views and opinions.

Recording hate-motivated incidents

In the context of recording hate-motivated incidents, this term implies that the police or civil society organizations keep records or minutes of all experienced and reported hate crimes and/or incidents.. This also implies recording key information related to these incidents, e.g. when something happened and the accompanying description of the event.

Hate crimes

Hate crimes are criminal offences motivated by prejudice against certain groups of people. They can be based, among other things, on gender identity and sexual orientation.

Hate crimes comprise two different elements.

- it is an offense constituting a criminal offense under criminal law, regardless of the perpetrator's motivation, and
- a crime, the commission of which is based on the perpetrator's prejudice.

Therefore, the perpetrator of a hate crime chooses the victim based on the affiliation or perception that the victim belong to a certain group. Where the crime involves damage to property, the property is chosen on the basis of its connection to the victim and may include locations for the gathering of religious groups, community center activities, vehicles, or family homes.

Intersex

A comprehensive term referring to all persons born with reproductive organs and/or chromosomes (sexual characteristics) that cannot be classified as strictly male or female. These variations are often classified as variations in sexual development (DSD-differences in sexual development). The use of the anachronistic and offensive term "hermaphrodite" should be avoided. Although some people born as intersex people can also be transgender, these pose separate phenomena and should not be confused.

Hate-motivated incidents

The term is used to describe actions motivated by prejudices that range from those that are only offensive to those that represent actual criminal offences. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany, or provide a context for hate crimes.

Queer

An adjective used by certain, mostly younger people, whose sexual orientation is not strictly heterosexual (e.g. queer persons or a queer women). These people see the traditional terms such as lesbian, gay, and bisexual as limiting or too related to the widespread cultural connotations that do not apply to them personally. Some people use the term queer or gender queer to describe their gender identity or gender expression. This term was once considered derogatory, but within a contemporary context, part of the community has taken it over and "purified" it from the negative connotations, but it is still not a universally accepted term within the LGBT + community. When at the end of LGBT acronym, a Q appears, it usually denotes the term queer, although it rarely implies people who are still

exploring and questioning their sexuality. In this context, the term “queer” is used as an umbrella term for all persons of a sexual orientation different from heterosexual, and a gender identity and expression other from cisgender, and as such, in this context should be different from the above specified use of the term.

LGBT+

An acronym denoting lesbian, gay, bisexual, trans and all other people whose sexual orientation is different from straight and whose gender identity is different from the cisgender.

Lesbian

A woman experiencing a long-term attraction for other women, in both emotional, physical and romantic sense. Some lesbians prefer to be identified by the word gay (gay women). The use of the term “homosexual” should be avoided, when describing lesbian, since it is deemed offensive.

Monitoring

A broad term describing an active collection, verification and use of information on human rights issues over a period of time. Human rights monitoring includes monitoring and gathering information on incidents and events (elections, trials, demonstrations, etc.). Monitoring includes a time component because it generally happens over a longer period of time. In the specific context of hate crimes, the purpose of monitoring is to document hate-motivated violence and to draw the attention of authorities or international organizations to human rights violations. Finally, monitoring aims to gather sufficient evidence of hate crimes to convince the government and the public that something needs to be done to improve the human rights situation of vulnerable groups. Monitoring is also implemented to ensure that government officials comply with laws, guidelines or agreements. Also, monitoring can present the trends over a period of time.

Survivor’s perception

The perception of the survivor (or a witness) is the decisive factor in determining whether an incident should be investigated as a hate-motivated incident. No presumption implying a lack of motivation as a cause of an incident should prevent a hate-motivated incident from being reported, should the survivor or a witness point to the possibility of such a view. The survivor of a homophobic or transphobic hate

crime or incident does not have to be a member of the queer community. For example, a heterosexual person verbally abused when leaving a gay bar has every right to think that the attack is motivated by homophobia, even though he / she is not part of the LGBT + community. The decisive factor lies in the perception of the survivor or a witness.

Prejudice indicators

Criteria that can assist law enforcement professionals in determining whether a particular incident was committed out of hatred. These criteria are not comprehensive and each case must be examined in relation to specific facts and circumstances.

Survivor of a homophobic or transphobic hate-crime/incident

The survivor of a hate incident / crime is a person who has suffered an incident, which may or may not be a criminal offense, and which the survivor or any other person considers motivated by prejudice or hatred based on his / her sexual orientation, gender identity and / or gender expression. The terms “female survivor”, i.e. “male survivor”, will be used in the text to replace the term “victim” or the “injured party”. The term “male/female survivor” has been chosen as the most suitable translation of the English word “survivor”, which is most often used in lieu of the word “victim”. This language change draws attention to the active role of persons who have suffered violence and / or discrimination in combating the consequences of an incident that is insufficiently highlighted in terms that are predominantly used for persons who have suffered violence and / or discrimination.

Secondary victimization

When a person who has suffered a hate crime, notices a lack of commitment or understanding in the police response, it can have the effect of secondary victimization.

Transgender

The terms “transgender person” or “trans person” are used to describe a person whose gender identity or gender expression differs from the gender ascribed to them at birth. Trans * (with asterisk) is a recent term that encompasses the diversity of experiences within trans communities and functions as an umbrella term for different types of trans identities; trans (without asterisk), most precisely refers to trans women and trans men, while asterisk refers to a special trait in the effort

to include all non-cisgender identities, including transgender, transsexual persons, transvestites, genderqueer persons, gender fluid, gender nonconforming, persons playing with gender, agender, third gender, two-spirit (refers to North American natives who play one or more mixed gender roles that can traditionally be found in many American and Canadian natives).

Transsexuality

A transsexual person is a person whose gender identity corresponds to a gender other than that attributed to them at birth. The term is often associated with those people who are going through or who want to go through a medical transition, so in medical literature we often come across the terms MtF (from male to female, male to female, Eng. MtF) and FtM (from female to male, female to male, Eng. FtM).

Transphobia

Intolerance, aversion and prejudice towards trans persons.

Physical attack

- Any attack on a person that can potentially cause serious physical injury.
- Attack with a weapon or any other object that may cause injuries.
- Each and every physical attack on a person or a group, which does not pose a threat to their lives or is not severe. These include milder forms of attacks.
- Unsuccessful attempts of attacks in the course of self-defense or escape of a survivor.
- Throwing objects at a person or group, including cases where the object misses the target.

Heterosexual

A term used to describe persons whose physical, romantic and emotional attraction is directed towards persons of the opposite sex. The term “straight” is also used.

Homophobia

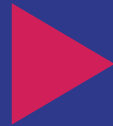
Intolerance, aversion and prejudice towards gays and lesbians.

Cisgender

A cisgender person, cisgender, cis is a term used to describe persons who are not trans, i.e. whose gender is ascribed to them at birth in accordance with their sense of self. Originating from Latin and means “from this side”, it is used in the same way as heterosexual (heterosexuality, heterosexual person) which refers to persons who are not of homosexual orientation.

Coming out

A lifelong process of accepting one’s LGBT + identity and revealing it to the others. An outed person or a person who is out, who openly shows his/her sexual orientation and/or gender identity in his/her personal, public and professional life.



INTRODUCTION



Our safety, most commonly understood as the prevention of attacks on physical integrity, is not acquired by merely surrendering to the willfulness of the authorities in exchange for the illusory guarantee that they will protect us from any risk of aggression. On the contrary, the security of citizens stems from the protection of the law from any kind of abuse of power, be it by individuals or public officials. The security imperative, on which the modern legal order is founded on, implies strict legal equality of individuals, regardless of their position in the society. Far from justifying the omnipotence of the government, it implies its subjection to the law and, consequently, the effective protection of the most vulnerable groups.

The democratic strength of a legal system is measured by its ability to function without interest, i.e. to guarantee the protection of the law, to those who, in individual cases or systematically, do not possess any other economic, social and cultural resources for the protection of their interests. To that end, the decisive indicator is the destiny intended for those who, like the queer¹ community, find themselves in a situation of economic and social vulnerability. The level of legal protection of vulnerable citizens can either strengthen or weaken the security of each individual. The greater the incentive for the authorities to respect the rights of queer people, the more they will be in favor of respecting the rights of those citizens who are in a better position to demand them. The same applies vice versa - the weaker the protection of the queer community, more easily will it spill over on the others.

The report in front of you, is the result of the work of the Association *Da se zna!* on the monitoring and documenting illegal actions motivated by hatred towards queer persons or, in other words, illegal actions motivated by prejudice towards actual or presumed sexual orientation, gender identity and gender expression (SOGIE)² of the survivor³. The first part of the report consists of a quantitative analysis of illegal actions motivated by SOGIE, in the period from January 1 to December 31, 2019 in Serbia, as well as individual descriptions of cases of physical violence, threats, vandalism and destruction of property. The central part of the report is a quantitative analysis of the competent authorities of the SOGIE motivated illegal actions, reported by a survivor in the period from January 1, 2017 to June 30, 2020 and the reaction of the criminal justice system. The final part of the report consists of five case studies motivated by SOGIE, in which the prosecution of the

1 In this context, the term “queer” is used as an umbrella term for all persons of different sexual orientation from heterosexual, and different gender identity and expression from cisgender

2 For the terms: sexual orientation, gender identity and gender expression, the acronym SORI will be used in the text, based on the now established English acronym SOGIE (sexual orientation, gender identity and gender expression) for the stated personal characteristics.

3 The terms “female survivor”, i.e. “male survivor”, will be used in the text to replace the term “victim” or the “injured party”. The term “male/female survivor” has been chosen as the most suitable translation of the English word “survivor”, which is most often used in lieu of the word “victim”.

perpetrators has advanced the most and they are not necessarily related to the observed periods from the first and the central part of the report.

As for the quantitative part of the report, the term “illegal conduct” implies conduct prohibited by the Criminal Code⁴ (hereinafter: CC), the Law on Public Order and Peace⁵ (hereinafter: LPOR) and conduct prohibited by the Anti-Discrimination Law⁶, hereinafter referred to as: (ADL), with the exception of the discriminatory conduct inflicting damage to no specific individual or group, nor the entire queer community. The illegal conduct, not covered by the quantitative part of the report, primarily refers to hate speech delivered in the media, but also to institutional discrimination⁷.

Illegal conduct motivated by prejudice against the actual or presumed SOGIE survivor (hereinafter: “hate-motivated incidents” or just “incidents”) is a form of crime which the survivors, competent institutions and the general public are still not sufficiently informed about. As for the monitoring and documentation of hate-motivated incidents, two obstacles lie ahead: insufficient reporting, i.e. factors that discourage the survivor from reporting the incident to the competent authorities (under-reporting) and insufficient recognition of the perpetrator’s motives, i.e. factors that result in the incident not being recorded, as if motivated by prejudice against the SOGIE of the survivor (under-recording). Together, these two obstacles create a so-called “dark number”, i.e. the number of incidents that are either not reported at all or are reported, but mistakenly, remain unclassified by the authorities as hate-motivated incidents.

Serbia has neither developed a system for identifying cases of hate crimes, nor has it started reporting them transparently and unambiguously. The lack of official data on the prevalence of this form of crime reflects the unrealistic picture of policy makers, decision makers, but also the broader public about the severity of the problems faced by queer people in Serbia. Furthermore, one should have in mind

⁴ Krivični zakonik, . (Criminal Code, Official Gazette of RS, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

⁵ Zakon o javnom redu i miru, Službeni glasnik RS, br. 6/2016 i 24/2018. (Law on Public Order and Peace, Official Gazette of RS, nos. 6/2016 and 24/2018).

⁶ Zakon o zabrani diskriminacije, Službeni glasnik RS, br. 22/2009. (Law on Prohibition of Discrimination, Official Gazette of the Republic of Serbia, no. 22/2009).

⁷ Institutional discrimination arises as consequence of decision-making or application of practices of institutions that produce harmful consequences for members of certain groups. An example of institutional discrimination against LGB people from 2019 are the discriminatory provisions of the Rulebook on detailed conditions, criteria and manner of selection, testing and assessment of donors of reproductive cells and embryos of the Ministry of Health of the Republic of Serbia, which practically deny LGB people the right to be donors. Namely, a donor cannot be a person with a “history of homosexual relations” in the past five years. Such provision places homosexual relations in the context of diseases (medical history), and potential donors would be practically asked about their sexual orientation, which is contrary to the Law on Prohibition of Discrimination.

that insufficient recognition and insufficient reporting of hate-motivated incidents are related and that failure of the competent institutions to recognize the motive of the perpetrator of the incident, may further discourage the queer persons to report them.

The only official statistics are those provided by the Republic of Serbia to the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE). However, the statistics thus provided by the state, give a very limited overview of the actual prevalence of hate crimes. Therefore, the aim of this report is to provide a reliable, clear and unambiguous overview of the safety situation of the queer community and to contribute to determining the actual prevalence of hate-motivated incidents in the Republic of Serbia, as well as and above all, to inform the competent institutions, and the local and international public.

Given that this is the third year in a row that the Association “*Da se zna!*” has published a report on hate-motivated incidents in Serbia and that the data are mostly comparable, this report also indicates certain trends as to the level of safety of queer people in Serbia. However, it is necessary to approach the data from this publication with caution, since it is not a research conducted on a representative sample, but rather an annual report on hate-motivated incidents that the Association “*Da se zna!*” has information about. On the other hand, the advantage of this report in relation to quantitative research conducted with a large number of respondents on a similar topic, is that it is characterized by data of a higher degree of reliability. Namely, quantitative online research conducted on a large number of respondents usually does not include any verification of the obtained data. This means that the researchers solely rely on the self-assessment of the research respondents. Either as lack of information or appropriate vocabulary, the respondents sometimes may misqualify their experience. This is why it is very important for the collected data to undergo a form of verification by the researchers. In all incidents covered by this report, the accuracy of the incident’s qualification was verified by comparison with its description. Through conversations with the survivors who did not report the incident anonymously, it was possible to obtain additional information and specify the initial report.



METHODOLOGY

01. _____

02. _____

03. _____

04. _____

Since 2015, survivors and witnesses of hate-motivated incidents have been able to report cases to the *Da se zna!* Association, through three official channels: via e-mail, contact form and online questionnaires available on the association's website www.dasezna.lgbt. As part of the psychological support program, a group psychotherapy for queer people is organized every two weeks, and within the youth program, each month, young people have the opportunity to meet at various educational events. The queer community also gathers once a year, through the organization of a cultural and speech program during the Pride Week and the Pride Month. Through direct communication with members of the community at these and other similar meetings, team members gain knowledge about hate-motivated incidents. Owing to the strong presence on social networks, a number of incidents are reported to the Association this way as well. In addition to learning about incidents, the information obtained directly from the survivors and witnesses, there is a possibility for the civil society organizations to report hate-motivated incidents via the Association's website. Finally, media coverage of issues important for the queer community is monitored, as is media coverage of incidents motivated by SOGIE survivors. The media thus represent another channel through which information about a smaller number of incidents is obtained.

The online questionnaire through which survivors and witnesses of hate-motivated incidents can report cases to the Association *Da se zna!* is made up of four steps. The first consists of only one closed-ended question in which the person reporting the incident can choose whether to report it as a survivor or a witness and whether the incident being reported was committed against an individual or a group. Based on the answers obtained from these questions, the questions in further steps are adjusted. The second step consists of three closed-ended questions on sexual orientation, gender identity and the age of the survivor. The third step consists of four closed-ended questions and three open-ended questions about the incident itself (date, time, location, place, description of the incident, etc.), as well as questions about whether the incident was reported to the competent institutions. Depending on whether or not the incident was reported to the institutions, the final step is made up of closed questions about the reaction of the institutions or the reasons why the incident was not reported.

The online questionnaire for reporting incidents by civil society organizations is analogous to the online questionnaire for perpetrators and witnesses of hate-motivated incidents. Witnesses and survivors who chose to report incidents via email, contact form, direct communication, and social media, did so in free form. Based on such free form statement and further communication with the survivors or witnesses of the incident, the team of the *Da se zna!* Association categorized the information about the survivor and the incident according to the categories from the online questionnaire. In cases reported to the competent authorities, in which there was a possibility of contacting the survivors (incidents that were not reported anonymously), information on the course of the case was collected through direct communication with the survivors. In June and July 2020, the collected data were statistically performed, while the answers obtained through open-ended questions were subject to a qualitative analysis, which supplement the understanding of quantitative results and the writing of reports.



KEY RESULTS



- ▶ In 2019, 63 survivor's SOGIE motivated illegal acts were committed and recorded, which is 50% more than in the previous year.
- ▶ For the past three years, violence has been a form of illegal action motivated by SOGIE, which is mostly recorded, while discrimination occurs to a lesser extent or is less recognized as a problem worth reporting.
- ▶ In 2019, 27 physical attacks were committed and documented, 12 of which implied bodily injuries inflicted to the survivors. The share of the physically violent incidents in the total number of documented incidents is by 28.1% higher compared to the previous year.
- ▶ In 2019, human rights defenders were survivors in 19% of documented incidents, which is twice as many as in the previous year.
- ▶ Young cis gays from Belgrade are most often the survivors of documented hate-motivated incidents.
- ▶ A much higher percentage of hate-motivated incidents were reported to the police and the prosecutor's office in 2019 than in the year before. However, most of the documented incidents are still reported only to the Da se zna! Association.
- ▶ Most of the hate-motivated incidents reported to the police and the prosecutor's office are still in the pre-investigation procedure. As many as 87.1% of the survivors have no information whether the received criminal report was even acted upon.



PART I:

HATE-MOTIVATED INCIDENTS AGAINST QUEER PERSONS IN 2019



In 2019, 63 survivor's SOGIE motivated illegal acts of were committed and recorded. Of the total number of the documented illegal actions, in 50 (79.4%) cases solely criminal offenses or misdemeanors were committed, in 11 (17.5%) solely discrimination, and in two (3.2%) cases, upon commission of the criminal act or offence, the survivor was also discriminated.

The share of criminal acts and discrimination in the total number of incidents is almost the same as in the previous two years. Such structure of the documented illegal actions indicates that violence remains the biggest problem of the queer community, while discrimination occurs to a lesser extent or is less recognized as a problem worth reporting.

Illegal actions	2017	2018	2019
Criminal act/offence	74,1%	78,6%	79,4%
Discrimination	22,2%	14,3%	17,5%
Criminal act/offence and discrimination	3,7%	7,1%	3,2%

Table 1.1. Comparative overview of illegal actions in percentages

In 2019, the Association *Da se zna!* recorded 21 more (50.0%) hate-motivated incidents, compared to 2018. Despite the encouraging willingness of survivors and witnesses of hate-motivated incidents to report such cases, it should be noted that documented cases continue to be just the tip of an iceberg of violence and discrimination against the queer community in Serbia. The number of the documented incidents can hardly be interpreted differently, considering that 17% of members of the queer community have suffered physical or sexual violence in the previous five years, while as many as 41% of members of the queer community have suffered mild abuse in the past year, for who they are or for whom they love (European Union Agency for Fundamental Rights 2020: 40–44). Therefore, the documented 63 hate-motivated incidents should by no means, be taken as data on *all incidents that were committed*, but only as *data on incidents that were actually committed* in the observed period.

Illegal actions	2018	2019
Criminal act/offence	78,6%	79,4%
Discrimination	14,3%	17,5%
Criminal act/offence and discrimination	7,1%	3,2%

Table 1.2. Comparative overview of illegal actions in absolute numbers

SOURCE

The Association *Da se zna!* received information about the hate-motivated incidents in 51 (80.9%) cases directly from the survivors, in 11 (17.5%) from witnesses and in one (1.6%) from the media. In no case were other civil society organizations and competent institutions the source of information.

Source of information	Number of incidents	%
Survivors	51	80,9%
Witnesses	11	17,5%
Media	1	1,6%
Civil Society Organizations	0	0,0%
Competent institutions	0	0,0%
Ostalo	0	0,0%

Table 1.3. Overview of incidents according to the source of information in 2019

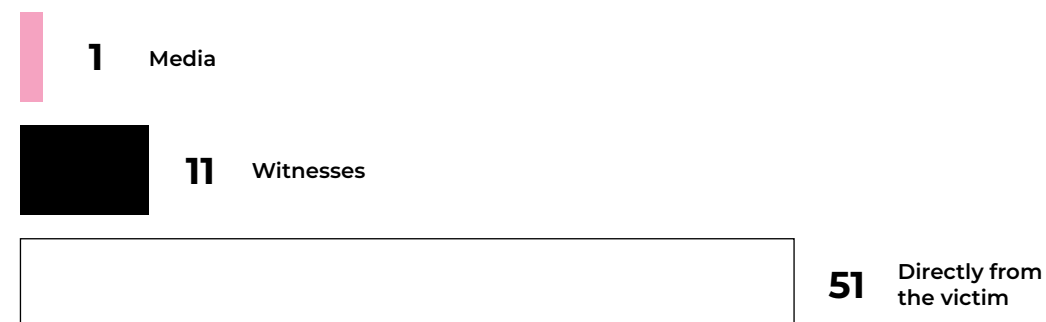


Chart 1.1. Overview of incidents according to the source of information in 2019

As for the data from the previous two years, we can conclude that there is a growing trend of reporting incidents by witnesses and a declining trend of reporting by other civil society organizations. The almost doubled percentage of incidents reported by witnesses compared to 2018 indicates a rapid increase in citizens' awareness of the inadmissibility of discrimination and violence, including the one committed against the queer community. Compared to 2018, there is a slight increase in incidents reported by survivors, but it still did not reach the level of 2017.

Source of information	2017.	2018.	2019.
Survivors	88,9%	78,6%	80,9%
Witnesses	0%	9,5%	17,5%
Media	0%	2,4%	1,6%
Civil Society Organizations	11,1%	9,5%	0%
Competent institutions	0%	0%	0%
Other	0%	0%	0%

Table 1.4. Overview of incidents according to the source of information

PLACE AND LOCATION

Three quarters of the documented incidents, and as many as 47 (74.6%) were committed in Belgrade. Six incidents were committed in Novi Sad (9.5%). One incident (1.6%) was recorded in Vršac, as well as Smederevo, Subotica and Novi Pazar, each. When it comes to smaller places, one incident (1.6%) was documented in Ljig, Majdanpek, Indjija, Tutin, Kula and Šimanovci each.

Location	Number of incidents	%	Type of location	Number of incidents	%			
Belgrade	47	74,6%	Capital city	47	74,6%			
Novi Sad	6	9,5%	Other cities	10	15,9%			
Smederevo	1	1,6%						
Novi Pazar	1	1,6%						
Subotica	1	1,6%						
Indjija	1	1,6%						
Tutin	1	1,6%						
Kula	1	1,6%						
Vršac	1	1,6%				Smaller towns	6	9,5%
Šimanovci	1	1,6%						
Majdanpek	1	1,6%						
Ljig	1	1,6%						

Table 1.5. Overview of incidents according to the location and the type of location in 2019



Chart 1.2. Overview of incidents according to the type of location in 2019

The share of documented incidents committed in Belgrade is relatively stable and disproportionately high compared to other places. This may indicate that the notion of Belgrade as a more tolerant and liberal environment is wrong in relation to other places in Serbia. The percentage of the documented cases in other cities and smaller places varies from year to year.

Type of location	2017	2018	2019
Capital city	66,7%	76,2%	74,6%
Other cities	29,6%	9,5%	15,9%
Smaller towns	3,7%	14,3%	9,5%

Table 1.6. Overview of incidents according to the type of location

Most of the incidents were committed in open public areas. Public urban property such as streets, parks and squares that should belong equally to everyone, for many queer people are places of fear and radical insecurity. Although the Pride Parade has been taking place for years without major incidents, the data show that on other days, members of the queer community are still not safe to walk neither the streets of Belgrade, nor other cities and places in Serbia. Eighteen (28.6%) incidents committed in open public areas and three (4.8%) incidents committed in public transport are even more worrying if we take into account that the queer community in Serbia is one of the queer communities in Europe that is largely “disciplined” by homophobia and transphobia of its fellow citizens. Every other queer person in Serbia avoids certain places, and 71% of same - sex couples never hold hands in public for fear of a hate - motivated incident (*Ibid.* 26–27).

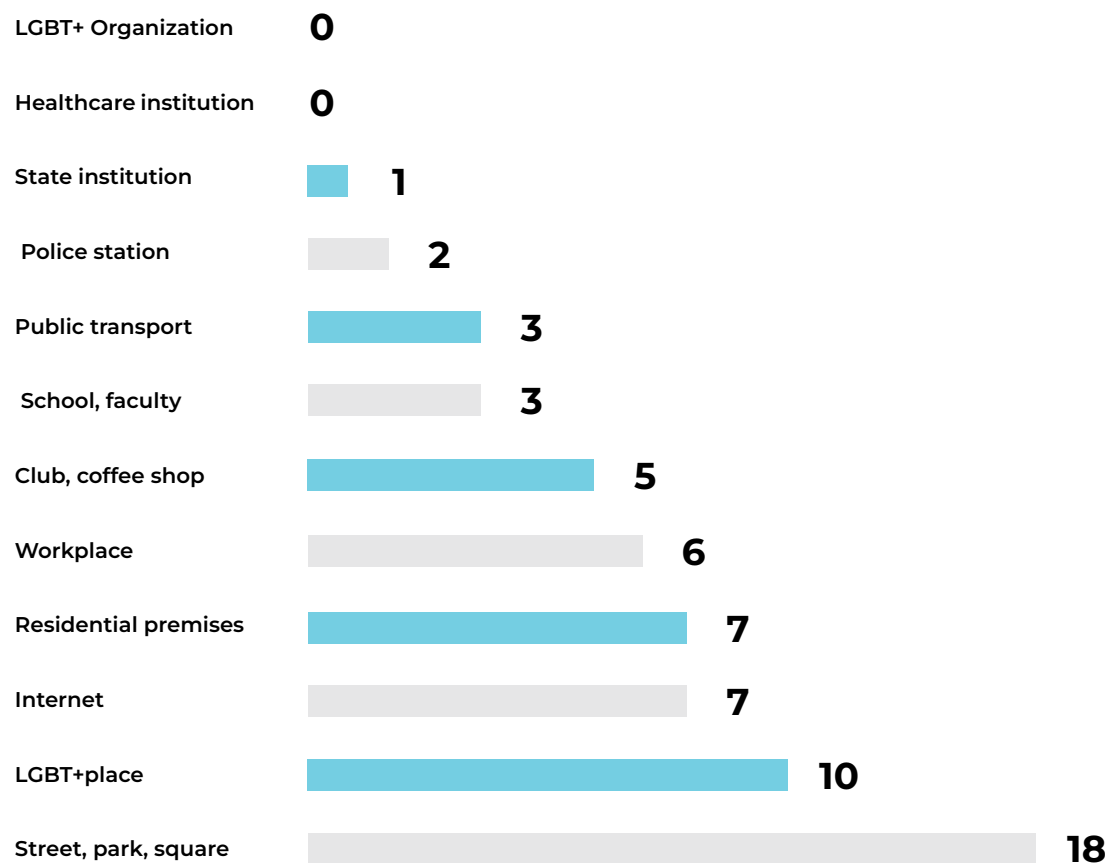
Violence in open public areas is directly related to the still dominant homophobic idea of the “four walls”, i.e. the attitude that queer people have no place in the public sphere, which has the largest share of cis- heterosexual people in Serbia. Although officially against any form of violence, the citizens of Serbia commit and tolerate violence against queer people, especially those who defy the idea that in some places, there is no place for them. That is why it is important that through frequent Pride Parades and similar events and protests, the heterosexual public is confronted with the fact of sexual and gender variance.



And it is particularly devastating that the queer community in Serbia is unable to feel safe even “within its four walls”. This is further supported by the fact that 10 (15.9%) incidents were committed in an LGBT + location and 8 (12.7%) in the survivor’s residential premises. Compared to 2018, the number of incidents committed in a LGBT + location increased, while the number of incidents committed in the survivor’s residential premises, has decreased. Six (9.5%) workplace incidents were documented. Three (4.8%) documented incidents were committed at school, i.e. at the faculty.

There is no decent work without equal employment opportunities and equal treatment at a workplace. Unfortunately, for many queer unemployed, precarious workers, and even those increasingly few in a standard employment relationship, decent work is far from reality. The queer community is faced with discrimination in the labor market, although unequal treatment based on sexual orientation and gender identity is prohibited by the Labor Law and the Law on Prohibition of Discrimination. The main reason for this is that anti-discrimination regulations are made meaningless by difficult access to justice due to high costs and excessive length of court proceedings. Three (4.8%) documented incidents were committed at school, i.e. at the faculty. Despite the fact that many from the queer community face discrimination and harassment during the educational process, which reduces their chances of finding a job, queer people are excluded from affirmative measures being implemented in the field of employment. Discrimination continues after school and later at the workplace as well, in extreme cases resulting in physical abuse of queer workers by colleagues and superiors, and in at least one case there has been a fatal outcome. In early 2019, a member of the queer community committed suicide after being exposed to harassment at the workplace due to his sexual orientation. Together, we must all work on the creation of a work environment in which queer workers will feel accepted and able to work without fear of stigmatization, discrimination, harassment and violence. Decent work implies respecting everyone’s rights, not just those whose sexual orientation and / or gender identity is considered legitimate by the majority.

Over three quarters of people who reported a hate crime to the police or the prosecution in 2017 negatively assessed the way they were treated. In some cases, the survivors were exposed to insults and even physical violence by police officers. In the report of the *Da se zna!* Association, on illegal treatment motivated by homophobia and transphobia in 2018, verbal violence committed by police officers against a trans-woman was described. In 2019, two (3.2%) discriminatory incidents were documented, committed by police officers at the police station against a cis gay young man and at the border control against a trans-man. It is even more worrying that in 2019, a physical attack was recorded that took place in the street, but which was committed by a police officer, during a search of a cis gay young man, after he found a rainbow-colored flag in his backpack. These cases indicate that certain members of the police force not only fail to stand up against hate crimes, but also commit them themselves, thus actively undermining the newly established relationship of trust with the queer community.



Grafikon 1.3: Prikaz incidenta prema mestu u 2019. godini

Location	2018.		2019.	
	Number of incidents	%	Number of incidents	%
Street, park, square	11	26,2%	18	28,6%
LGBT+ location	2	4,8%	10	15,9%
Internet	5	11,9%	7	11,1%
Residential premises	9	21,4%	8	12,7%
Workplace	5	11,9%	6	9,5%
Club, cafe	2	4,8%	5	7,9%
School, faculty	3	7,1%	3	4,8%
Public transport	1	2,4%	3	4,8%
Police station	1	2,4%	2	3,2%
State institution	0	0,0%	1	1,6%
Healthcare institution	2	4,8%	0	0,0%
LGBT+ Organisation	0	0,0%	0	0,0%
Phone	1	2,4%	0	0,0%

Table 1.7. Overview of incidents according to the location

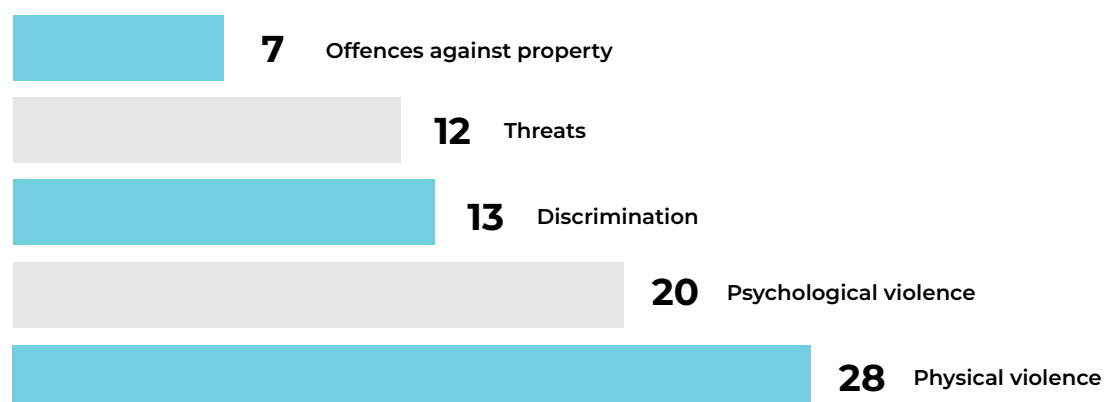
TYPE OF INJURY⁸

In addition to the growth of the total number of documented incidents, in 2019, an increase in their cruelty was also recorded. In almost half of the documented incidents, in 27 of them (42.9%) physical violence was committed against survivors, which is a share of physical violence in the total number of incidents, and which is by 28.1% higher than in 2018.

Percentage of physically violent incidents	2017.	2018.	2019.
	29,6%	33,5%	42,9%

Table 1.8. Comparative overview of the physically violent incidents in the total number of incidents

Of the 27 incidents involving physical violence, 12 involved inflicted bodily injuries on survivors. Psychological violence was documented in 20 (31.7%) cases. Discrimination was recorded in 13 (20.6%), and threats in 12 (19.0%) cases. Of the seven cases relating to the property of the survivor, in five incidents vandalism was documented, i.e. a milder degree of injury, and in two incidents, the destruction of property, i.e. a more severe degree of injury.



Grafikon 1.4. Prikaz incidenata prema tipu povrede u 2019. godini

⁸ Unlike the data on the source of information on the incident, the place and location of the incident, as well as the data on the survivor in which one answer excludes the others, the data on the type of injury are not mutually exclusive. As some incidents involve multiple types of injuries, the sum of incidents divided by the type of injury exceeds 63, i.e. the percentages exceed 100%.

Type of injury	Number of incidents	%	Degree of injury	Number of incidents	%
Physical violence	27	42,9%	No bodily injuries	15	23,8%
			Bodily injuries	12	19,0%
Physical violence	20	31,7%			
Discrimination	13	20,6%			
Threats	12	19,0%			
Offences against property	7	11,1%	Destruction of property	2	3,2%
			Vandalism	5	7,9%

Table 1.9. Overview of incidents according to the type and degree of injury in 2019

Ratio of the physical violence without bodily injuries and physical violence with bodily injuries	Number of incidents	%
Physical violence without bodily injuries	15	55,6%
Physical violence with bodily injuries	12	44,4%
Total physical violence	27	100%

Table 1.10. Overview of the ratio of the physical violence without bodily injuries and physical violence with bodily injuries for 2019

SURVIVORS

Data on female and female survivors were collected, on whether they suffered the incident as individuals or as part of a group, as well as whether they are human rights defenders of queer persons. Data on gender identity, sexual orientation and age were collected for persons who suffered an incident as individuals, so that incidents committed against groups were excluded from the analysis of these data.

In 39 (61.9%) cases, a hate-motivated incident was committed against a person as an individual, and in 24 (38.1%) against a group. Compared to 2018, in 2019, the percentage of incidents committed against individuals decreased, and the percentage of incidents committed against groups increased.

Of the total number of incidents, 12 (19.0%) were committed against human rights defenders of queer persons, of which 11 recorded incidents were committed against groups. Compared to 2018, the percentage of attacks on human rights defenders doubled.



Number of survivors	Number of incidents	%	Aktivistički angažman prebrodilaca	Number of incidents	%
Individuals	39	61,9%	Human rights defenders	1	1,6%
			Others	38	60,3%
Groups	24	38,1%	Human rights defenders	11	17,5%
			Others	13	20,6%

Table 1.11. Overview of the number of survivors and the activist engagement of survivors in 2019

Ratio of the human rights defenders and the others	Groups		Individuals	
	Number of incidents	%	Number of incidents	%
Human rights defenders	11	45,8%	1	2,6%
Others	13	54,2%	38	97,4%
Total	24	100%	39	100%

Table 1.12. Overview of the ratio of the human rights defenders and others according to the number of survivors in 2019



Chart 1.5. Overview of the number of survivors and the activist engagement of survivors in 2019

Number of survivors	2018.		2019.	
	Number of incidents	%	Number of incidents	%
Individual	33	78,6%	39	61,9%
Group	9	21,4%	24	38,1%

Table 1.13. Comparative overview of the number of survivors

Activist engagement of survivors	2018.		2019.	
	Number of incidents	%	Number of incidents	%
Human rights defenders	4	9,5%	12	19,0%
Others	38	90,5%	51	81,0%

Table 1.14. Comparative overview of the activist engagement of the survivors

As for the gender identity of persons who were exposed to hate incidents, 23 (59.0%) were cis-men, and in six (15.4%) cases the survivors were trans-women. In four (10.3%) incidents each, the survivors were cis-women and persons of other trans identities. In two (5.1%) cases, the survivors were trans-men.

The percentage of incidents committed against cis-men decreased slightly compared to 2018. The percentage of trans women survivors and persons who identify neither as men nor women has increased compared to 2018, while the share of cis-women survivors and trans male survivors in the total number of documented incidents is gradually declining from year to year.

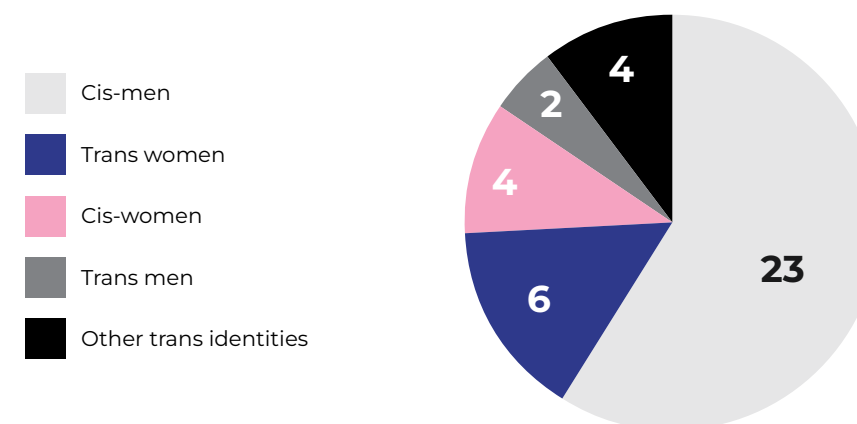


Chart 1.6. Overview of the gender identity of the survivors in 2019 (without the groups)

Gender identity of the survivors	2018.		2019.		
	Number of incidents	%	Number of incidents	%	
Cis-men	21	63,6%	Cis-men	23	59,0%
Trans-women	4	12,1%	Trans-women	6	15,4%
Cis-women	4	12,1%	Cis-women	4	10,3%
Trans-men	2	6,1%	Trans-men	2	5,1%
Other trans identities	1	3,0%	Other trans identities	4	10,3%
Other	1	3,0%	Other	0	0,0%

Table 1.15. Comparative overview of the gender identity of the survivors (without groups)

The sexual orientation of persons exposed to incidents was same-sex in 27 (69.2%) cases, heterosexual in six (15.4%) cases, and bisexual in five (12.8%) cases. Compared to the data from 2018, the percentage of incidents against homosexuals decreased in 2019, while the number of incidents in which the survivors were heterosexual persons doubled. The share of incidents against bisexual persons in the total number of documented incidents is growing from year to year.

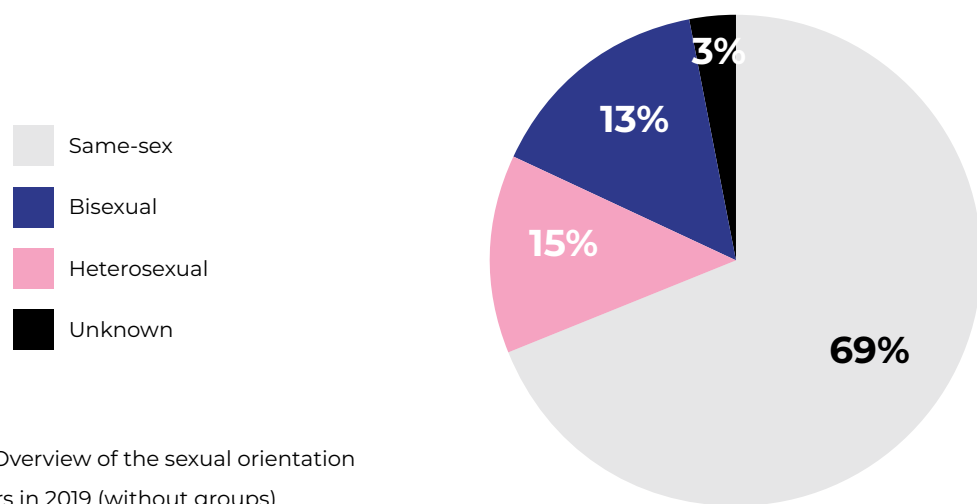


Chart 1.7. Overview of the sexual orientation of survivors in 2019 (without groups)

Sexual orientation	2018.		2019.	
	Number of incidents	%	Number of incidents	%
Same-sex	26	78,8%	27	69,2%
Bisexual	2	6,1%	5	12,8%
Heterosexual	3	9,1%	6	15,4%
Asexual	1	3,0%	0	0,0%
Queer	0	0,0%	0	0,0%
Unknown	1	3,0%	1	2,6%

Table 1.16. Overview of the sexual orientation of survivors (without groups)

More than half (53.8%) of documented hate-motivated incidents were committed against young adults (under 30). Then, 11 (28.2%) incidents were committed against persons aged 31 to 40 years of age, while only two (5.1%) cases were recorded in which the survivors were between 41 and 50 years old. Of particular concern is the fact that out of the total number of documented incidents, five (12.8%) were committed against minors.

A large number of documented hate-motivated incidents involving survivors who are young cis gay men, are consistent with data on hate crime survivors from other countries such as the United States and Canada. According to the FBI data, gay men are 2.5 times more likely to be survivors of hate crimes, than lesbians and bisexuals, and as many as 83% of Canadian survivors of sexually motivated violent crimes were gay men, and approximately half of them were under 25 years old.⁹

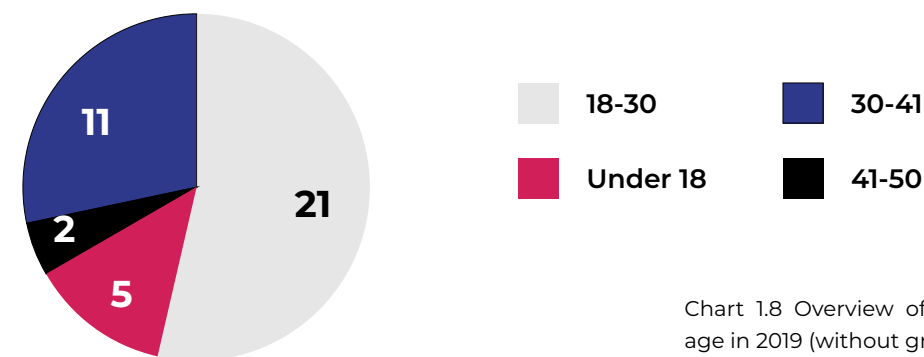


Chart 1.8 Overview of the survivors' age in 2019 (without groups)

Age	2018.		2019.	
	Number of incidents	%	Number of incidents	%
Under 18	4	12,1%	5	12,8%
18-30	21	63,6%	21	53,8%
31-40	7	21,2%	11	28,2%
41-50	1	3,0%	2	5,1%
51-60	0	0,0%	0	0,0%
60+	0	0,0%	0	0,0%

Tabela 1.17. Upređni prikaz starosti prebrođilaca (bez grupa)

⁹ Uprava policije MUP-a, *Priručnik za rad policije sa LGBTI populacijom*, Beograd, MUP R. Srbije, 2016, str. 21-22 (Police Administration of the Ministry of Interior, Handbook for police work involving LGBTI population, Belgrade, MoI Serbia, 2016, p.21-22)

REPORTING¹⁰

The majority of hate-motivated incidents, 33 (52.4%) were not reported to any institution or any other civil society organization, except for the *Da se zna!* Association. Of the 29 (46.0%) incidents reported, 23 were reported to the police, eight to the prosecutor's office, and for two of the cases court proceedings have been launched. Seven cases were also reported to other civil society organizations, apart from the *Da se zna!* Association. Two incidents of each were reported to the Commissioner for the Protection of Equality and to health care institutions. One discriminatory incident was reported to the competent ministry. The percentage of the incident reporting to the police and the prosecution is by far higher than in 2018.

Reporting	Number of incidents	%
Reported	29	46,0%
Not reported	33	52,4%
Unknown	1	1,6%

Table 1.18. Overview of incident reporting in 2019



Chart 1.9 Overview of incident reporting in 2019

¹⁰ Unlike the data on the source of information on the incident, the place and location of the incident, as well as the data on the survivors in which one answer excludes the others, the data on the report and the reasons for failure to report are not mutually exclusive. Some incidents were reported to a larger number of stakeholders or were not reported for several reasons. Therefore, the sum of the incidents classified according to the report, exceeds 29 reported incidents, i.e. the percentages exceed 46.0%. Also, the sum of incidents classified according to the reasons for unreported incidents, exceeds 33, i.e. the percentage exceed 52.4%.

Incident reported	Number of incidents	Percentage of the total number of incidents	Percentage of the total number of the reported incidents
CSO	7	11,1%	24,1%
Police	23	36,5%	79,3%
Prosecution	8	12,7%	27,6%
Court	2	3,2%	6,9%
Commissioner	2	3,2%	6,9%
Healthcare institution	2	3,2%	6,9%
Other	1	1,6%	3,4%
Ombudsman	0	0,0%	0,0%
Social welfare center	0	0,0%	0,0%

Table 1.19. Overview of incidents according to the institutions/organization to which they were reported in 2019

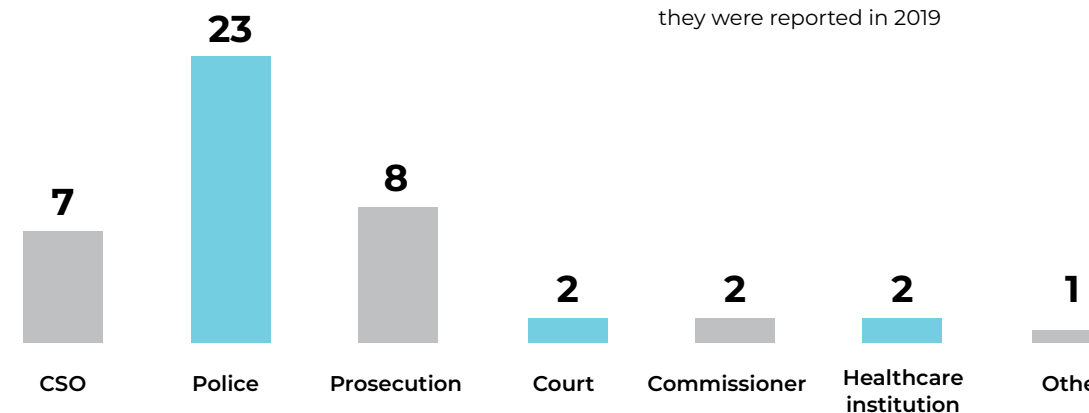
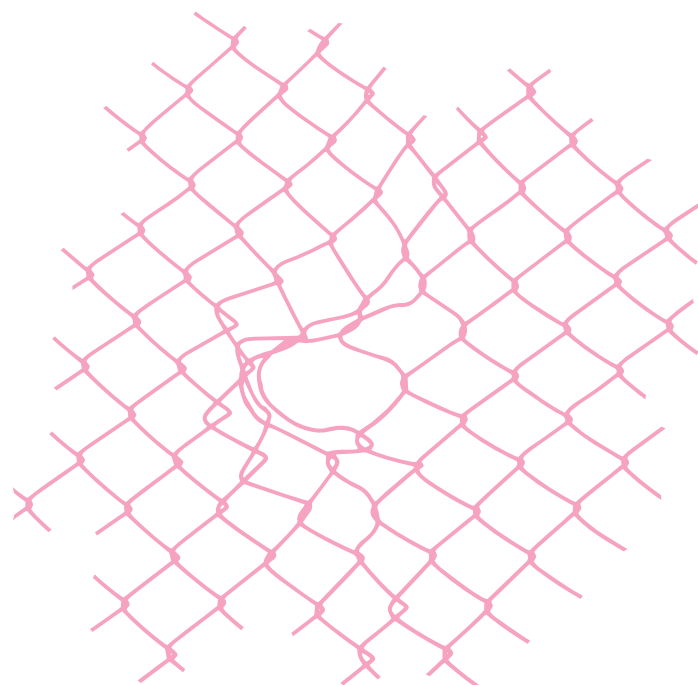


Chart 1.10 Overview of incidents according to the institutions/organization to which they were reported in 2019

Incident reported	2018.		2019.	
	Number of incidents	Percentage of the total number of incidents	Number of incidents	Percentage of the total number of incidents
Police	3	7,1%	23	36,5%
Prosecution	2	4,8%	8	12,7%
Commissioner for the Protection of Equality	1	2,4%	2	3.2%

Table 1.20. Comparative overview of the incidents reported to the police, prosecution and the Commissioner for the Protection of Equality

The most common reason given for not reporting a hate-motivated incident is that a survivor is not outed. In as many as 14 cases, the survivors did not report a case for fear of being found out about their sexual orientation and / or gender identity.



▶ The fact that the main reason why survivors do not report incidents is the fear of revealing their sexual orientation and / or gender identity, is not surprising, considering that as many as 81% of queer people in Serbia are (almost) never or rarely open about their sexual orientation or gender identity¹¹. Although hate-motivated incidents may be motivated by erroneously assumed personal characteristics, and thus even cis heterosexuals may be survivors, such cases are extremely rare. In addition, police officers apply a wrong practice of questioning hate crime survivors about their sexual orientation instead of questioning the existence of indicators that could more reliably determine whether the perpetrator was motivated by prejudice against the queer community. The nature of the hate crimes, the stated police practice, together with the homophobic and transphobic social climate, have a demotivating effect on the survivors to report the hate-motivated incident.

¹¹ European Union Agency for Fundamental Rights (FRA), A long way to go for LGBTI equality, Luxembourg, Publications Office of the European Union, 2020, p. 26.

For this reason, persons who did not report a hate-motivated incident committed against them cite fear of the perpetrator in ten cases, not being familiar with the procedures in eight cases, and distrust in institutions in seven cases.

Reasons for not reporting	Number of incidents	Percentage of the total number of the unreported incidents
Distrust in institutions	7	21,2%
Person not outed	14	42,4%
Fear of the perpetrator	10	30,3%
Not familiar with the procedures	8	24,2%
Other	3	9,1%

Table 1.21. Overview of incidents according to the reason for not reporting in 2019

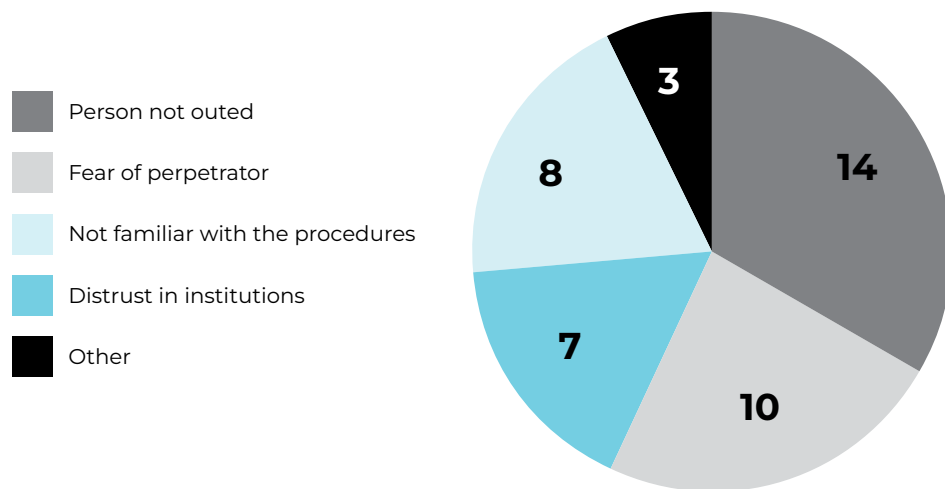


Chart 1.11 Overview of incidents according to the reason for not reporting in 2019

“ I was returning from a restaurant where I work as a cook, when somebody in the public transport, started harassing me for being a lesbian. I looked at the direction from where the voice was coming from. It came from a couple of kids who were there. I ignored what they were saying, and I got off at the next stop. They came after me and started following me. They caught up with me and surrounded me. They said there would be blood and that we will get what we deserve. There were three of them, and one licked his finger and approached me aiming to put his fingers into my mouth. He then grabbed me by the neck, and asked me if I liked it. He then said: “You perverse mother fucker.” About ten minutes later, they let me go, and I somehow got into my apartment. I do not want to report the case, since nobody know about me, and I do not want anyone at work to find out.

Example 1.1. Description of the incident that was not reported, because the survivor was not outed.

BRIEF DESCRIPTION OF THE MOST SEVERE CASES OF HATE CRIME



This section describes documented hate crimes classified as cases of physical violence, threats, destruction of property and vandalism according to a predetermined universal classification system for civil society organizations that submit data for the annual report on hate crimes of the ODIHR Office, OSCE, about hate crimes. For each hate crime, the date, source, location, place and indicator of the perpetrator's prejudice are stated. However, it should be noted that most of the listed cases include other types of injuries, but that they are classified according to the most severe form of injury.

THREATS

	Date of incident	Source	Location	Place of incident
1	February 14, 2019	Victim's testimony	Belgrade	Queer place
2	March 5, 2019	Victim's testimony	Belgrade	Internet
3	April 25, 2019 and May 4, 2019	Victim's testimony	Belgrade	Residential premises
4	June 23, 2019	Victim's testimony	Belgrade	Internet
5	June 24 - 25, 2019	Victim's testimony	Belgrade	Internet
6	August 3-5, 2019	Victim's testimony	Novi Pazar	Internet

Description	Prejudice indicator
Trans co-owner of a queer club received an anonymous letter in which she and her visitors received a death threat	Homophobic vocabulary; The incident happened at the gathering place of queer people
An unknown perpetrator threatened to kill two gay young men on their Youtube channel	The survivors are outed
A trans woman received death threats from her neighbor on two occasions	Transphobic vocabulary;
Both the female and the male activists of the <i>Da se zna!</i> Association received death threats via the Associations' Instagram account from unknown perpetrators	Homophobic vocabulary; The incident happened on the Instagram account of human rights defenders of queer people
A female activist of the Befem Association received a death threat from unknown perpetrators on the Instagram account of the Association.	Homophobic vocabulary; The incident happened on the Instagram account of the human rights female defenders of queer people
The female activists of the Impuls Association received death threats from unknown perpetrators, on their Instagram and Facebook account	Homophobic vocabulary; The incident happened on the Instagram account of the human rights female defenders of queer people

7	September 29, 2019	Victim's testimony	Belgrade	Internet
8	October 11, 2019	Survivor's testimony	Ljig	Intercity bus and bus station

A cis bisexual received death threats from an acquaintance, via e-mail and Viber messages	The threats followed after the perpetrator learned that the survivor is bisexual
A trans woman was non-verbally and verbally threatened to death, insulted and spat at by a man who physically abused her in the past.	Homophobic vocabulary; The perpetrator was already reported for hate-motivated incidents against queer persons.

PHYSICAL VIOLENCE

	Date of incident	Source	Location	Place of incident
1	January 5, 2019	Survivor's testimony	Belgrade	Street
2	February 8, 2019	Survivor's testimony	Belgrade	Queer place
3	February 8, 2019	Survivor's testimony	Belgrade	Park

Description	Prejudice indicator
A group of queer activists repeatedly threw snow balls during protests against violence.	The survivors wore queer insignia; Other protest participants were not targeted.
A group of unknown perpetrators ran towards the activists of the Pride Info Center with the intention of physically attacking him. The survivor managed to avoid the physical attack by entering the Pride Info Center, and the perpetrators kicked at the door several times.	One of the perpetrators spat on the window of the Pride Info Center just before the attempted physical assault; Homophobic vocabulary; The incident happened at the gathering place of queer people
A group of men attacked a lesbian couple, inflicting bodily injuries and threatening to kill them	Homophobic vocabulary;

4	March 10, 2019	Survivor's testimony	Belgrade	Street
5	April 17, 2019	Survivor's testimony	Belgrade	Park
6	May 8, 2019	Survivor's testimony	Belgrade	Street
7	May 13, 2019	Testimony of a female survivor	Novi Sad	Street
8	May 17, 2019	Testimony of a female survivor	Belgrade	Queer place
9	May 21, 2019	Testimony of a female survivor	Novi Sad	Street
10	May 25, 2019	Survivor's testimony	Belgrade	Queer place

A gay trans person was attacked by a group of men	Survivor's perception
A group of three men attacked a gay couple while kissing.	Homophobic vocabulary;
A know perpetrator hit a cis gay man in the face	Homophobic vocabulary;
Three unknown perpetrators first insulted a cis lesbian, then followed and surrounded her, after which they threatened her, and one of them physically attacked her.	Homophobic vocabulary;
A transgender person standing in front of the Pride Info Center was thrown a beer can at by an acquaintance from high school, who then shouted a homophobic call for lynching together with a group of guys.	Homophobic vocabulary; The incident happened at the gathering place of queer people
A group of four men attacked a cis lesbian	Survivor's perception
Four perpetrators kicked one gay man, and hit the other in the face, in a queer club	Survivor's perception; Difference in the sexual orientation of the perpetrator and the survivor; The incident took place at a gathering place of queer persons

11	June 7, 2019	Survivor's testimony	Novi Sad	Public transport
12	June 9, 2019	Survivor's testimony	Belgrade	Public transport
13	June 12, 2019	Survivor's testimony	Belgrade	Street
14	June 13, 2019	Survivor's testimony	Belgrade	Street
15	June 29, 2019	Survivor's testimony	Belgrade	Park
16	July 12, 2019	Media	Belgrade	Residential premises
17	July 19, 2019	Testimony of a female survivor	Belgrade	Residential premises

A bus driver violently kicked out a gay cis man from the bus.	Homophobic vocabulary;
Using a metal object, an unknown perpetrator kicked a cis gay man on the head, thus inflicting bodily injuries	Homophobic vocabulary;
An unknown perpetrator pushed a cis gay man, thus inflicting bodily injuries.	Survivor's perception
A known perpetrator attacked a cis gay man.	The same perpetrator had already attacked the victim using homophobic vocabulary.
Two unknown perpetrators hit, several times, in the face, a male gay cis couple, thus inflicting light bodily injuries	Homophobic vocabulary; The perpetrators overheard the survivors talking about their relationship.
A trans heterosexual woman was threatened and physically attacked by her partner and his family.	The victim's partner's family was openly against the perpetrator's relation with the trans woman.
A cis bisexual was abused by the parents.	Homophobic vocabulary; the attacks started when the girl openly declared to her parents that she is a bisexual.

18	July 21, 2019	Testimony of a female survivor	Belgrade	Night club
19	July 2019, 2019	Witness' testimony	Kul	Residential premises
20	August 21, 2019	Survivor's testimony	Novi Sad	Street
21	September 6, 2019	Survivor's testimony	Belgrade	Street
22	8. septembar 2019.	Survivor's testimony	Belgrade	Night club
23	26. septembar 2019.	Witness' testimony	Belgrade	School

A cis lesbian was physically attacked by a security member.	Homophobic vocabulary; The difference between the victim and the perpetrator; The incident took place at the gathering place of queer persons.
A trans girl was thrown out from her home, having been abused by her father.	Homophobic vocabulary; The incident followed once the perpetrator found out that the survivor is trans.
A police officer hit in the face a gay cis man.	The incident followed immediately once the police officer found a rainbow-colored flag in the survivor's backpack.
A group of five migrants, three of whom were cis gays, were attacked by a group of three people.	Homophobic dictionary; The attacked happened when one of the victims responded affirmatively to the question whether he is gay or not.
An unknown man physically attacked a gay cis man and threatened to kill him, and then forced him to apologize for kissing his partner.	The incident ensued immediately after the survivor kissed his partner; The Perpetrators asked from the survivor to momentarily stop kissing and threatened to kill him should he fail to do so.
Gay cis minor, psychologically and physically abused by several of his peers	The abuse followed once the perpetrators found out that the survivor volunteered at the Pride Info Center.

24	October 2019	Testimony of a female survivor	Belgrade	School
25	November 2, 2019	Survivor's testimony	Belgrade	Street
26	November 24, 2019	Survivor's testimony	Belgrade	Workplace
27	November 29, 2019	Witness' testimony	Belgrade	Night club

A gay trans minor was spat at and hit, on several occasions by her peers.	Homophobic vocabulary;
A heterosexual cis man was attacked by perpetrators who thought he was gay.	Homophobic vocabulary;
A group of three gay cis men and one woman of unknown sexual orientation were collectively fired after the owner of the workplace physically attacked one of the victims.	Homophobic vocabulary; The perpetrator has a history of homophobic behavior.
A cis gay was physically attacked and thrown out of a club by a member of the security.	Homophobic vocabulary;

VANDALISM

	Date of incident	Source	Location	Place of incident
1	September 21, 2019	Survivor's testimony	Belgrade	Queer place
2	October 1, 2019	Survivor's testimony	Belgrade	Queer place
3	October 22, 2019	Witness' testimony	Belgrade	Queer place
4	December 27, 2019	Survivor's testimony	Belgrade	Queer place

Description	Prejudice indicator
A group of teenagers vandalized the LGBT+ flag, hanging in front of the Pride Info Center.	Homophobic vocabulary; The incident happened at the gathering place of queer community.
A group of Red Star fans threw beer cans and glass bottles at the windows of the Pride Info Center.	Vandalism took place at the gathering place of the queer community.
A teenager vandalized a flag, hanging in front of the Pride Info Center.	Vandalism took place at the gathering place of the queer community.
The window and the door of the Pride Info Center were vandalized during a public protest against the Montenegrin Law on Religious Freedom.	Homophobic vocabulary; The incident happened at the gathering place of queer community.

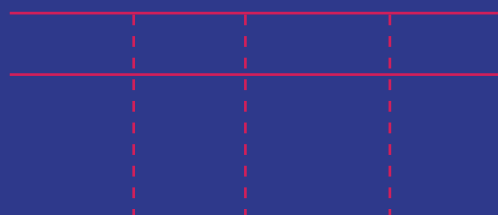
DESTRUCTION OF PROPERTY

	Date of incident	Source	Location	Place of incident
1	January 5, 2019	Survivor's testimony	Belgrade	Queer place
2	January 16, 2019	Survivor's testimony	Beograd	Residential premises

Description	Prejudice indicator
The perpetrator threw a brick, on several occasions, at the window of the Pride Info Center.	The attack happened at the gathering place of queer community.
The unknown perpetrator drew a cross with fecal matter, in front of the apartment of a gay trans person; a whole was made in the roof of the same apartment.	Survivor's perception



PART II: REPORTED HATE-MOTIVATED INCIDENTS AGAINST QUEER PERSONS



From January 2017 to June 30, 2020, 166 illegal acts motivated by SOGIE were committed and documented. The largest number of incidents, 94 (56.6%) were not reported, for five (3.0%) incidents it is not known whether they were reported, while 67 (40.4%) incidents were reported to a stakeholder other than to *Da se zna!*, Association, while 57 (34.3%) were reported to the police, the prosecutor's office or a lawsuit was initiated. Due to their importance for considering the issues of the characteristics of incidents that are visible for the criminal justice system, as well as the adequacy of the reaction of the above competent authorities, these 57 incidents are the subject of analysis in this part of the report.

SOURCE

The greatest source of information for the *Da se zna!* Association on reported incidents, in 49 (86.0%) cases they are the survivors themselves. Two (3.5%) incidents were reported by the witnesses. Five (8.8%) incidents were documented from the media, and in one (1.8%) case the source of information was another civil society organization.

Source of information	Number of incidents	%
Survivors	49	86.0%
Witnesses	2	3.5%
Media	5	8.8%
Civil Society Organizations	1	1.8%
Competent institutions	0	0,0%
Other	0	0,0%

Table 2.1. Overview of reported incidents according to the source of information

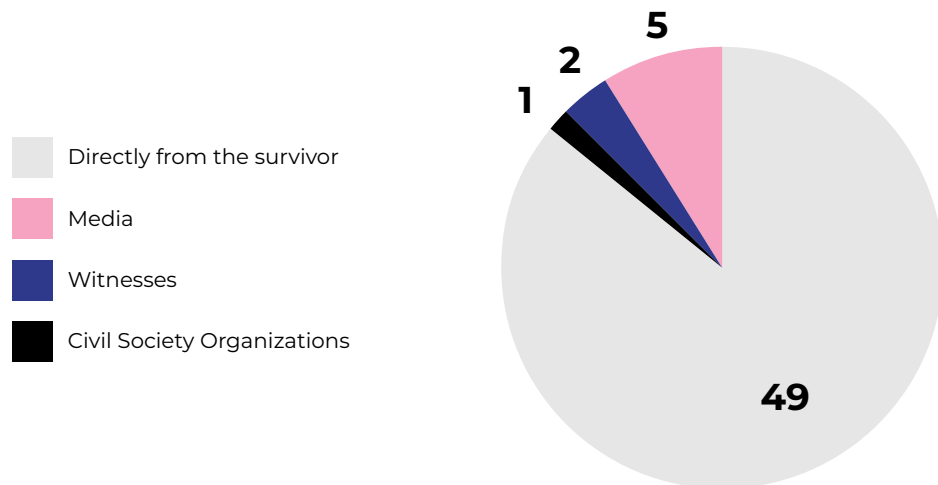


Chart 2.1 Overview of reported incidents according to the source of information

PLACE AND LOCATION

Hate motivated incidents are most reported in Belgrade. As many as 40 (70.2%) reported incidents occurred in the capital. It is followed by Novi Sad with seven (12.3%) reported incidents, Subotica with two (3.5%) and Niš, Kragujevac, Novi Pazar, Požarevac and Sremska Mitrovica with one (1.8%) reported incident. The least reported incidents were documented in smaller places, only three (5.2%), of which one (1.8%) in Tutin, Indija and Ljig.

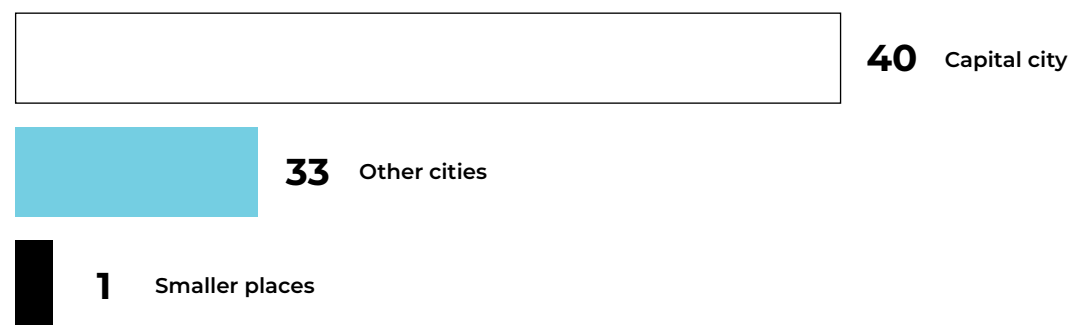


Chart 2.2 Overview of reported incidents according to the type of location

Location	Number of incidents	%	Type of location	Number of incidents	%			
Belgrade	40	70,2%	Glavni grad	40	70,2%			
Novi Sad	7	12,3%	Ostali gradovi	14	24,6%			
Subotica	2	3,5%						
Niš	1	1,8%						
Kragujevac	1	1,8%						
Novi Pazar	1	1,8%						
Sremska Mitrovica	1	1,8%						
Požarevac	1	1,8%						
Tutin	1	1,8%				Manja mesta	3	5,2%
Indija	1	1,8%						
Ljig	1	1,8%						

Table 2.2. Overview of reported incidents according to the location and the type of location

Almost a third, 18 (31.6%) of the reported incidents occur in open public areas such as streets, squares, parks, etc. They are followed by queer gathering places with 13 (22.8%) recorded reported incidents. Ten (17.5%) of the reported incidents took place on the Internet. A small number of incidents that took place, were reported by telephone, in residential and public enclosed spaces such as public transport, cafes, clubs and photocopying stores.

Location	Number of incidents	%
Street, square, park	18	31,6%
Club, coffee shop	2	3,5%
Workplace	0	0,0%
LGBT+ location	13	22,8%
LGBT+ Organisation	0	0,0%
Police station	0	0,0%
Healthcare institution	0	0,0%
State institution	0	0,0%
Residential premises	5	8,8%
School, faculty	0	0,0%
Transport	3	5,3%
Internet	10	17,5%
Phone	5	8,8%
Other	1	1,8%

Table 2.3. Overview of reported incidents according to place



Chart 2.3 Overview of reported incidents according to place

TYPE OF INJURY¹²

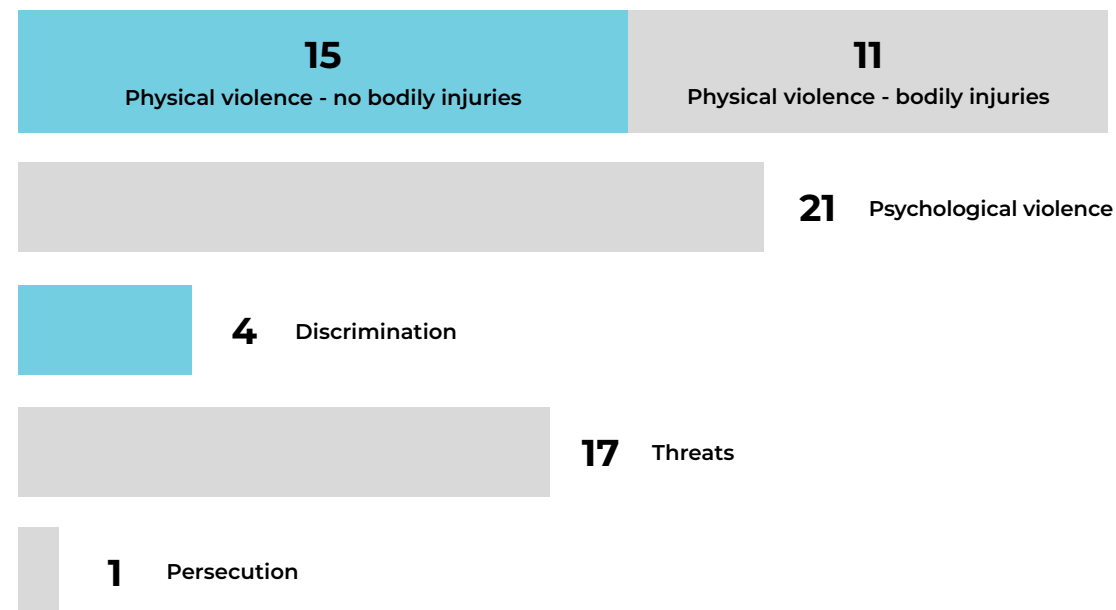
Physical violence occurred in 26 (45.6%) reported incidents, of which bodily injuries were inflicted on survivors in 11 of the cases. Psychological violence was recorded in 21 (36.8%) reported incidents, threats in 17 (29.8%), and destruction of property and vandalism were recorded in a total of ten (17.5%) cases. A small number of reported incidents included discrimination and harassment.

Type of injury	Number of incidents	%	Degree of injury	Number of incidents	%
Physical violence	26	45,6%	No bodily injuries	15	26,3%
			Bodily injuries	11	19,3%
Psychological violence	21	36,8%			
Discrimination	4	7,0%			
Threats	17	29,8%			
Persecution	1	1,8%			
Offences against property	10	17,5%	Destruction of property	6	10,5%
			Vandalism	4	7,0%

Table 2.4. Overview of reported incidents according to the type and degree of injury

¹² Unlike the data on the source of information on the incident, the place and location of the incident, as well as the data on the survivor in which one answer excludes the others, the data on the type of injury are not mutually exclusive. As some incidents involve multiple types of injuries, the sum of incidents divided by the type of injury exceeds 57, i.e. the percentages exceed 100%.

Physical violence



Offences against property



Table 2.4. Overview of reported incidents according to the type and degree of injury

SURVIVORS

In 31 (54.4%) incidents, the survivors were individuals, and in 26 (45.4%) groups. As for the activist engagement of survivors, human rights defenders are survivors in 22 reported incidents, and human rights defenders in 35 incidents. The percentage of reported incidents in which survivors are human rights defenders is by far higher than the share of incidents recorded against them in the previous two years, which indicates that activist engagement in the field of human rights is positively correlated with readiness to report the incident.

Excluding the reported incidents committed against groups, the majority were committed against gays and lesbians (61.3%), followed by straight people (16.1%), two (6.5%) cases were reported against bisexual people, and one (3.2%) against a pansexual person. Two (6.5%) persons did not find themselves in any of the offered answers, and for two (6.5%) information on sexual orientation is not known.

Number of survivors	Number of incidents	%
Individuals	31	54,4%
Groups	26	45,6%

Table 2.5. Overview of reported incidents according to the number of survivors

Activist engagement of survivors	Number of incidents	%
Human rights defenders	22	38,6%
Others	35	61,4%

Table 2.6. Overview of reported incidents according to the activist engagement of the survivors

Sexual orientation	Number of incidents	%
Same-sex	19	61,3%
Bisexual	2	6,5%
Heterosexual	5	16,1%
Pansexual	1	3,2%
Other	2	6,5%
Unknown	2	6,5%

Table 2.7. Overview of the reported incidents according to the sexual orientation of the survivors (without groups)

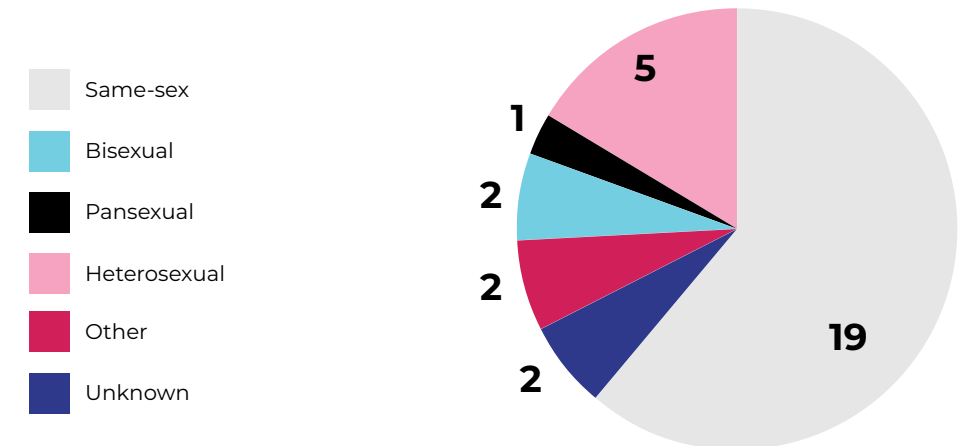


Chart 2.5 Overview of the reported incidents according to the sexual orientation of the survivors (without groups)

The majority of the reported incidents was recorded against cis male survivors (54.8%). Seven (22.6%) of the incidents were recorded against trans female survivors. These are followed by cis female survivors with four (12.9%) of the reported incidents. Against one (3.2%) trans survivor and against two (6.5%) trans persons who do not identify as either men or women the committed reported incidents were hate-motivated incidents.

Gender identity	Number of incidents	%
Cis-men	17	54,8%
Trans-women	7	22,6%
Cis-women	4	12,9%
Trans-men	1	3,2%
Other trans identities	2	6,5%

Table 2.8. Overview of the reported incidents according to the gender identity of the survivors (without groups)

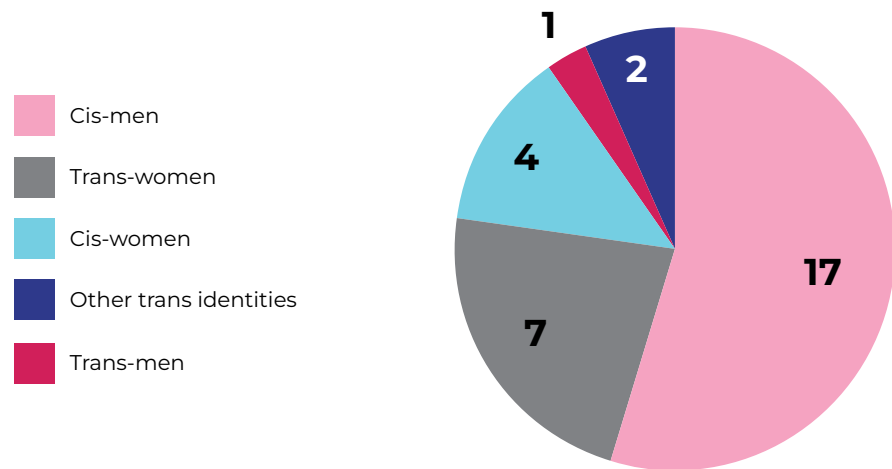


Chart 2.6 Overview of the reported incidents according to the gender identity of the survivors (without groups)

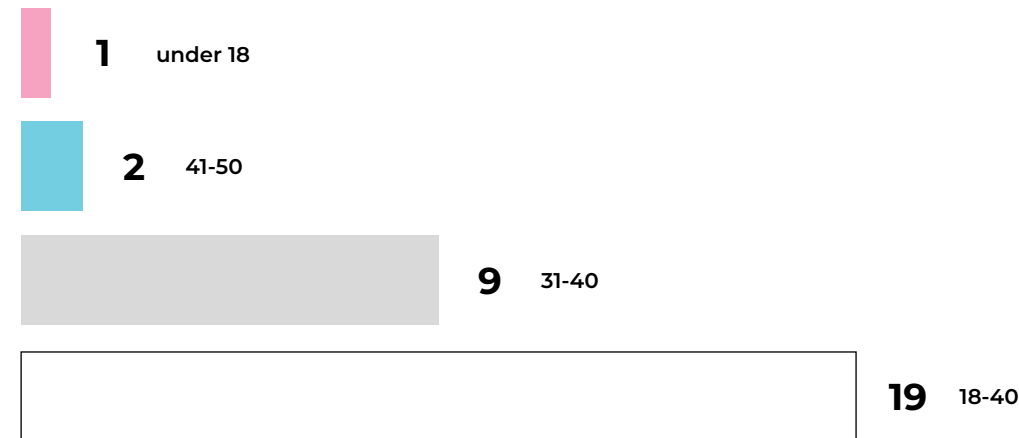


Chart 2.7 Overview of the reported incidents according to the age of the survivors (without groups)

The majority (61.3%) of survivors are young adults. They are followed by nine (29.0%) survivors aged between 31 and 40 and two (6.5%) survivors aged between 41 and 50. One reported incident (3.2%) against a minor was documented as well.

Age	Number of incidents	%
under 18	1	3,2%
18-30	19	61,3%
31-40	9	29,0%
41-50	2	6,5%
51-60	0	0,0%
60+	0	0,0%

Table 2.9. Overview of the reported incidents according to the age of the survivors (without groups)

REPORTING

Out of the total number of observed incidents, 47 (82.5%) were reported to the police, 18 (31.6%) to the prosecutor's office and court proceedings were initiated in five (8.8%) cases.¹³

Cases are predominantly reported to the police, although there are good reasons for the survivors, and especially queer survivors, to report incidents directly to the prosecution. One obvious reason is the high degree of risk of secondary victimization. Survivors are not allowed to have a person they trust next to them when reporting an incident at the police station, except for a lawyer. This generally prevents friends, family members or queer activists from supporting the survivors and testifying about possible secondary victimization and violation of their rights. It is not uncommon for police officers to ask survivors to report an incident another day or at another police station without a justified reason, to misinform survivors, to question survivors about their sexual orientation and gender identity, and to ask survivors to describe the incident several times. to various police officers. In some cases, police officers try to blame the survivor for the incident he/she suffered, use offensive and threatening vocabulary, and make no written record of the incident. Almost as a rule, the survivors are not issued a copy of the official note of the notification of the incident that they gave to the police. The survivors were not proactively informed about the actions taken after the incident was reported to the police station, nor about the manner in which they could file a complaint if they were dissatisfied with the work of the police. Self-initiated informing of the survivors is also difficult because they are almost never informed about the number under which the case was registered, which police officer is the contact point for their case, when he/she is available, etc. All these problems lead to the fact that the offenders are usually not informed whether the incident they reported (in an adequate manner) was forwarded to the

¹³ Unlike the data on the source of information on the incident, the place and location of the incident, as well as the data on the survivor in which one answer excludes the others, the data on the report are not mutually exclusive. Some incidents were reported to a larger number of stakeholders. Therefore, the sum of the incidents classified according to the report, exceeds 57 reported incidents, i.e. the percentages exceed 100.0%.

prosecutor's office and whether the prosecutor's office rejected the criminal report or took action upon its receipt. Based on all of the afore mentioned, we can conclude that survivors, and especially queer survivors in Serbia, do not reach the minimum standards in the rights, support and protection of victims of crime as defined by the EU Directive 2012/29 / EU¹⁴ Until Serbia implements the necessary reforms to bring the rights of survivors in line with the European standards, in order to meet the requirements of Chapter 23, at least some of these problems could be avoided, or at least mitigated, if the survivors, with the legal support of the civil society organizations, would file criminal charges, through the competent prosecutor's office, thus bypassing secondary victimization in the police, at least in their first step down the long road to resolving the case.

Competent institutions	Number of incidents	%
Police	47	82.5%
Prosecution	18	31.6%
Court	5	8.8%

Table 2.10. Overview of incidents according to the competent institutions to which they have been reported

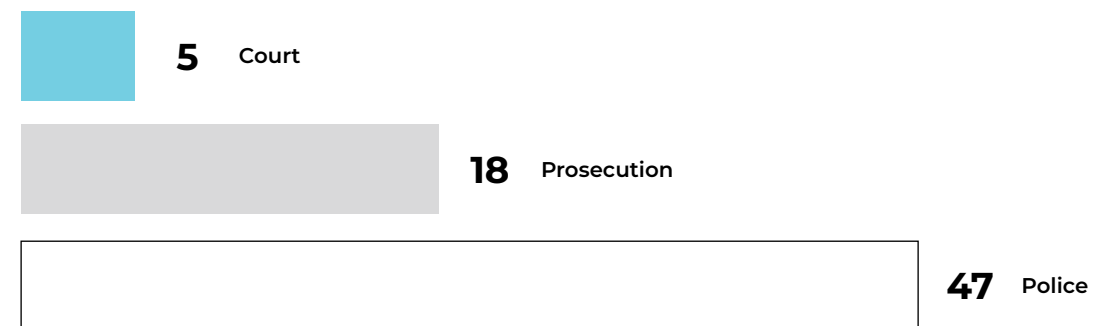


Chart 2.8 Overview of incidents according to the competent institutions to which they have been reported

¹⁴ Official Journal of the European Union, L 315/57, 14. November 2012.

Competent institutions	Number of incidents	%
Just the police	36	63,2%
Just the prosecution	8	14,0%
Just the court	1	1,8%
Police and Prosecution	8	14,0%
Police and court	2	3,5%
Prosecution and Court	1	1,8%
Police, Prosecution and Court	1	1,8%

Table 2.11. Overview of incidents according to the number of competent institutions to which they have been reported

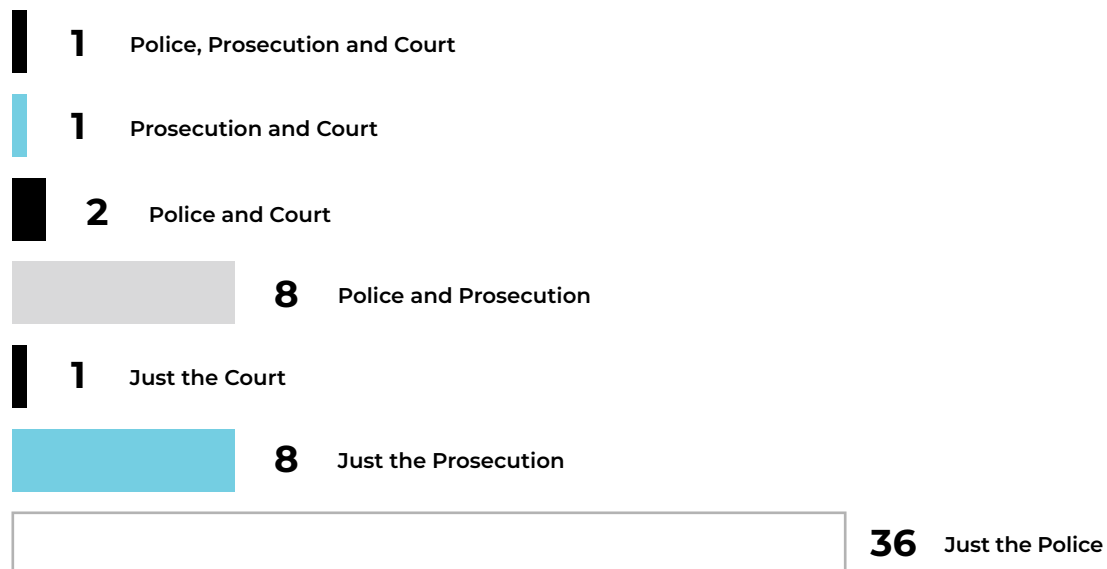


Chart 2.9 Overview of incidents according to the number of competent institutions to which they have been reported

CASE STATUS¹⁵

Out of the total number of observed cases, 31 (54.4%) are in the pre-investigation procedure¹⁶, s tim što je samo u četiri slučaja prebrodiocima poznato da su zaista preduzete neke radnje od strane nadležnih organa po podnošenju krivične prijave. U skoro pola prijavljenih incidenata prebrodioci nemaju nikakva saznanja u pogledu toga da li je i na koji način postupano nakon prijave incidenta, što stvara osećaj da njihov slučaj “leži u nekoj fioci”.

▶ Even in cases where survivors are highly motivated to inquire about the status of the case, they fail to obtain information. The reasons are numerous. As already stated, the applicants are almost never familiar as to how they can inquire about the status of the case. Also, most of the survivors are not in a position to hire a lawyer and rely solely on the support of human rights defenders. However, human rights defenders are not allowed to inquire about the case, despite the fact that the survivors are willing to authorize them to follow up on it. In the end, survivors are sometimes addressed with bizarre requests that seem to be intended to prevent them from being adequately informed about the status of the case. An illustrative example is the behavior of a plaintiff who asked a survivor who inquired about her case not to write down what she was told.

In three (5.3%) cases, criminal charges were dismissed, in one of them because the reported crime was not prosecuted *ex officio*, and in the other two, the reported incidents were recognized as misdemeanors. In one (1.8%) case, investigation was launched. It is quite indicative that a female survivor recognized that her case would have ended up “at a bottom of a drawer” were it not for her proxy, who was in constant contact with the competent authorities.

¹⁵ Unlike the data on the source of information on the incident, the place and location of the incident, as well as the data on the survivor in which one answer excludes the others, the data on the case status are not mutually exclusive. Regarding one incident, two different proceedings are administered. Therefore, the sum of the incidents classified according to the case status, exceeds 57 reported incidents, i.e. the percentages exceed 100.0%.

¹⁶ The term “pre-investigation procedure” in this report is used for the part of the procedure from the moment of filing a criminal report until the issuance of an order to conduct an investigation, i.e. until the indictment in cases for which summary proceedings are envisaged.

In the case that received a certain amount of publicity, the physical assault on Ilija Vučević due to presumed same-sex sexual orientation, the competent prosecutor's office reached an agreement with the perpetrators on the recognition of the crime, which was confirmed by the competent court and thus the second verdict for a hate crime¹⁷ was rendered in Serbia. This case is also unusual not only because the survivor is a cis-straight male, but also owing to the quick reaction of the prosecution, and therefore is neither a typical profile of hate crime survivor, nor the experience of the majority of the survivors with the criminal justice system.

▶ In the same pizza place, where Ilija Vučević was attacked two years earlier, a trans woman and her friends were physically attacked, and they were also injured. This case, although reported to the police, never moved away from the pre-investigation procedure, nor did it receive close media attention. The efficiency of the competent authorities in shedding light on the case and the interest of the media should not depend on the personal characteristics of the survivor. Everyone has the right to access justice and to report professionally on the incident they have suffered regardless of SOGIE.

In three (5.3%) cases, female survivors filed private lawsuits, in two for insult and in one for discrimination. Four (7.0%) incidents were reported, but no criminal report was recorded, i.e. no official note was made. In two incidents, survivors went to the police station and reported the incident, but police officers did not record a criminal report, and in the remaining two, the incident took place in front of the police officers, but they did not react. In 15 (26.3%) cases, the incident was reported anonymously or an attempt to contact the person who reported the incident was unsuccessful.

¹⁷ For an excellent analysis of the plea agreement reached by the competent prosecutor's office with the perpetrators, see: Stojanović, B., "Zločin iz mržnje - (ne)dovršena priča", (internet) 7. novembar 2019., dostupno na: <https://www.vreme.com/cms/view.php?id=1730213> (pristupljeno 26. jula 2020). (Stojanović, B., "Hate crime - (un) completed story", (internet) November 7, 2019, available at: <https://www.vreme.com/cms/view.php?id=1730213> (accessed 26 July 2020)).

“ Having finished my training, I headed home, the way I go every day. I was passing by a group of six or seven guys with whom I made no contact, but the clothes I was wearing, gave rise for their strong reaction (I was wearing shoes, Bermuda shorts, a short-sleeved T-shirt, a shirt, a hat and a backpack). At first, they started shouting “fagot” which I ignored and continued on my way, but that group continued following me while shouting loudly, yelling and whistling. Since the streets were very dimly lit, the only thing I tried to do was get to the main street as soon as possible so that I would be surrounded by people. I went to the market aiming to hide there, but they followed me there as well. While they were looking for me in the market, I managed to get out before them and go to the police station that was across the street from that market, but they still continued following me. When I entered the station and reported the case, the two officers came out and asked me what had happened and whether I was sure that they were following me and what they were telling me. After that, they went out at the entrance and told me that they were not there, and that I could go home, and that the second shift would take me through the city later to see who they were. They made no report. I did not feel safe and refused to go home alone, so a police officer drove me back home, and on the way home he commented that I should never enter the police station dressed like that again, thinking of my Bermuda shorts, not realizing the danger I was in when I entered the station to seek help. They took no information from me. When I asked what would be the best thing to do next time, since situations like these did happen to me before, involving even a physical attack, I was told: “Go home, get some rest.” **”**

Example 2.1. Description of the incident in which a criminal report was not recorded

Case status	Number of incidents	%
No criminal report recorded	4	7,0%
Pre-investigative proceedings	31	54,4%
Dismissed criminal report	3	5,3%
Investigation	1	1,8%
Plea agreement	1	1,8%
Private lawsuit	3	5,3%
Unknown	15	26,3%

Table 2.12. Overview of incidents according to the case status

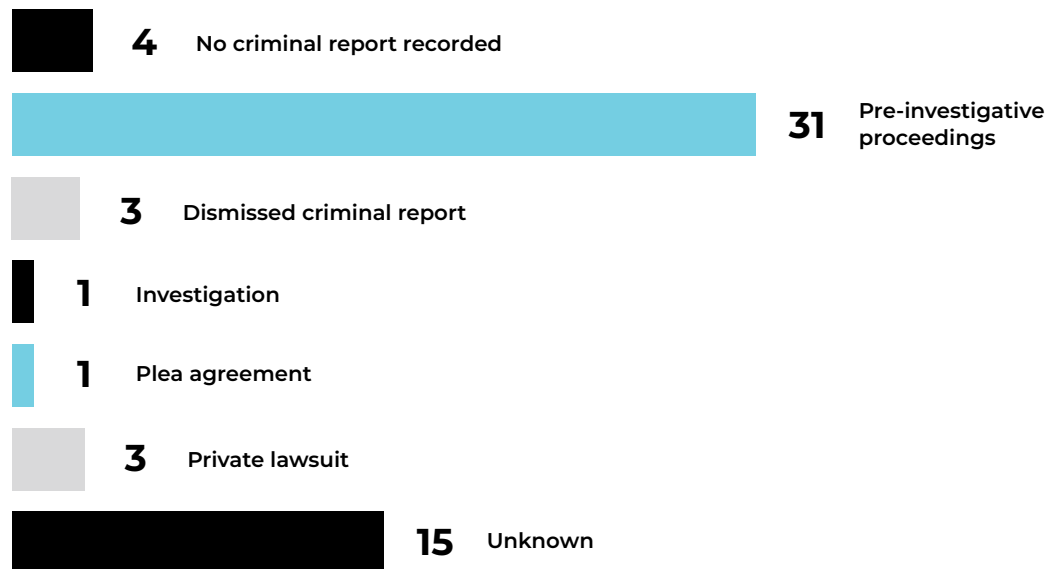


Chart 2.10 Overview of incidents according to the case status

Pre-investigative proceedings	Number of incidents	%
Survivors having information that a criminal report has been acted upon	4	12,9%
Survivors not having information whether a criminal report has been acted upon	27	87,1%

Table 2.13. Overview of incidents in the pre-investigation procedure according to the information of the survivors about the undertaken actions

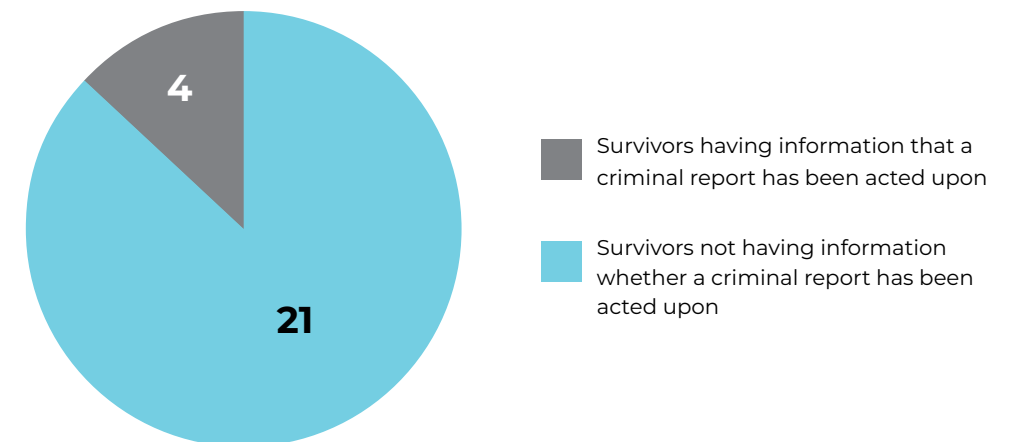


Chart 2.11 Overview of incidents in the pre-investigation procedure according to the information of the survivors about the undertaken actions

It is necessary for the competent authorities to proactively and regularly inform the applicant of the actions taken¹⁸. The Handbook for police work involving LGBTI population explicitly states that the police should inform the survivors about the measures taken. Nevertheless, as many as 87.1% of survivors were not informed that any action had been taken upon receipt of the criminal report. This means that the competent authorities are either violating the right of the survivors to information about the procedure or, even worse, fail to take any action whatsoever in order to unmask and shed light on the reported hate-motivated incidents. Article 22 of the EU Directive 2012/29/EU¹⁹ on establishing minimum standards on the rights, support and protection of victims of hate crimes, explicitly lists the hate-crime survivors as particularly exposed to the risks of secondary and repeated victimization, and it is therefore necessary for the identification of the specific protection needs to be carried out at the **earliest possible stage** of the investigation. In addition, the **timeliness** of identifying the indicators that a hate incident is motivated is, according to the *Guidelines for the Prosecution of Hate Crimes in the Republic of Serbia*, recognized as key to properly classifying a crime as a hate crime, as well as proving, at later stage of the procedure²⁰, that a hate crime was committed. Based on the aforementioned, it should be clear that delaying the pre-investigation procedure increases the vulnerability of the hate-crime survivors and violates the right of the perpetrators to an efficient investigation without discrimination.

Also, the survivors must be informed that they have the right to request and receive a copy of the official record of the incident they reported, as well as to be informed under what number the report were filed, who is the contact person for their case and when is he/she available, but also how they can file a complaint against the work of the police and the prosecutor's office. In the already mentioned *Guidelines for the Prosecution of Hate Crimes in the Republic of Serbia*, as an example of ill-treatment by police officers, the failure to instruct the survivors about the

rights that belong to them in criminal proceedings²¹ is also cited. Nevertheless, such behavior is proving to be a practice in reporting hate-motivated incidents.

Human rights defenders should be allowed to be with the survivor of a hate incident, from the moment the complaint is filed until the verdict, as well as to inquire about the case when they have the consent of the survivor.

Handbook for police work involving LGBTI population suggests for the police officers to contact queer organizations if they have any concerns about the treatment of crime survivors²². Despite the fact that in the observed period, numerous irregularities in the treatment of the queer survivors by the police officers, were documented, the Association *Da se zna!* so far, has not been addressed by a police officer, wishing to better exercise his powers.

The situations is quite similar with the prosecutor's office. Given that the state system of support for queer survivors of hate incidents has not yet been developed in Serbia, based on the example of a positive resolution of a case, prosecutors are advised in the Guidelines for the Prosecution of Hate Crimes in the Republic of Serbia to refer the survivors to human rights organizations, which provide free legal aid and counseling²³. As can be seen from the analysis of the incidents according to the source of information, the Association *Da se zna!* received no information of a single, document incident, from the competent authorities, although it has been providing these services for years.

It is inadmissible for police officers to ignore criminal reports, misinform the survivors, question the perception of survivors with manipulative questions and comments, or try to hold them responsible for the incident they suffered, as well as to fail to react to incidents they personally witness. It is necessary for such police officers to be bear disciplinary, misdemeanor and criminal liability, in order to create a discontinuity in the decades-long treatment of queers as second-class citizens.

18 Uprava policije MUP-a, 2016, p.14. (Police Administration of the MoI, 2016, p.14)

19 European Union: Council of the *European Union, Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, 14 November 2012, L 315/57.

20 Mirović, T. et al., 2018, p. 15.

21 *Ibid.*, page 34

22 Uprava policije MUP-a, 2016, p.14. (Police Administration of the MoI, 2016, p.14)

23 Mirović, T. et al., 2018, page 35.



PART III:

CASE STUDIES



SERBIA V. N.B.

Since September 2017, when the Pride Info Center was opened for the first time, as space intended for sharing information with citizens about the events related to the Pride Week and Pride Parade, until present time, seven attacks on the facility were reported. In some of the cases, the activists that were at the facility at that time, were attacked. One of the victims of the homophobic attack in November 2018 was the activist of the *Da se zna!* Association Aleksandar Savić, who reported this case to competent authorities.

Namely, on 9 November 2018, approximately around 18.00 Aleksandar Savić, activist of the Association *Da se zna!* was in front of the Pride Info Center at Kralja Milana Street in Belgrade, when he noticed an unknown young man throwing his cigarette on the street, just before entering the Pride Info Center. Before the young man, that will be identified as N.B. later on, entered the Pride Info Center, Aleksandar asked him not to throw the cigarette butt on the street, since there was an ashtray in front of the door, and asked him to pick the butt up and throw it in the ashtray. However, N.B. threatened him that he will break his bones and lunged towards Aleksandar with his fists ready for hitting, but the security officer came up between them and moved N.B. along, while Aleksandar called the police.

Afterwards, N.B. addressed Aleksandar in a homophobic manner, asked if he wanted to be called gay, and then said “faggot” to Aleksandar.

Related the aforementioned event the Ministry of Interior of the Republic of Serbia, Police Directorate, Police Administration of the City of Belgrade, Police Station Stari Grad, brought criminal charges to the First Basic Public Prosecutor’s Office in Belgrade against N.B. for suspicion of committing criminal offense of Endangerment of Safety from Article 138 paragraph 1 of the Criminal Code²⁴.

Aleksandar Savić pointed out the possible motive of N.B. for the commitment of such act to the competent prosecutor’s office, and that it was probable that N.B. acted in such a manner for reasons of hate due to presumed sexual orientation of Aleksandar, keeping in mind, especially, that the incident occurred in front of the Price Info Center, and that N.B. addressed Aleksandar in a homophobic manner.

In March 2020, the prosecutor’s office, after the hearing of Aleksandar Savić, dismissed criminal charges against N.B. since they concluded there were no grounds for

²⁴ Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019.(Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.)

suspicion that N.B. committed a criminal offense that is pursued ex officio due to lack of evidence.

Aleksandar Savić objected to this decision of the First Basic Public Prosecutor's Office to the Higher Public Prosecutor's Office in Belgrade and pointed out to the fact that all the evidence was not presented, that is, all the persons that evidenced the incident were not questioned.

In May 2020, the Higher Public Prosecutor's Office in Belgrade adopted the stated objection by Aleksandar Savić and ordered the First Basic Public Prosecutor's Office to continue with the proceedings and question all witnesses to the event. The proceedings are ongoing, and the decision of the public prosecutor's office has not been adopted yet.

In this specific case as well as other cases which the Association *Da se zna!* follows and is interested in, one can notice the tardiness in action. A year has passed from the statement of the aggrieved party given to the police to the call for the first hearing in the capacity of a witness in front of the competent prosecutor's office. Also, even though the aggrieved party pointed to the possible motive of the criminal offense, the competent prosecutor's office has not taken that into consideration yet. Additionally, the prosecutor's office initially dropped criminal charges without questioning all the witnesses of the event.

The aforementioned points to the fact that the aggrieved party must have a more active role in the proceedings and insist on taking certain evidence gathering activities, even though they are the official duty of the prosecutor's office.

DRAGOSLAVA BARZUT V. M.K.

Human rights activists have been exposed to threats, belittling and discrediting of their work for years now, with frequent threats to their physical safety. Unfortunately, this was confirmed in 2019 by attacks to activists of associations "Ne davimo Beograd" and *Da se zna!* on the events marking the International Women's Day – March 8th. Another woman was attacked on the same day, on her job, while driving a city public transportation bus.

On 8 March 2019, Dragoslava Barzut headed from the office of the Association *Da se zna!* towards the plateau of the Faculty of Philosophy in Belgrade with other activists, where a protest march was scheduled for 1 o'clock, marking the March 8th. They stopped for a while in the Pride Info Center at Kralja Milana Street where

they took the rainbow flags, joined by volunteers. Dragoslava Barzut carried a folded flag, with the intention to unfold it during the march.

Between Slavija square and the Palace Albania, they were insulted or provoked by passers-by, with a cab driver that was parked at the Terazije taxi station yelling: "You motherfuckers."

At the entrance into the Knez Mihajlova Street two young men they did not know at the time addressed them: "You sickos, why are you passing here, you stink" etc. One of them was violating personal space of Dragoslava Barzut the whole time, and her colleague, yelling: "What?! What?! You sickos!" and he spat in their direction. Dragoslava and her colleague approached a police officer asking him to remove the two young men, explaining what happened, but the police officer did not react because, as he put it, he did not see it.

With the reaction of the police missing, the young men continued following them through Knez Mihajlova Street towards the plateau of the Faculty of Philosophy in Belgrade and one of them, later on identified as M.K. recorded them as well. Dragoslava asked M.K. not to do that in a calm tone, but he responded with insults: "You sicko, just look at yourself, are you a boy or a girl?" A colleague of Dragoslava approached another police officer after that, but he also did not react.

When they arrived at the plateau, Dragoslava asked M.K. to erase the footage, but he got into her face and spat on her, when she pushed him away in a reflex reaction. Then a plain-dressed inspector came over, who was securing the announced rally, and moved M.K from Dragoslava with his hands.

Considering the entire event, especially the fact a group of LGBT activists moved through the city to the venue of the rally, and that incidents usually happen in these circumstances, we consider the reaction of police officers inadequate and untimely. Namely, the facts of the case show that the reaction of the police officer, when first approached, in the sense of taking measures to secure public order and peace, identification of two young men and resolving the incident would change the course of the event and mitigate its consequences to a significant degree. The police officer had the authority to warn two young men in line with Article 72 of the Law on Police²⁵(LP), since the description of the event the police officer was present at (even though he stated he did not see it), implied that two young men could have jeopardized the safety of activists and violate public order, but he did not act.

For insults she suffered that day, Dragoslava Barzut filed a civil lawsuit against M.K. to the First Basic Court in Belgrade for the criminal offense of insult with

²⁵ Zakon o policiji, *Službeni glasnik RS*, br. 6/2016, 24/2018 i 87/2018. (Law on Police, *Official Gazette of the Republic of Serbia*, nos. 6/2016, 24/2018 and 87/2018)

aggravating circumstances from Article 54a of LP²⁶. Namely, the circumstances of the case clearly show that the insults M.K. said Dragoslava Barzut were motivated by prejudice due to her presumed sexual orientation as LGBT+ activist, who was holding a LGBT+ flag at that time.

Even through more than a year passed from filing a civil suit, the main hearing was not held yet, since the court could not secure the presence of M.K. Out of five hearings that were scheduled so far, three were not held due to absence of M.K., one due to the moving of the court and one due to the state of emergency in the Republic of Serbia.

DA SE ZNA! V. VLADIMIR DIMITRIJEVIĆ

In addition to documenting hate crimes and related incidents motivated by prejudice towards queer persons, the Association *Da se zna!* also performs monitoring of newspaper articles and reacts to hate speech and discrimination present in the media. Thus, in last year's report²⁷ we wrote about the case of discrimination in an article of the Orthodox Church columnist, Vladimir Dimitrijević, which was, in May 2018., a subject of our complaint to the Commissioner for Protection of Equality. In her opinion, the Commissioner stated that it was the case of discrimination (violation of provision of Article 12 of the Law on Prohibition of Discrimination)²⁸ and issued a recommendation for the discriminator to issue a public apology and restrain from further violation of regulations on discrimination prohibition (Janković, Internet). Instead of apologizing, Vladimir Dimitrijević repeated the discrimination in his article as the response to our complaint.

Opinion of the Commissioner and repeated discrimination are the reasons we filed a suit against Vladimir Dimitrijević in January 2019 to the Higher Court in Belgrade. Since its foundation in 2016 the *Da se zna!* Association submitted dozens of complaints to the Commissioner for Protection of Equality, and due to this experience extending for a number of years, we approach cases on a strategic level. We considered

²⁶ Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019. (Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.)

²⁷ Kovačević, M., *Podaci, a ne zvona i prapoci 2*, Beograd, *Da se zna!*, 2019, str. 54. (Kovačević, M., *Bring out the data, not empty drums and trumpets 2*, Belgrade, *Da se zna!* 2019, p. 54).

²⁸ Zakon o zabrani diskriminacije, *Službeni glasnik RS*, br. 22/2009, Član 12. (Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009, Article 12)

this case a representative example of discrimination present in the public space of Serbia that, in addition to justifying, also creates the policy of creating alibies for violence towards the queer community.

Just as a reminder, on 12 January 2018, Vladimir Dimitrijević published an article on his website named "In the Defense of a Natural Family" that he wrote, as he said himself, just before the adoption of the Law on Gender Equality (LGE)²⁹ "*consequences of which will be tremendous on our, already devastated, families.*" He pointed out that the article was written with the intention of informing the citizens on the "*most devastating attack of the totalitarian rule on the family that may be compared only to the communist strike on spiritual and family values*" and that "*homosexuality is imposed upon Serbs, instead of communism*" namely "*under the mask of gender equality*" promoted by, as he pointed out, LGBT activists.

In the aforementioned article Vladimir Dimitrijević quoted parts of the letter of Branislav Vujić, accepting parts of that letter as its own. In this letter, same-sex relationship is reduced only to intercourse, deprived from other human characteristics, such as emotional bond, compared to heterosexual relationship that may exist even without sex. Further, homosexual relationship is named perverse, selfish and consumer-like, with warning that homosexual relationships destroy family relations and change the criteria of normality. All of this was stated in order to prevent treating same-sex couples as equal, which was stated in the conclusion of the article.

The article transpires the position that the only natural union is the union between a man and a woman and that only such a union – a natural family, is the path to happiness leading to a proper life, true happiness, wellbeing and source of proper political life.

Also, Vladimir Dimitrijević presents the ideas that impose gender ideology to the whole society, with the goal of winning the "souls" through schools, stating that "*when LGBT-genders enter schools they will have the base for their propaganda they never had before.*"

Then, in May 2018, Vladimir Dimitrijević, as response to the complaint submitted by *Da se zna!* to the Commissioner for Protection of Equality related to the article "In the Defense of a Natural Family", published a new article on his website named Response to a complaint by LGBT protectors or Again "As Long As There is One Hundred".

In the aforementioned article Vladimir Dimitrijević, in the opinion of *Da se zna!* and the Commissioner for Protection of Equality, repeated his positions that depict essential lack of understanding of human sexuality, deepen negative stereotypes,

²⁹ Zakon o rodnoj ravnopravnosti, *Službeni glasnik RS*, br. 104/2009. (Law on Gender Equality, *Official Gazette of the Republic of Serbia*, no. 104/2009)

humiliate LGBT+ persons and promote creation of hostile and offensive environment for such persons. Thus, Vladimir Dimitrijević, among others, states that in a modern society “*there are tendencies to understand homosexuality not as a gender deviation but as a sexual orientation that has equal rights to public practice and respect.*”

Then he presented alleged position of the Church accepting them as own, and stated that “*homosexual relationships are sinful and subject to judgment*” and that “*homosexual intentions can be treated as can other passions that trouble the fallen man*” and that “*occasional deviation of human sexuality is presented in the form of sick feeling of belonging to the same sex, with the result of trying to change such sex.*”

For all these reasons the Association *Da se zna!*, in January 2019, filed a suit against Vladimir Dimitrijević to the Higher Court in Belgrade, with the proposal for the court to determine whether Vladimir Dimitrijević, in his articles “In the Defense of a Natural Family” and “Response to a suit by LGBT protectors” or Again “As Long As There is One Hundred” committed an act of discrimination towards the queer community, and to order Vladimir Dimitrijević to remove stated articles from his website and to prohibit further publication of articles on the website and other publications discriminating queer community, and to order publication of the verdict at own expense.

In the suit filed with the Higher Court in Belgrade, Association *Da se zna!* among others, pointed out that positions of Vladimir Dimitrijević in the articles published represent a negative stereotype on same-sex relationships and lead to unacceptable conclusion that same-sex couples cannot be treated as equal. Also, *Da se zna!* expressed the opinion that Vladimir Dimitrijević directly offended the dignity of LGBT+ persons in his statements and promoted the creation of hostile and offensive environment for such persons, leading to unfounded conclusions that the rights of LGBT+ persons jeopardize families and family values.

In his response to the suit from April 2019, Vladimir Dimitrijević, defending his positions, stated that in article “In the Defense of a Natural Family” he pointed that we should prevent all tendencies that are not in the spirit of family values as understood in our nation in the form of a tradition, as well as the fact that same-sex couples are not allowed, in line with our constitution and legislation, to conclude a marriage or adopt children, and that in that sense, his position cannot be seen as discrimination of LGBT persons. However, in addition to the fact that Serbia, as a member of the Council of Europe is obligated to regulate the living community of persons of the same sex, systemic discrimination surely cannot be the basis for legitimization of violation of certain anti-discriminatory provisions. In other words, systemic discrimination, as the result of absence of regulations related to specific issues such as the issue of living communities of persons of the same sex, cannot be an instrument to deepen the discrimination in spheres where regulations explicitly guarantee protection from discrimination.

He also stated that the purpose of articles was drawing attention to the broader public to issues that may occur as the consequence of possible equality of heterosexual and homosexual couples, regarding adopting children and marriage.

In the words of Vladimir Dimitrijević, using provocative language in articles under dispute is not for the purpose of offending and humiliating homosexual couples or individual homosexuals, but for the purpose of criticizing the social phenomenon he calls “ideology of political homosexuality”. Vladimir Dimitrijević thinks that in that sense all the intellectuals, himself included, feel the primarily moral duty to value and criticize current phenomena or tendencies occurring in our society, for which they must be allowed a broad understanding of freedom of thought and speech. In the words of Vladimir Dimitrijević, the purpose of his articles is participation in public debate and criticizing the possible adoption of then proposed LGE, in order to prevent its adoption, and considers his legitimate right to, from the aspect of family values, religion and tradition of the Serbian people, criticize possible legal solutions that oppose such values, including the ideology of political homosexuality.

Vladimir Dimitrijević pointed out to the fact that the suit of *Da se zna!* represents violation of his right to the freedom of religion and freedom of thought as well as public expression of opinion, but he also raises the issue of constitutionality of LPD³⁰ emphasizing that it is not in the “spirit” of the Constitution of the Republic of Serbia (CRS)³¹ that prescribes special protection of the family and that the CRS does not entail sexual orientation among special basis for discrimination. However, these positions of Vladimir Dimitrijević are obviously unfounded, having in mind that Article 21 paragraph 3 of the CRS prohibits any discrimination on any grounds.³²

In a filing from December 2019, *Da se zna!* among others, pointed to the right on existence without discrimination of LGBT persons that cannot be related to the social and political formations, for example, communism, which Vladimir Dimitrijević tries to do, since homosexuality is not a socio-economic system or any “managerial” policy of the society.

It is the opinion of *Da se zna!* which is emphasized in the current course of proceedings, that is it inadmissible for Vladimir Dimitrijević to publicly, completely unjustifiably, allegedly in order to “defend” traditional value, express positions that directly stigmatize a minority group based on personal properties – sexual orientation and deepen the stereotype in a society in which this group, in addition to Roma people, is discriminated the most.

30 Zakon o zabrani diskriminacije, *Službeni glasnik RS*, br. 22/2009. (Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009)

31 Ustav Republike Srbije, *Službeni glasnik RS*, br. 98/2006. (Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 98/2006)

32 *Ibid*, Article 21 paragraph 3.

Related to this, *Da se zna!* pointed out that nobody is denying Vladimir Dimitrijević the right to publicly debate on the significance of the family, reasons he feels are causing the vulnerability of the institution of marriage and the family in the society, causes of divorces, drop of birth rate, etc. and nobody is questioning his right to freely practice religion or have an opinion, but it cannot be allowed to use such a debate to present opinions that, undoubtedly, insult the dignity of a minority group, and this group is depicted as the one violating the rights of the majority and destroying the “natural” family.

Also, the freedom of speech related to family values does not justify expressing positions that homosexuality is gender deviation, and it does not justify presenting homosexual relationships as the main and the only cause of possible devastation of any family value.

It is clear that the right to a family life belongs to persons of homosexual orientation as well as persons of heterosexual orientation and, it is the opinion of *Da se zna!* one cannot “defend family values” by stigmatizing the minority that is also entitled to a family life, especially not by accusing it of so-called destruction of the family.

Da se zna! also pointed out the fact that Article 18 of the CRS³³ prescribes that human and minority rights are directly applied and interpreted in line with current international standards of human and minority rights, as well as the practice of international institutions that monitor its implementation, and reminded to the fact that Serbia, being the member of the Council of Europe, is obligated to protect the living community of persons of the same gender, and especially pointed out the verdict of the European Court for Human Rights (ECHR) in the case *Oliari and Others v. Italy*³⁴ which clearly proves the obligation of all member states to legally regulate the same-sex living community.

Da se zna! also pointed out that the purpose of the suit was not to exclude any type of debate in a democratic society, but Vladimir Dimitrijević expressed opinions that cannot be justified and are not proportionate to the purpose of any debate on family and family values. Vladimir Dimitrijević, in the opinion of *Da se zna!* promotes stereotypes, through his indications, that the respect of rights of a single group of persons results in losing the rights of others, and that the exercise of rights to a private and family life of persons of different sexual orientation may, in a way, endanger the same rights of heterosexual persons.

Da se zna! mentioned the verdict of ECHR in the case of *Bayev and Others v. Russia*³⁵ since the court, in the stated case, considered arguments of the defen-

33 *Ibid.*, Article 18.

34 *Oliari and Others v. Italy*, no. 18766/11 and 36030/11

35 *Bayev and Others v. Russia*, no. 67667/09, 44092/12, 5671/12

se that homosexual relationships are not in accordance with traditional values of Russians and that most of the Russians do not approve homosexuality. The International Court did not accept such arguments, concluding that Russia failed to show that affirmative reporting on the subject of LGBT human rights would have a negative impact to the existing “traditional family” and endanger its future.

We will receive the decision of the court on whether Vladimir Dimitrijević discriminated the queer community in his allegations or he acted within his right to freedom of thought and public speech.

It is important to point out that extraordinary tardiness in acting is clear in this specific case, even though the Law on Prohibition of Discrimination clearly prescribes the procedure for protection from discrimination urgent. One year passed since the filing of the suit in January 2019 until the first hearing on the 22 January 2020, and this is the only hearing held so far.

DA SE ZNA! V. MILOVAN BRKIĆ

Lack of queer topics is clearly visible in the media space of Serbia in the last couple of years. Thus, if we can say that there was a dominantly negative reporting on queer topic in the near past, today we can say that there is a culture of silence on all important topics of the queer community in Serbia, such as violence, systemic discrimination, poverty, etc. The media act as most of the population, they consider queer topics not significant enough to write about, putting the experience of queer community discrimination in the domain of sexuality in this manner, and as a consequence – in the domain of privacy. This is clearly the case of switching the arguments, that is, de-humanization of the queer persons. Such erroneous attitude towards the queer community, in addition of being the consequence of homophobia and transphobia in our society, speaks on the severity of prejudice we face today.

One of the media that went the farthest in de-humanizing the queer community is the *Tabloid* magazine. This media reflects the worst prejudice towards the queer community that exist in the Serbian society. Being of opinion that the articles of the *Tabloid* magazine contribute to current prejudice, the association *Da se zna!* initiated proceedings against the Editor in Chief of this paper in front of the Higher Court in Belgrade.

Namely, in the online edition of “*Tabloid Magazine: Truths and Delusions*” on 3 May 2018 the article named “Where is This World Heading?” was published. This article expressed ideas and opinions that humiliate persons of sexual orientation that is

different than heterosexual, as well as trans-gender persons, in a manner insulting their dignity and creating hostile, humiliating and offensive environment.

The heading of the article “Where is This World Heading?” was followed up by subtitle stating: “*The plague of the third millennium: Is the victory of death, sodomy, pedophilia and destruction of family the final goal of the European Union or its ending?*”

The topic of the article “Where is This World Heading?” is explained the summary, elaborating: “Today, not only the European Union, but also the entire West, sunk in the darkness of homosexuality, pedophilia, same-sex marriages, destruction of family and everything that maintained the European and Christian civilization so far.”

The article, among others, quotes: “Systematic destruction of ethical, moral, Christian and, in general, human in the European civilization, is reaching its peak. Either this continent, whose fate is shared by Serbia also, will resist the horrible dance of death, admiration to Sodom and Gomorrah, homosexuality, gay marriages, aggressive transsexual propaganda, pedophilia, or it will be no more.”

After expressing views that the first victims of the global violence are families and the youngest, and, through them, countries and societies, the article follows: “In order for this horrific project to succeed, the change of profiles of persons leading European institutions is accelerating. Gay-diplomacy became part of the European political being, and the members of the so-called gay-lesbian community are accurately distributed throughout the EU administration, on positions where they adopt fateful decisions for all members states and those aspiring to be one. Laws are quickly amended, as well as constitutional principles that violate families and marriage...” In addition to failure of connecting adopting anti-discriminatory regulations with jeopardizing family and marriage, these views unjustifiably imply that queer persons should not hold high-ranking positions and functions due to their personal properties, that is, their sexual orientation.

In the part of the article elaborating on homosexual rights and Pride Parade in other countries, the following is noted: “So, terror of this minority over the majority occurred in Serbia by adopting laws protecting the rights of homosexuals and so-called trans-gender minorities. The principles of the freedom of the individual or minority, written in the French Bourgeois Revolution, are squashed today in the name of sodomy, pedophilia and the rights of the deviant ones. The laws that sanctioned this evil are slowly giving way to laws that glorify it. Serbia and Serbian legislature follow this trend.” Further, related to the legalization of homosexual marriage in Ireland and establishment of the new “forms of family”, the article asks a question: “What are the consequences of this demise?”, followed by conclusion: “Sexual deviation has become protected in Western societies by human rights organizations. Special associations and organizations were formed for homosexuals and lesbians with huge budgets and armies of lawyers to protect or defend their interest.”

Since these allegations directly express ideas and opinions that humiliate persons of different sexual orientation in related to heterosexuality, as well as transgender persons, that is, insult their dignity and create hostile, humiliating and offensive environment for such persons, in May 2018, the Association *Da se zna!* filed a complaint to the Commissioner for Protection of Equality against the Editor in Chief Milovan Brkić. Milovan Brkić responded to allegations from the complaint, and, among others, referred to the freedom of speech, but this independent institution did not accept his allegations, and adopted an opinion that the stated article violated provisions of Article 12 of LPD³⁶, and recommended Milovan Brkić, as the Editor in Chief to publish an apology to the queer community in the Tabloid Magazine: *Truths and Delusions*, and, in the future, to restrain from publishing articles creating fear and hostile, humiliating or offensive environment for the queer community.

Since Milovan Brkić did not act in line with recommendations of the Commissioner for Protection of Equality the Association *Da se zna!* filed a suit in April 2019 to the Higher Court in Belgrade, for protection from discrimination, with the proposal for the court to establish discrimination, prohibit future publication of articles discriminating queer persons, and ordering the Editor in Chief to publish an apology to the queer community, remove the disputed article and publish the verdict.

In the suit, among others, *Da se zna!* pointed out that the content of the article in subject clearly shows that the homosexual orientation is named offensively using the word “pederasty” and that it is related to pedophilia together with term of trans-gender, and the message is sent to queer persons that they contribute to the destruction of family and everything positive for a certain part of the public. Also, *Da se zna!* pointed out that homosexual orientation and transgenderism are depicted as evil (“death dance”) and represent such a danger for the society that it is necessary to “resist” them, otherwise all “positive and human” things in the European civilization will perish. Additionally, queer persons are considered deviant, while the legalization of homosexual marriage in other European countries is considered a demise.

Da se zna! pointed out the relevant provisions of CRS³⁷, LPD³⁸, European Convention for the Protection of Human Rights (ECHR)³⁹, and the fact that the right to a freedom of speech is not unlimited.

36 Zakon o zabrani diskriminacije, *Službeni glasnik RS*, br. 22/2009, Član 12. (Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009)

37 Ustav Republike Srbije, *Službeni glasnik RS*, br. 98/2006. (Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 98/2006)

38 Zakon o zabrani diskriminacije, *Službeni glasnik RS*, br. 22/2009. (Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009)

39 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5

Namely, Article 21 of the CRS⁴⁰ prohibits any discrimination, direct or indirect, on any grounds. CRS guarantees the freedom of thought and speech, as well as the freedom to seek, receive and spread information and ideas through speech, by writing, images or any other manner, but also prescribes that the freedom of speech may be limited by law if necessary, among others, for the protection of rights and reputation of others.

Further, Article 2 paragraph 1 item 1 of the LPD⁴¹ prescribes that discrimination and discriminatory behavior represent each unjustified differentiation or unequal treatment, that is, omission to treat, persons or groups as well as their family members, or close persons, in an open or hidden manner, based on, among others, sexual orientation and/or gender identity.

Article 12 of the LPD⁴² prohibits harassment and humiliating with the goal of or representing the violation of dignity of persons or groups based on their personal properties, especially in case of creating fear or hostile, humiliating or offensive environment.

Article 14 of the ECHR⁴³ prohibits discrimination and it regulates that the exercise of rights and liberties stated in the aforementioned convention is provided without discrimination on any grounds, and Article 1 of the Protocol 12 of the stated Convention⁴⁴ states that the exercise of all rights prescribed by law is secured without discrimination on any grounds. Additionally, Article 10 of ECHR⁴⁵ states that everybody has the right to a freedom of speech, that includes the right to have your own opinion, to accept and announce information and ideas without interference of the government and regardless of borders, but, since the exercise of these liberties includes certain duties and responsibilities, it can be subjected to formalities, conditions, limitations or penalties regulated and necessary in a democratic society in the interest of the national security, territorial integrity or public security for the purpose of preventing unrest or crime, protection of health or moral, protection of reputation or rights of others, preventing disclosure of information received in confidentiality or for preserving the authority and independency of the court.

40 Ustav Republike Srbije, *Službeni glasnik RS, br. 98/2006, Član 21.* (Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia, no. 98/2006*)

41 Zakon o zabrani diskriminacije, *Službeni glasnik RS, br. 22/2009, Član 2. Stav 1. Tačka 1.* (Law on Prohibition of Discrimination, *Official Gazette of the Republic of Serbia, no. 22/2009 Article 2, Paragraph 2, Point 1*).

42 *Ibid*, Article 12

43 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

44 Council of Europe, *Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination*, 4 November 2000, ETS 177, Article 1.

45 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

So, the freedom of speech is not unlimited. In line with CRS and ECHR, the protection of reputation and rights of others is one of the legitimate limitations of this right.

Further, in the practice of the European Court for Human Rights, limitations to the freedom of speech must be observed on case-by-case basis, including the review of statements and messages sent, as well as spatial and time context in which statements were given, and it is necessary to determine whether the limitation of the freedom of speech is necessary in a democratic society and proportionate to the legitimate goal.

Therefore, *Da se zna!* pointed out in the suit that connecting words such as “pederasty”, “aggressive transgender propaganda” and pedophilia brings extremely negative connotation to these words sending a negative message to the queer community, and getting the impression that different sexual orientation, other than heterosexual, that is, transgenderism, is something bad. Thus, it is clear that the article used offensive expressions unnecessarily. Media is entitled to express views and opinions of journalists on different social phenomena and events. However, it cannot be tolerated that a view on a certain social phenomenon is expressed by offending an entire social group only due to their specific personal property, which is, in this specific case, sexual orientation and gender identity.

Regarding spatial and time context, *Da se zna!* emphasized the position of queer persons in our society. Namely, prejudice towards queer community are widespread, evidenced by different reports and research, also presented to the court by *Da se zna!* that were current at the time of filing the suit.

For example, the Third periodic report of the Human Rights Committee on the application of International pact on civil and political rights from 2017, when the Committee adopted Conclusive Observations and obligated Serbia to deliver the next periodic report by 29 March 2021, stated that the Committee concludes that there is still a high level of discrimination and violence towards LGBT persons.⁴⁶

Also, the report of the European Commission against racism and intolerance of the Council of Europe stated that LGBT persons face high level of prejudice and that safety is their daily concern.⁴⁷ Additionally, the research “How will the security sector reform impact safety of people in Serbia: reassessment of the security sector reform impact on LGBT population” stated that 80% of the total population

46 Human Rights Committee (HRC), *Concluding observations on the third periodic report of Serbia, 10 April 2017, CCPR/C/SRB/CO/3*, available at: <https://www.refworld.org/docid/591e9c4b4.html> (9 August 2020).

47 European Commission Against Racism and Intolerance, *ECRI Report on Serbia (fifth Monitoring Cycle), adopted on 22 March 2017*, 16. May 2017, CRI (2017)21. available at: <https://www.refworld.org/docid/59637e444.html> (9 August 2020).

in Serbia would not wish a LGBT person for a neighbor. A total of 26% of surveyed LGBT persons stated they experienced physical violence.”⁴⁸

Further, results of research “Position of media towards discrimination” performed by the Commissioner for Protection of Equality during 2018 showed that reporters, even though they recognize discrimination towards LGBT persons, have a certain level of social distance towards this minority group. Thus, 21% of respondents agree with the statement “I have nothing against LGBT persons, but they should be LGBT at their homes, not in public”, while 15% of respondents had no opinion (Commissioner for Protection of Equality, Internet). The analysis of the second survey that was implemented by the Commissioner for Protection of Equality during the year on positions of the representatives of the government towards discrimination in Serbia showed that one fourth of respondents feel that employees in institutions would agree with the statement “Homosexuality is a disease that should be treated (Commissioner for Protection of Equality, Internet).⁴⁹

The work report of the Commissioner for Protection of Equality shows that the Commissioner for Protection of Equality paid special attention during 2018 to the fact that hate speech promotes violence and discrimination, and a frequent subject of the hate speech were women and members of the LGBT population, causing the issuance of several warnings.⁵⁰ Hate speech could be heard during 2018 in public space from the representatives of public functions and politicians. The results of research “Position of representatives of public authority towards discrimination in Serbia” executed by the Commissioner in 2018⁵¹ show that, if we were to exclude representatives of the judiciary, two thirds of respondents (62.5%) think that hate speech is prohibited by law, but the cause for concern is the fact that this opinion is least present with the members of the National Assembly of the Republic of Serbia (39%) and employees of the Ministries (40%). Also, when it comes to acting upon recommendations the largest number of omissions to act in line with recommendations is related to the cases of discrimination based on sexual orientation.

48 Radoman J., Radoman M. and Šapić, *Kako reforma sektora bezbednosti utiče na ljudsku bezbednost u Srbiji*, Beograd, Centar za istraživanje javnih politika and OSCE Mission in Serbia, 2017. (Radoman J., Radoman M. and Šapić, *How security sector reform affects human security in Serbia*, Belgrade, Center for Policy Research and OSCE Mission in Serbia, 2017.)

49 Poverenik za zaštitu ravnopravnosti, *Odnos predstavnika organa javne vlasti prema diskriminaciji u Srbiji*, Beograd, Poverenik za zaštitu ravnopravnosti, 2018, dostupno na: http://ravnopravnost.gov.rs/wp-content/download/izvestaj_odnos_predstavnika_javne_vlasti_prema_diskriminaciji_u_srbiji_final.pdf (pristupljeno 3. avgusta 2020). (Commissioner for Protection of Equality, *The attitude of representatives of public authorities towards discrimination in Serbia*, Beograd, Commissioner for Protection of Equality, 2018, available at: http://ravnopravnost.gov.rs/wp-content/download/izvestaj_odnos_predstavnika_javne_vlasti_prema_diskriminaciji_u_srbiji_final.pdf (3 August 2020).

50 Commissioner for Protection of Equality, *Regular Annual Report*, Belgrade, Commissioner for Protection of Equality, 2019.

51 Commissioner for Protection of Equality, 2018.

Tardiness is evident in this case also, even though LPD⁵² determines protection from discrimination cases urgent. More than a year has passed from the filing of the suit in the Higher Court in Belgrade, and the first hearing has not been held yet, that is, it was scheduled for the end of October 2020.

SERBIA V. D.M.

One of the rare cases with court epilogue, that was monitored intensively by the Association *Da se zna!* from the moment we learned about it (December 2018), is certainly the case of physical attack motivated by hate on three members of the queer community in Smederevo. The defendant was found guilty for hate crime in February 2020, and the verdict was not pronounced valid until the preparation of this report. Having in mind that since December 2012 when the Article 54a was introduced there are only two valid verdicts adopted, it is of great significance for the future court practice to analyze the actions of the competent public prosecutor's office and the court in this specific case, to put it more accurately – detect and mark points that prevent, slow down or make inadequate the application of the instrument of hate crime as the aggravating circumstance.

In September 2015 in Smederevo D.M. in the presence of a large number of citizens returning from the concert, physically assaulted I.I. and I.Đ., inflicting minor bodily injuries with homophobic statements.

Namely, I.I. and I.Đ. after the concert ended in the company of their girlfriend and her minor child, headed towards the “Wine City” when they were approached by a group of unknown young men. The assailant, later identified as D.M. yelled “There he goes!”, thinking of I.I. and then hit I.I. from the back, using a fist to the back of the head, pushing I.Đ. at the same time and their friend. I.Đ. asked D.M. why he hit I.I. to which he responded: “What the hell do you want, I know him, gay motherfucker, I will kill him, this is Serbia, he cannot live here, this is Smederevo” and kicked I.I. from the back in the groin, still dazed from the first punch to the head. Then, D.M. grabbed I.Đ. by the neck, trying to prevent the attack on I.I., put her face down and hit her in the forehead several times. D.M. left the scene running when the police showed up, but the plaintiffs recognized him on social network thus, including the identification in the police (March 2016) determining his identity.

In the described event I.I. received minor bodily injuries in the form of contusion of

52 Zakon o zabrani diskriminacije, *Službeni glasnik RS*, br. 22/2009. (Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019)

the back of the head and the groin area, while I.Đ. also received minor bodily injuries in the form of head contusion, which was determined by medical court expert in January 2017.

The competent public prosecutor's office filed an arraignment in February 2017 accusing D.M. for violent behavior from Article 344 paragraph 2 related to paragraph 1 of the CC.⁵³ In previous cases which we learned about from the plaintiffs we have pointed out that these were hate crimes towards LGBT+ persons (due to the vocabulary the offenders used when committing criminal acts and in their subsequent statements to the police and the public prosecutor's office) while the motive of hate was not recognized in the arraignment or the verdict.⁵⁴ Let us remind you of the case of physical violence over a trans woman in Valjevo, where the public prosecutor's office did not include hate in the arraignment even though the facts clearly showed that the criminal offense was committed out of hate due to the personal property of the plaintiff, that is, her (trans)gender identity. Then we submitted to the Republic Public Prosecutor's Office a Request for the Submission of Initiative for the Protection of Legality, considering the violation of the law occurred, since during the sentencing the court did not consider Article 54a of the CC.⁵⁵ This is added to the fact that the defendant clearly confessed to his motive, stating that he committed the criminal act since the aggrieved party was dressed as a woman and this irritated him.

At the initiative of the Association *Da se zna!* the Republic Public Prosecutor's Office, in December 2017, submitted to the Supreme Court of Cassation the Request for the Protection of Legality, with the proposal that the Supreme Court of Cassation should determine whether the verdict of the Basic Court in Valjevo violated the law in favor of the defendant. However, after more than a year from the submission of this Request, the Supreme Court of Cassation dismissed the stated request as unallowed, stating the rationale of its decision as follows:

- Article 54a of the CC⁵⁶ is imperative in nature, where the court is obligated to evaluate the circumstance whether the act was committed from hate as aggravating circumstance,

53 Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019. (Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.)

54 Kovačević, M., 2019, p. 31.

55 Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019. (Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 – as amended, 107/2005 – as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.)

56 *Ibid.*

- Extraordinary legal remedy the Request for the Protection of Legality cannot be submitted due to erroneous or incomplete determination of facts,
- Specific case holds no activities by the public prosecutor's office evidencing hate crime in such specific case,
- Statements of the Republic Public Prosecutor's Office that the court undoubtedly determined that the defendant acted out of hate are not accurate, while the wording of the verdict stated that the defendant approached the aggrieved party and took action without any cause, that was detailed in the wording of the verdict.

Such response of the Supreme Court of Cassation meant that the court cannot evaluate aggravating circumstances if the public prosecutor's office did not include them in the arraignment. On the other hand, the prosecutor has the position that the evaluation of the aggravating circumstances is the exclusive competence of the court, as detailed in the Article 54a: "If a criminal offence is committed from hate based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating except when it is not stipulated as a feature of the criminal offence." However, after the rationale of the Supreme Court of Cassation on the submitted Initiative of the Republic Public Prosecutor's Office, it became clear that the Prosecutor's Office should take a series of actions in order to enable the court to evaluate aggravating circumstances when determining punishment. Thus, Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia, published in 2018, developed by the Republic Public Prosecutor's Office with the support of OSCE Mission in Serbia, provided more detailed recommendations for actions of competent prosecutor's offices in cases of hate crimes:

"Having in mind that the burden of proof is on the plaintiff (Article 15 paragraph 2 of the LCP) and the evidence includes facts that constitute a criminal offense or other provisions of the Criminal Code depend on such evidence (Article 83 paragraph 1 of the LCP), it can be presumed that the court, in case of hate crime, if the public prosecutor fails to include that it is a criminal offence committed out of hate in the description of facts and legal qualification of the act, will not determine motive for the commitment of the specific criminal act, and it will base its decision only on the arraignment and evidence presented by the prosecutor."⁵⁷

We started following this case, which is the subject of consideration in this study, unlike the case of violence over the trans woman in Valjevo at the time it was current. This means that we could present the information on the progress of this case, the

57 Mirović, T. et al, 2018, p. 27.

fact that Article 54a was not included in the arraignment, on the inter-sector meeting which is a regular discussion forum related to hate crimes between competent state authorities and representatives of the civil society organizations.

Since 2014, in the organization of the Office for Human and Minority Rights, with the support of the OSCE Mission in Serbia, coordination meetings are held of the representatives of competent state authorities and organizations of civil society for the purpose of establishing a mechanism of combatting hate crimes in the Republic of Serbia. Aforementioned meetings arose from the Strategy for Prevention and Protection from Discrimination and its Action Plan (2014-2018).

The purpose of the meeting is cooperation and experience sharing between the competent state authorities, primarily the Ministry of Justice, Ministry of Interior, Supreme Court of Cassation, Republic Public Prosecutor's Office, Judicial Academy, Commissioner for Protection of Equality, Center for Basic Police Training and the Office for Human and Minority Rights, as well as the civil society organizations that had a significant role in struggle against hate crimes recently. Representatives of OSCE Mission in Serbia are also present at the meetings. The meetings are scheduled by the national contact person for combatting hate crimes on behalf of the Office for Human and Minority Rights, with the goal of adopting specific proposals in resolving hate crime issues. The association *Da se zna!* is taking part on these coordination meetings of representatives of competent authorities since its foundation in 2016. Immediately upon learning that the arraignment does not include the motive of hate, we presented the case in front of a network formed from the participants of the coordination meeting after which, in January 2019, competent prosecutor was replaced, and the arraignment was detailed. At this moment, we could reference the aforementioned Guidelines:

“If the description of facts in the arraignment does not include facts and circumstances from which it is clear the crime is motivated by hate, and the court implements the Article 54a of the Criminal Code as a mandatory aggravating circumstance, depending on whether the proceedings determined the act was done out of hate, one may raise a question of overstepping the arraignment, that is, would the defendant be proclaimed guilty for something not included in the arraignment.”⁵⁸

Through detailed arraignment the competent prosecutor's office considered the fact that D.M. committed the act motivated by hate due to presumed sexual orientation of the aggrieved party I.I. and qualified the act as violent behavior from Article 344

58 *Ibid.*, p. 28.

paragraph 2 related to paragraph 1 and related to Article 54a of the CC.⁵⁹ However, after the amendment of the arraignment in part of the wording and legal assessment of the criminal act, the prosecutor's office remained at the initial proposal to convict D.M. to a jail sentence in the duration of 6 months.

After verbal and public hearing and assessment of all evidence presented, in February 2020 the Court reached a verdict finding D.M. guilty for the act of violent behavior from Article 344 paragraph 2 related to paragraph 1 and related to Article 54a of the CC⁶⁰ and sentenced him to jail time in the duration of six months, which will be implemented at the premises of his residence, with the application of electronic surveillance.

Having in mind that the criminal offence from Article 344 paragraph 2 related to paragraph 1 imposes a penalty of imprisonment in the duration from 6 months to 5 years, one can notice a mild punishment of the prosecutor's office in this case. Namely, if the crime was motivated by hate, that is, with the aggravating circumstance from Article 54a of CC⁶¹, the prosecutor's office proposed, and the court accepted, the lowest imposed sentence. This raises the question whether judiciary views hate crimes as specific socially dangerous criminal acts.

The defendant D.M. appealed to the first-degree verdict due to significant violation of provisions of the criminal proceedings, erroneous determination of facts, violation of CC⁶² and the decision on criminal sanctions. The competent public prosecutor's office also appealed the first-degree verdict since the court omitted to decide on the proposed measures of prohibition of approaching and communicating of D.M. with the aggrieved parties, having in mind the fear and endangerment by D.M. due to motives of the criminal offense.

The competent court has not reached a decision on appeals even though almost 5 years have passed since the act and a valid verdict has not been reached yet.

Tardiness in action is visible in this specific case, which is unfortunately the practice of courts very often. This was contributed by an inefficient implementation of measures of securing the presence of the defendant, including summons sent by mail. Also, one could notice a typical lack of preparedness of the court to set a strict measure to secure the presence of the defendant in case more flexible measures fail. Several months passed between main hearings, and only one was held out of five scheduled in 2019.

59 Krivični zakonik, *Službeni glasnik RS*, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019. (Criminal Code, *Official Gazette of the Republic of Serbia*, nos. 85/2005, 88/2005 - as amended, 107/2005 - as amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

60 *Ibid.*

61 *Ibid.*

62 *Ibid.*

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