PNZP 4 – Grasp the truth based on facts 4



REPORT ON HATE-MOTIVATED INCIDENTS AGAINST LGBT+ PERSONS IN SERBIA FOR THE PERIOD OF 2017-2020



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Report on hate-motivated incidents against LGBT+ persons in Serbia for the period of 2017-2020

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ABOUT US

Da se zna! creates a more efficient system of protection against homophobic and transphobic unlawful conduct, as well as the reaction of the competent authorities, in accordance with international standards. With this aim, we have established a monitoring system for incidents of hate crimes and discrimination against queer persons, and have been running it for the past five years.

We are also dedicated to strengthening the queer community through legal and psychological support, as well as with advocacy activities and continuous cooperation with competent institutions.

TABLE OF ABBREVIATIONS	6
SUMMARY OF TERMS	7
INTRODUCTION	14
LEGAL AND SOCIAL CONTEXTS	20
METHODOLOGY	26
KEY RESULTS	28
PART I: HATE-MOTIVATED INCIDENTS TOWARDS QUEER PEOPLE IN 2020 SOURCE	30 32
PLACE AND LOCATION	34
TYPE OF INJURY	39
SURVIVORS	41
REPORTING	50
BRIEF DESCRIPTIONS OF THE MOST SEVERE HATE CRIMES	54
THREATS	56
PHYSICAL VIOLENCE	62
DAMAGE OF PROPERTY	68
VANDALISM	70
PART II: UNREPORTED HATE CRIMES AGAINST QUEER PERSONS 2017-2020	72
Reasons for not reporting hate crimes to competent authorities	73
Characteristics of hate crimes not reported to the competent authorities	78
Characteristics of survivors of hate crimes not reported to the competent authorities	81
Conclusion	88

PART III: CASE STUDIES	90
DA SE ZNA! VERSUS VLADIMIR DIMITRIJEVIĆ	91
DA SE ZNA! VERSUS MILOVAN BRKIĆ	112
Tables and Charts Index	124
References	128

TABLE OF ABBREVIATIONS

ECtHR	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
СРС	Criminal Procedure Code
LP	Law on Police
сс	Criminal Code of the Republic of Serbia
ODIHR	Office for Democratic Competent authorities 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.

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 CSO keep records or minutes of all experienced and reported hate-motivated 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 survivor based on the affiliation or perception that the survivor belongs to a certain group. Where the crime involves damage to property, the property is chosen on the basis of its connection to the survivor 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 genderqueer 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 report, 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, transgender 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 queer 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-motivated crime/incident

The survivor of a hate-motivated incident 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 "survivor", will be used in the text to replace the term "victim" or the "injured party". 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-motivated incident, 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 assigned to them at birth. Trans* (with asterisk) is a recent term that encompasses the diversity of experiences within transgender communities and functions as an umbrella term for different types of transgender identities; trans (without asterisk), most precisely refers to transgender women and transgender men, while asterisk refers to a special trait in the effort to include all non-cisgender identities, including transgender, transsexual persons, crossdressers, 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 transgender persons.

Homophobia

Intolerance, aversion and prejudice towards gays and lesbians.

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 a 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.

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 same-sex orientation.

Coming out

A lifelong process of accepting one's queer 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.



here has been a lot of debate among academics and practitioners in the international community about what constitutes a hate crime and what is the best way to approach this phenomenon. According to the OSCE/ODIHR, a hate crime consists of two elements: a criminal offence and a bias motive.¹ In fact, one of the reasons why there is variation on what constitutes a hate crime in different countries is the fact that each legal framework has different conceptualisations of the kind of conducts that amount to crime, even though in general there are a lot of similarities. It is the second element of a hate crime, the bias motive, that distinguishes it from other crimes, in light of the fact that the perpetrators act on the basis of prejudice related to the targeted survivor's personal characteristics.

A hate crime is a crime like no other, also because its impact goes beyond the consequences that the survivor experiences. As all people have protected characteristics, anyone – both members of majority and minority groups - can become targets of a hate crime. However, hate crimes are usually directed towards members of groups that are already marginalized in a society and they are used as a mechanism of oppression aimed at reasserting hierarchies in a certain social order. As such, they are an extension of the racism, sexism, ableism, homophobia, and transphobia that already pervade society. Moreover, the damage done by hate crimes also involves the creation of sentiments of fear and suspicion in the targeted community.² For such reasons, hate crimes should not be perceived as a series of isolated incidents, but rather as the consequence of a political culture that bestows rights and privileges depending on social characteristics. These social characteristics may be: race, language, religion, ethnicity, gender identity, sexual orientation, sex characteristics, disability and others.³ Violence perpetrated on the

2 Perry, B. (2001). In the Name of Hate: Understanding Hate Crimes. New York: Routledge.

¹ ODIHR (2020). *Understanding the Needs of Hate Crime Victims*. Warsaw: OSCE. Available at: https://www.osce.org/odihr/463011

³ Chakraborti, N., and Garland J. (2015) Hate Crime: Impact, Causes and Responses. London: Sage.

basis of SOGIESC is at the heart of hate crimes against queer people,⁴ which are the focus of this report. People professionally affiliated with or actively engaged in gender issues, such as those working for women's rights groups or queer CSOs, may also be targeted.⁵

However, in order to have a clearer picture of the phenomenon, it is necessary to take into account that some scholars⁶ have argued that framing hate crimes simply as hate-motivated offences towards a single strand of a person's identity may fail to recognize a central element of its dynamics: the intersectionality of identity characteristics. Indeed, a person may be targeted by perpetrators of hate crimes because of an intersection of their identity characteristics, for example, sexual orientation intersects with other protected characteristics, such as health status, gender expression and socio-economic status.

t is а problem widely acknowledged by scholars and practitioners, that hate crimes are massively under-reported and underrecorded in respect to crimes that do not have a bias motivation.⁷ The issue is so well-established that some have started to talk about the "dark figure" of hate crimes, to refer to all those incidents that remain unreported.⁸ There are a number of obstacles that hinder comprehensive hate crime recording and they usually fall into two categories: there are factors that result in the incidents not being recognized as having a bias motivation (underrecording) and there are circumstances that deter survivors from reporting to the police (under-reporting).⁹ In fact, it is much more difficult for survivors

⁴ Moran, L. J. (2015) "LGBT Hate Crime." In: N. Hall, A. Corb, P. Giannasi, and J. Grieve (ed.) *The Routledge International Handbook on Hate Crime*. New York: Routledge, pp. 266-277.

⁵ Kovačević, M. (2019). *Podaci, a ne zvona i praporci 2*. Beograd: Udruženje Da se zna! Kovačević, M. and Planojević, N. (2020). *Grasp the truth based on facts!*. Belgrade: Da se zna! Association. ODIHR (2020). *Understanding the Needs of Hate Crime Victims*. Warsaw: OSCE. Available at: https://www. osce.org/odihr/463011

⁶ Hall, N. (2015) *The Routledge International Handbook on Hate Crime*. First Edition. New York: Routledge, Taylor & Francis Group.

⁷ Giannasi, P. (2014) "Policing and Hate Crime." In: N. Hall, A. Corb, P. Giannasi, and J. Grieve (ed.) *The Routledge International Handbook on Hate Crime*. London: Routledge, pp. 331-342.

⁸ Pezzella, F. S., Fetzer, M. D. and Keller, T. (2019). "The Dark Figure of Hate Crime Underreporting." American Behavioral Scientist, 00(0), pp. 1-24. Available at: <u>https://doi.org/10.1177/0002764218823844</u>.

⁹ ODIHR (2009). Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region. Warsaw: ODIHR. Available at: https://www.osce.org/odihr/39821.

of hate crimes to report to the police than it is for survivors of similar crimes without a bias motive.¹⁰ This finding is consistent with the belief shared among academics that hate crimes are more debilitating than others and impair survivors from taking further action.¹¹

his is especially true when the focus shifts to hate crimes perpetrated against queer survivors. Studies conducted in various countries inform that anti-queer hate crimes are reported in minimal part to either the police or CSOs. Investigating the causes of this, scholars and practitioners have found that in some contexts, the issue is linked to the lack of legislation against homophobic and transphobic hate crimes which leads survivors to perceive reporting inconsequential. However, the as

problem persists even in countries where legislation to protect queer individuals from such violence exists, which suggests that the reasons behind under-reporting are varied.¹²

urvivors of hate crimes be discouraged from reporting incidents due to their conviction that the authorities will not be able or willing to take appropriate action to address their hate crime report.13 This belief stems from the survivors' lack of trust in the competent authorities and the fear that they will not be treated in a sympathetic manner. Survivors often perceive that there is a high risk that the police will share the offender's discriminatory attitudes.¹⁴ In the literature, this issue has been labelled "fear of secondary victimisation", namely the fear of further discrimination or mistreatment by

¹⁰ FRA ed. (2016) *Ensuring Justice for Hate Crime Victims: Professional Perspectives*. Justice. Luxembourg: Publications Office of the European Union.

Herek, G. M., Gillis, j. R., and Cogan, J. C. (1999). "Psychological Sequelae of Hate-Crime Victimization among Lesbian, Gay, and Bisexual Adults." *Journal of Consulting and Clinical Psychology*, 67 (6), pp. 945–51. Available at: <u>https://doi.org/10.1037/0022-006X.67.6.945</u>. Herek, G. M., Cogan, J. C., and Gillis, J. R. (2002). "Victim Experiences in Hate Crimes Based on Sexual Orientation." *Journal of Social Issues*, 58(2), pp. 319–39. Available at: <u>https://doi.org/10.1111/1540-4560.00263</u>.

¹² Godzisz, P. and Viggiani G. (2018) *Running through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes.* Warsaw: Lambda Warsaw Association.

¹³ ODIHR (2009). *Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region.* Warsaw: ODIHR. Available at: https://www.osce.org/odihr/39821.

¹⁴ FRA ed. (2016) *Ensuring Justice for Hate Crime Victims: Professional Perspectives*. Justice. Luxembourg: Publications Office of the European Union.

police authorities.¹⁵ For queer survivors of hate crimes, this is also tightly linked to their fear of publicly disclosing their SOGIESC. The survivor's desire to not be outed to the general public, and thus risk further victimisation, may impair them from reporting incidents to the authorities.¹⁶

whv nother reason survivors avoid reporting hate-motivated incidents is the preoccupation that the perpetrators or others who share their views will retaliate against them, their family members or the community they belong to. This fear is an especially strong deterrent in cases where the perpetrator is a member of a hate group.¹⁷ The decision to not report may also be linked to feelings of shame or denial that survivors may experience after the incident. This connects

with the assessment that trauma for survivors of hate-motivated incidents can be particularly severe compared to what is experienced by survivors of similar incidents without the bias motivation. The higher level of trauma is associated with the fact that survivors become the targets of violence due to what they are perceived to be, hence they are victimized due to something that they have no control over.¹⁸ Finally, survivors may not have the appropriate information about hate crime laws or may not know what are the procedures to follow in order to report a hatemotivated incident.¹⁹

All these obstacles allow for the majority of cases of hate-motivated to remain unreported and therefore hidden. The end result is that the rights of many survivors cannot be respected or protected.²⁰

¹⁵ Herek, G. M., and Berrill K. T. (1992) "Primary and Secondary Victimization in Anti-Gay Hate Crimes." In: G. M. Herek and K. T. Berrill (ed.) *Hate Crimes*. Thousand Oaks: Sage, pp. 269-289.

^{Herek, G. M., Cogan, J. C., and Gillis, J. R. (2002). "Victim Experiences in Hate Crimes Based on Sexual Orientation."} *Journal of Social Issues*, 58(2), pp. 319–39. Available at: <u>https://doi.org/10.1111/1540-4560.00263</u>. *Ibid.*

¹⁷ ODIHR (2009). *Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region.* Warsaw: ODIHR. Available at: https://www.osce.org/odihr/39821.

¹⁸ FRA ed. (2016) *Ensuring Justice for Hate Crime Victims: Professional Perspectives*. Justice. Luxembourg: Publications Office of the European Union.

¹⁹ ODIHR (2009). Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE Region. Warsaw: ODIHR. Available at: https://www.osce.org/odihr/39821

²⁰ FRA. (2012) Making Hate Crime Visible in the European Union: Acknowledging Victims' Rights. Luxembourg: Publications Office.

Moreover, if these incidents are invisible and the police cannot intervene, offenders remain unpunished, which in turn undermines the credibility of the criminal justice system, especially in case this failure to react becomes systematic and known to the public. This creates a vicious cycle as people will have even less trust in the police once they become the targets of such crimes.²¹

Hate crimes against queer people are particularly violent and the psychological trauma that survivors experience is higher than what survivors of other crimes face.²² For this reason, enabling survivors to receive support after their experiences of anti-queer hate crimes is of utmost importance. However, queer survivors of hate crimes are among the groups that struggle the most to access it and this is mostly due to the fact that the majority of them do not report such crimes. The importance that reporting crimes the competent hate to authorities has in generating actions to provide support to survivors is well documented in the literature.²³ However, little effective action has been taken in order to encourage survivors to report to the competent authorities. Thus, second part of this report will analyse the reasons that prevent survivors of anti-queer hatemotivated incidents to report incidents to competent authorities, and thus to access support and justice. In the first part of the report both discrimination and hate crimes are jointly discussed as hate-motivated incidents or unlawfull conduct motivated by survivors SOGIESC. Third part of the report consists of two case studies of hate speech against queer people.

²¹ FRA ed. (2016) *Ensuring Justice for Hate Crime Victims: Professional Perspectives*. Justice. Luxembourg: Publications Office of the European Union.

Herek, G. M., Gillis, j. R., and Cogan, J. C. (1999). "Psychological Sequelae of Hate-Crime Victimization among Lesbian, Gay, and Bisexual Adults." *Journal of Consulting and Clinical Psychology*, 67 (6), pp. 945–51. Available at: <u>https://doi.org/10.1037/0022-006X.67.6.945</u>. Herek, G. M., Cogan, J. C., and Gillis, J. R. (2002). "Victim Experiences in Hate Crimes Based on Sexual Orientation." *Journal of Social Issues*, 58(2), pp. 319–39. Available at: <u>https://doi.org/10.1111/1540-4560.00263</u>.

²³ Chakraborti, N., and Garland J. (2015) *Hate Crime: Impact, Causes and Responses*. London: Sage. Wong, K. and Christmann, K. (2008) The role of decision-making in reporting hate crime. *Safer Communities*, 7(2), pp. 19–34.

LEGAL AND SOCIAL CONTEXTS

fter five consecutive years during which the Government of the Republic of Serbia, using unconstitutional decisions, banned the central public gathering of gueer community, Pride parade was held regularly and without major incidents from 2014 until 2020, when it was not held due to COVID-19 pandemic. Research on the citizens' attitudes on the topic vary. According to the research conducted by the Commissioner for the Protection of Equality (from now on in the text below, the Commissioner), 21% of Serbian citizens support queer people's coming out from their private sphere¹, while according to the research conducted by CSOs, as many as two thirds of citizens support Pride parade². Pride parade was held this year (2021), and EuroPride is also planned to be held in Belgrade in 2022.

Anti-discrimination law was adopted in 2009;³ it bans discrimination on the grounds of sexual orientation and gender identity, and with the latest updates through 2021 amendments of the Law, discrimination is also banned on the grounds of sex characteristics, with that the unequal treatment by clergymen is not considered discrimination. Action plan for the Strategy of Prevention and Protection against Discrimination expired in 2018, and a new one has still not been adopted.

n regards to the Serbian criminal justice system, the Law on Amendments to the CC adopted in 2012, that came into force on 1st of January 2013, established the institution of hate crime in the Serbian criminal justice system as a mandatory aggravating circumstance for

¹ Poverenik za zaštitu ravnopravnosti (2019). *Izveštaj o istraživanju javnog mnjenja: Odnos građana i građanki prema diskriminaciji u Srbiji*, Beograd: Poverenik za zaštitu ravnopravnosti, pp. 43.

² Danas (2021) *Istraživanje: Srbija spremna za zakon o istopolnim zajednicama*, online, available at: <u>https://www.danas.rs/drustvo/istrazivanje-srbija-spremna-za-zakon-o-istopolnim-zajednicama/</u>

Geten (2021) *Predstavljeni rezultati istraživanja Stepen društvene integrisanosti LGBT*+ populacije u Srbiji, online, available at: <u>https://www.transserbia.org/vesti/1858-predstavljeni-rezultati-istrazivanja-stepen-drust-vene-integrisanosti-lgbt-populacije-u-srbiji</u>

³ Zakon o zabrani diskriminacije, *Službeni glasnik RS, br. 22/2009*.

all criminal acts defined by the CC.⁴ The provision of Article 54a is the only mandatory aggravating circumstance which makes it substantially different from mitigating and aggravating circumstances provisioned in the Article 54 of the CC, under the general provisions of sentencing. The aim of the provision of Article 54a, in accordance with the relevant international standards, is the stricter sentencing of the perpetrators, and in line with that, the stronger legal protection for the survivors of crimes motivated by homophobia and transphobia. In accordance with the case law of the ECtHR the provision of Article 54a of the CC should be interpreted as such that it provides legal protection not only to queer persons, but also to persons for which it was assumed that they belong to the gueer community, as well as to those persons who have real or

assumed connection with queer persons.⁵ Additionally, the application of the Article 54a is not excluded also when, in addition to the hate motive, other motives exist which are not based on prejudice.⁶

U puntil now, only five court decisions in which Article 54a was taken into account have been reached. The Supreme Court of Cassation of the Republic of Serbia established that it is the prosecution's duty to qualify the crime as the hate crime in the indictment, so that the court is able to take into account aggravating circumstance when reaching the decision, without violation of the right of the defendant.

The first court decision for hate crime was reached as late as 2018, and up until now this aggravating circumstance was tak-

⁴ 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.*

Article 54a of the CC, titled "A special circumstance for sentencing of hate crimes" states: "If the crime was committed out of hatred due to race and religion, nationality or ethnicity, gender, sexual orientation or gender identity of another person, the court will assess this circumstance as an aggravating circumstance, unless it is prescribed as a feature of the crime. "

⁵ Škorjanec v Croatia, application no. 25536/14, judgement of 28/0602017, para 56.

⁶ Balazs v. Hungary, application no. 15529/12, judgement of 14/03/2016, para 70.

en into account by courts only five times, although Da se zna! keeps documenting and reporting about dozens incidents involving queer people annually.⁷ The state of Serbia has still not developed a centralised database on cases of hate-motivated incidents. which makes the following and analysis of the incidents motivated by homophobia and transphobia difficult, and results in the state's insufficiently differentiated reporting to the ODIHR of the OSCE. Criminal justice system in Serbia is characterised by legalised extreme inefficiency, especially in preliminary investigation. As many as 87,1% of survivors of hate-motivated incidents are not informed about whether the authorities acted upon receiving a criminal charge.

The National Strategy on the Rights of Victims and Witnesses of Crime for the Republic of Serbia was adopted for the period 2020-2025, as well as the Action plan for the strategy implementation (monitoring and evaluation). The Strategy's objective is the improvement of the position and rights of survivors and witnesses of crime in Serbia in line with the standards of the European Union, codified by the EU Directive (2012)029.⁸

The Strategy ascertains that the great deal of the existing regulations in the field of survivors' and witnesses' of crimes protection in Serbia has already been aligned with the Directive, however, certain amendments and improvements are required. For example, it is necessary to align the terminological differences between the terms "victim" and "injured party", to improve the right to legal aid, the right to be informed and the right to translation, the right to property claim, etc.

⁷ Kovačević, M. (2018). *Bring of the data, not empty drums and trumpets*. Belgrade: Da se zna! Association.

Kovačević, M. (2019). Podaci, a ne zvona i praporci 2. Beograd: Udruženje Da se zna!.

Kovačević, M. and Planojević, N. (2020). *Grasp the truth based on facts!*. Belgrade: Da se zna! Association. 8 Official Journal of the European Union, L 315/57, 14. November 2012. available at: <u>https://eur-lex.</u> europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF

The most significant novelty is the introduction of the Network of services for the survivor and witness of crime support on the territory of the entire state of the Republic of Serbia.

oday these services exist only within high courts and Prosecutor's offices, as well as Specialist Prosecutor's offices. Nevertheless, aligning the existing state with EU standards, the services for survivor support will gain a different form, become more institutionalised, and territorially and organisationally prevalent. Taking into account the fact that queer people in Serbia are the ones exposed to violence and discrimination the most, and that they often appear as survivors of criminal offence motivated by hatred, this strategy is of extreme importance for the improvement of their legal position before the judicial institutions. Furthermore, work of CSOs dealing with protection and advance of queer people's rights, such as Da se zna!, will

be legally recognized, and in that way additionally contribute to the protection and advance of queer people's legal position.

Self-identification in terms of gender identity is not guaranteed by law in Serbia, although some steps forward in that direction have been made with the amendments of the Law on registration books from December 2019. Legal transition was made available on the grounds of completed psychiatric counselling and a year long hormone therapy administration, prescribed by an endocrinologist, while gender affirmation surgery has stopped being a requirement for legal transition. However, Serbia is still lagging behind when it comes to the process of trans depathologisation. World Health Organisation removed transgender states from The Diagnostic and Statistical Manual of Mental Disorders.

The newly established Ministry for human and minority rights and social dialogue, in cooperation with CSOs, has created a Draft Law on Same sex partnership in 2021, but the Government has still not adopted it.

A ccording to the research of the FRA, 17 % of queer community members in Serbia have suffered physical or sexual violence in the past five years, while as many as 41% of queer community members have suffered less severe abuse in the last twelve months, due to their identity. Every second queer person in Serbia avoids certain venues and places, while 71% of same sex couples never hold hands in public due to the fear of hate-motivated incidents.⁹

When it comes to queer youth, almost one third have suffered violent abuse, out of which 40% have suffered physical violence. The perpetrators are mostly peers, and the violence is usually happening at schools. Although young queer people usually report incidents to school authorities, in as many as half of the cases, nothing further has been done and the complaint has been dismissed.¹⁰

One third of queer youth has no family or friends support, one third of their cisgender heterosexual peers does not know any queer people and does not support queer community.¹¹

⁹ FRA (2020). *A long way to go for LGBTI equality*, Luxembourg: Publications Office of the European Union, pp. 40-44, 26-27. Available at: <u>https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgb-ti-equality-1_en.pdf</u>

¹⁰ Stolić, S., and Milutinović, U. (2021) *Vršnjačko nasilje i nasilje nad LGBTQ+ osobama: Istraživanje namenjeno mladima iz Vrnjačke Banje*, Belgrade: KOMS, available at: <u>https://koms.rs/wp-content/</u> <u>uploads/2021/07/Vrs%CC%8Cnjac%CC%8Cko-nasilje-i-nasilje-nad-LGBTQ-osobama-Vrnjac%CC%8C-</u> <u>ka-banja-za-web.pdf</u>

¹¹ Mijajlović, M., Prodanović, B., and Vukobratov, M. (2021). *Potrebe za psihološkom podrškom LGBT+ mladima u Kraljevu, Belgrade: KOMS*, available at: <u>https://koms.rs/wp-content/uploads/2021/07/</u> Potrebe-za-psihološkom-podrškom-LGBTQ-mladima-u-Kraljevu-za-web.pdf

METHODOLOGY

C ince 2015, survivors and wit-**O**nesses of hate-motivated incidents have been able to report cases to Da se zna!, through three official channels: via e-mail, contact form and online questionnaires available on Da se zna!'s website. Through direct communication with queer people at community events, researchers also gain knowledge about hate-motivated incidents. Owing to the strong presence on social networks, a number of incidents are reported to Da se zna! 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 CSOs to report hate-motivated incidents via Da se zna!'s website. Finally, media coverage of issues important for the gueer community is monitored, as is media coverage of incidents motivated by SOGIESC of the 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 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, 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 guestions about whether the incident was reported to the competent authorities. 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 CSOs is analogous to the online questionnaire for survivors 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 statements and further communication with the survivors or witnesses of the incident, researchers categorized the information about the survivor and the incident according to the categories from the online questionnaire.

KEY RESULTS

During 2020, 52 unlawful conducts motivated by the survivors' sexual orientation or gender identity were committed and documented, which is 17% less than the year before.

In 2020, a decrease in severity of hate crime was recorded. In 11 incidents (21%), physical violence was committed against survivors, which has up until now been the least recorded share of physical violence in the overall sum of incidents. Apart from that, in relation to 2019, a share of incidents which included bodily harm also dropped.

For three years in a row now, hate crime has represented a form of unlawful conduct motivated by sexual orientation/gender identity which is recorded and documented the most, while discrimination happens to a lesser extent or it is to a lesser extent recognised as an issue worthy of complaint.

The trend of rise in share of human rights defenders among survivors of hate-motivated incidents continued into 2020.

Young cisgender gays from Belgrade are usually survivors of documented hate-motivated incidents.

At least 60% of incidents are invisible to the authorities. In relation to 2019, the number of cases reported to the police dropped, and the smallest percentage of incidents up until now was reported to the Prosecutor's office and the Commissioner.

The most common reason for failing to report is the lack of trust in the institutions. The lack of trust is especially pronounced among survivors outside of Belgrade, survivors of physical violence, as well as among transgender survivors.

29



During 2020, 52 unlawful conducts motivated by sexual orientation/ gender identity of survivors have been committed and documented. Out of the overall number of documented unlawful conduts, in 41 cases (78,8%) exclusively crimes and misdemeanours were committed, in nine cases (17,3%) exclusively discrimination, and in two cases (3,8%) the survivor was discriminated against while he/she suffered criminal act.

The share of criminal acts and discrimination in overall sum of incidents is almost the same as in the previous three years. Such structure of documented criminal actions points to the fact that violence is still the greatest problem of queer community, while discrimination happens less often or is less often recognised as a problem worthy of reporting.

Unlawful conduct	2017	2018	2019	2020
Crime/misdemeanour	74,1%	78,6%	79,4%	78,8%
Discrimination	22,2%	14,3%	17,5%	17,3%
Crime/misdemeanour and discrimination	3,7%	7,1%	3,2%	3,8%





Chart 1.1. Comparative overview of unlawful conduct expressed in percentages

n 2020, Da se zna! documented 11 hate-motivated incidents (17,5%) less than in 2019. The reason behind this decrease of documented cases probably lies in the fact that Serbia, as well as the rest of the world, was faced with COVID-19 pandemic. The measures the Government of the Republic of Serbia adopted in order to prevent the spreading of the virus kept many queer people, but also potential perpetrators of incidents motivated by someone's sexual orientation/gender identity behind closed doors, in this way evading incidents – apart from the situations when the perpetrator and the survivor are members of the same household – that would have taken place, had the measures not been adopted and enacted.

Unlawful conduct	2018	2019	2020
Crime/misdemeanour	33	50	41
Discrimination	6	11	9
Crime/misdemeanour and discrimination	3	2	2

Table 1.2. Comparative overview of unlawful conducts expressed in absolute values

SOURCE

Da se zna! obtained knowledge on hate-motivated incidents in 38 Cases (73,1%) directly from survivors, in six (11.5%) from other CSOs, in five (9,6%) from witnesses and in three (5,6%) from the media. In neither of the cases was the source of information the institutions in charge.

Source of information	Number of incidents	Percentage
Survivors	38	73,1%
Witnesses	5	9,6%
Media	3	5,8%
CSOs	6	11,5%
Competent authorities in charge	0	0,0%
Other	0	0,0%

Table 1.3. Incident overview according to the source of information in 2020



Chart 1.2. Incident overview according to the source of information in 2020

A lthough by far the largest number of incidents still keeps being reported by the survivors, in relation to the data from the previous three years, we can safely conclude that in 2020, we documented the smallest percentage of survivors so far among the information source on the incident. Additionally, the percentage of witnesses in relation to 2019 also dropped, while after the continuous drop of reporting incidents by other CSOs, the number returned to the values recorded in 2017.

Source of information	2017	2018	2019	2020
Survivors	88,9%	78,6%	80,9%	73,1%
Witnesses	0%	9,5%	17,5%	9,6%
Media	0%	2,4%	1,6%	5,8%
CSOs	11,1%	9,5%	0%	11,5%
Competent authorities in charge	0%	0%	0%	0%
Other	0%	0%	0%	0%

Table 1.4. Comparative overview of incidents according to the source of information

PLACE AND LOCATION

Three fourths of documented incidents, as much as 40 incidents (76,9%) were committed in Belgrade. In Novi Sad, four incidents (7,7%) were committed. One incident (1,9%) in each of these towns - Kragujevac, Leskovac and Sremska Mitrovica – was documented. When it comes to smaller places, two incidents (3,8%) were documented in Šimanovci, and one each (1,9%) in Žabalj, Mionica, and Kovin.

Location	Number	Percent- age	Type of location	Number of incidents	Percentage	
Belgrade	40	76,9%	Capital city	40	76,9%	
Novi Sad	4	7,7%				
Kragujevac	1	1,9%	Other	7	13,5%	
Leskovac	1	1,9%	towns			
Sremska Mitrovica	1	1,9%				
Šimanovci	2	3,8%				
Žabalj	1	1,9%	Small plac-	5	0.6%	
Mionica	1	1,9%	es		9,6%	
Kovin	1	1,9%				

Table 1.5. Incident overview according to location and type of location in 2020



Chart 1.3. Incident overview according to the type of location in 2020

The share of documented incidents which took place in Belgrade is relatively stable and disproportionately high in relation to other places. The percentage of documented cases in other towns and smaller places is approximate to the one from 2019.

Type of location	2017	2018	2019	2020
The capital city	66,7%	76,2%	74,6%	76,9%
Other towns	29,6%	9,5%	15,9%	13,5%
Smaller places	3,7%	14,3%	9,5%	9,6%

Table 1.6. Comparative overview according to the type of location
The highest number of incidents was recorded on the internet, 18 (34,6%). Eight incidents (15,4%) were documented in the open, public spaces such as streets, squares and parks. The increase in the percentage of incidents which took place on the internet and the decrease of incidents which happened in the open public spaces can be attributed to the introduction of COVID-19 prevention measures, which were in effect throughout the largest part of 2020. These prevention measures stimulated people to stay home. However, home is not a safe space for everyone, so six incidents (11,5%) happened at home, that is, in living space. Four incidents each (7,7%) happened at queer venues and in workplace. In clubs/cafes, schools/faculties and police stations, there were three incidents (5,8%) documented in each of these places. One incident each (1,9%) happened in a state institution, health care institution and during a telephone conversation.

Place	20	2018		19	20	20
Place	Number of incidents	Percentage	Number of incidents	Percentage	Number of incidents	Percentage
Street, park, square	11	26,2%	18			15,4%
Queer community place	2	4,8%	10	15,9% 4		7,7%
The Internet	5	11,9%	7	11,1%	18	34,6%
Living space	9	21,4%	8	12,7%	6	11,5%
Workplace	5	11,9%	6	6 9,5% 4		7,7%
Club, cafe	2	4,8%	5	7,9%	3	5,8%

School, faculty	3	7,1%	3	4,8%	3	5,8%
Public transportation	1	2,4%	3	4,8%	0	0,0%
Police station	1	2,4%	2	3,2%	3	5,8%
State institution	0	0,0%	1	1,6%	1	1,9%
Health care institution	2	4,8%	0	0,0%	1	1,9%
Queer organisation	0	0,0%	0	0,0%	0	0,0%
Telephone	1	2,4%	0	0,0%	1	1,9%

Table 1.7. Comparative overview of incidents according to place



Chart 1.4. Incidents overview according to the place in 2020

TYPE OF INJURY

A part from the decrease in overall numbers of documented incidents in 2020, we have also recorded a decrease in their cruelty and severity. In 11 incidents (21,2%) physical violence was used against a survivor, which is the smallest share of physical violence committed and recorded so far in the overall number of incidents. Aside from that, in relation to 2019, the share of incidents which included bodily harm also dropped.

Percentage of physically violent	2017	2018	2019	2020
incidents	29,6%	33,5%	42,9%	21,2%

Table 1.8. Comparative overview of share of incidents including physical violence in theoverall number of incidents



Chart 1.5. Comparative overview of share of incidents including physical violence in the overall number of incidents

Psychological violence was documented in 25 cases (48,1%). Discrimination was recorded in 11 cases (21,2%), and threats in 14 cases (26,9%). Out of four cases in relation to the survivor's property, vandalism was recorded in one, that is, injury of a milder degree, and the damage of property, that is, a more severe degree of injury was documented in three incidents.

Type of injury	Number of incidents	Percentage	Degree of injury	Number of incidents	Percentage
Physical violance	11	21.204	No bodily harm	7	13,5%
Physical violence	ence 11 21,2%		With bodily harm	4	7,7%
Psychological violence	25	48,1%			
Discrimination	11	21,2%			
Threats	14	26,9%	Damage of property	3	5,8%
Crimes against property	4	7,7%	Vandalism	1	1,9%

Table 1.9. Overview of incidents according to the type and degree of injury in 2020



Chart 1.6. Overview of incidents according to the type of injury in 2020

Relation between physical violence	20	19	2020		
excluding bodily harm and physical violence including bodily harm	Number of incidents	Percentage	Number of incidents	Percentage	
Physical violence excluding bodily harm	15	55,6%	7	63,6%	
Physical violence including bodily harm	12	44,4%	4	36,4%	
Overall physical violence	27	100%	11	100%	

 Table 1.10. Comparative overview of relation between physical violence excluding bodily harm and physical violence including bodily harm

SURVIVORS

Data were collected about survivors regarding whether they suffered the incident on their own or as part of the group, as well as whether they are queer human rights defenders. When it comes to people who suffered the incident on their own, data on their gender identity, sexual orientation and age were collected, so for that reason incidents committed against groups were excluded from the analysis of these data. In order to obtain precise determination of survivors' identity, data on sexual orientation and gender identity were examined and compared.

n 37 cases (71,2%) the incident was hate-motivated and committed against a person as an individual, while in 15 cases (28,8%), it was committed against a group. After the increase of the percentage of incidents committed against groups in 2019, the level in 2020 returned to the one from 2018. Out of the overall number of incidents, 11 incidents (21,2%) were committed against queer human rights defenders, out of which 9 documented incidents were committed against groups. Increasing trend of human rights defenders' share among survivors of hatemotivated incidents continued into 2020.

Number of survivors	Number of incidents	Percentage	Survivors' activist en- gagement	Number of incidents	Percentage
Individuals	Individuals 37 71,2%	71 20%	Human rights defenders	2	3,8%
mainadais	57	71,270	Other	35	67,3%
Groups	15	28,8%	Human rights defenders	9	17,3%
Groups	15	20,0%	Other	6	11,5%

Table 1.11. Overview of the number of survivors and their activist engagement in 2020

Relation between human rights	Gro	ups	Individuals		
defenders and others	Number of incidents	Percentage	Number of incidents	Percentage	
Human rights defenders	9	60,0%	2	5,4%	
Other	6	40,0%	35	94,6%	
Overall	15	100%	37	100%	

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Table 1.12. Overview of relation between human rights defenders and the rest according to thenumber of survivors in 2020



Chart 1.7. Overview of activist engagement of survivors in 2020



Chart 1.8. Overview of number of survivors in 2020

Number of	20	18	2019 20			20
survivors	Number of incidents	l Percentage	Number of incidents	Percentage	Number of incidents	Percentage
Individual	33	78,6%	39	61,9%	37	71,2%
Group	9	21,4%	24	38,1%	15	28,8%

Table 1.13. Comparative overview of the number of survivors

Survivors'	20	18	20	19	2020		
activist engagement	ent Number of incidents Percentage	Percentage	Number of incidents	Percentage	Number of incidents	Percentage	
Human rights defenders	4	9,5%	12	19,0%	11	21,2%	
Other	38	90,5%	51	81,0%	41	78,8%	

Table 1.14. Comparative overview of survivors' activist engagement

When it comes to gender identity of people who were exposed to hatemotivated incidents, 20 (54,1%) were cisgender men, and in six cases (16,2%) the survivors were transgender women. In four cases each (10,8%), survivors were transgender men and people of other transgender identities respectively, while in three cases (8,1%), survivors were cisgender women.

he percentage of incidents which happened to cisgender survivors gradually dropped from 2018, while the percentage of incidents which

happened to transgender women survivors and transgender people who identify as neither man nor woman increased. The number of incidents documented including transgender men doubled in relation to previous two years.

Survivors'	20	18	20	19	2020		
gender identity	Number of incidents	Percentage	Number of incidents	Percentage	Number of incidents	Percentage	
Cisgender men	21	63,6%	23	59.0%	20	54,1%	
Transgender women	4	12,1%	6	15,4%	6	16,2%	
Cisgender women	4	12,1%	4	10,3%	3	8,1%	
Transgender men	2	6,1%	2	5,1%	4	10,8%	
Other trans identities	1	3,0%	4	10,3%	4	10,8%	
Others	1	3,0%	0	0,0%	0	0,0%	

Table 1.15. Comparative overview of survivors' gender identity (groups excluded)



Chart 1.9. Overview of survivors' gender identity in 2020 (groups excluded) 1



Chart 1.10. Overview of survivors' gender identity in 2020 (groups excluded) 2



Chart 1.11. Overview of survivors' gender identity in 2020 (groups excluded) 3

Sexual orientation of people who were exposed to incidents is same-sex in 16 cases (43,2%), bisexual in 13 cases (35,1%), heterosexual in seven cases (18,9%), and one incident was reported (2,7%) with a queer person. Percentage of incidents with same-sex oriented survivors has been decreasing gradually over years, while the number of incidents with heterosexual and bisexual survivors is on the rise.

Sexual	20	18	20	19	2020		
orientation	Number of incidents	Percentage	Number of incidents	Percentage	Number of incidents	Percentage	
Same-sex	26	78,8%	27	69,2%	16	43,2%	
Bisexual	2	6,1%	5	12,8%	13	35,1%	
Heterosexual	3	9,1%	6	15,4%	7	18,9%	
Asexual	1	3,0%	0	0,0%	0	0,0%	
Queer	0	0,0%	0	0,0%	1	2,7%	
Unknown	1	3,0%	1	2,6%	0	0,0%	

Table 1.16. Comparative overview of survivors' sexual orientation (groups excluded)



Chart 1.12. Overview of survivors' sexual orientation in 2020 (groups excluded)

Same-sex oriented cisgender men are mostly, in 12 cases (32,4%) the survivors of hate-motivated incidents. They are followed by bisexual cisgender men who are survivors in seven documented cases (18,9%). Heterosexual transgender women are survivors in four cases (10,8%).

Intersection of gender identity and sexual orientation	Sam	e-sex	Bisexual		Heterosexual		Queer		Overall	
	Num.	Perc.	Num.	Perc.	Num.	Perc.	Num.	Perc.	Num.	Perc.
Cisgender women	1	2,7%	2	5,4%	0	0,0%	0	0,0%	3	8,1%
Transgender women	0	0,0%	1	2,7%	4	10,8%	1	2,7%	6	16,2%
Transgender men	0	0,0%	2	5,4%	2	5,4%	0	0,0%	4	10,8%
Cisgender men	12	32,4%	7	18,9%	1	2,7%	0	0,0%	20	54,1%
Other trans identities	3	8,1%	1	2,7%	0	0,0%	0	0,0%	4	10,8%
Overall	16	43,2%	13	35,1%	7	18,9%	1	2,7%	37	100,0%

Table 1.17. Intersection of gender identity and sexual orientation in 2020 (groups excluded)

A lmost three thirds (73,0%) of documented hate-motivated incidents were committed against young adults (up to 30 years of age). Three incidents (8,1%) were committed against people from 31 to 40 years of age, while only one case (2,7%) was documented in which survivors were people from 41 to 50 years of age. It is especially concerning that out of the overall number of documented cases, six (16,2%) included underage survivors, which has been the highest number documented so far.

_	20	2018		2019 2020		20
Age	Number of incidents	Percentage	Number of incidents	Percentage	Number of incidents	Percentage
Below 18 years of age	4	12,1%	5	12,8%	6	16,2%
18-30	21	63,6%	21	53,8%	27	73,0%
31-40	7	21,2%	11	28,2%	3	8,1%
41-50	1	3,0%	2	5,1%	1	2,7%
51-60	0	0,0%	0	0,0%	0	0,0%
60+	0	0,0%	0	0,0%	0	0,0%

Table 1.18. Comparative overview of survivors' age (groups excluded)



Chart 1.13. Overview of survivors' age in 2020 (groups excluded)

REPORTING

The majority of hate-motivated incidents, 31 cases (59,6%) were not reported to any institutions, or any other CSO, apart from Da se zna! Out of 15 incidents (28,8%) which were reported, 11 were reported to the police, and one to the Prosecutor's office. One of the cases has been reported to other CSOs, besides Da se zna! One incident was reported to the Commissioner, and two to the Ombudsman of the Republic of Serbia. In comparison to 2019, the number of cases reported to the police decreased, while the lowest ever recorded number of incidents up until now were reported to the Prosecutor's office and the Commissioner.

Report	Number of incidents	Percentage
Reported	15	28,8%
Unreported	31	59,6%
Unknown	6	11,5%

Table 1.19. Overview of the reporting of incidents in 2020



Chart 1.14. Overview of the reporting of incidents in 2020

Incident reported	Number of incidents	Percentage of the overall number of incidents	Percentage of the overall number of reported incidents
CSO	1	1.9%	6.7%
Police	11	21.2%	73.3%
Prosecutor's office	1	1.9%	6.7%
Court	0	0.0%	0.0%
The Commissioner	1	1.9%	6.7%
Health care institution	0	0.0%	0.0%
Ombudsman	2	3.8%	13.3%
Centre for social work	0	0.0%	0.0%
Other	0	0.0%	0.0%

Table 1.20. Overview of incidents according to an institution/organisation to which they were reported in 2020



Chart 1.15. Overview of incidents according to an institution/organisation to which they were reported in 2020

Incident	20	18	2019		2020	
reported	Number of incidents	Percentage	Number of incidents	Percentage	Number of incidents	Percentage
Police	3	7,1%	23	36,5%	11	21,2%
Prosecutor's office	2	4,8%	8	12,7%	1	1,9%
The Commissioner	1	2,4%	2	3.2%	1	1,9%

Table 1.21. Comparative overview of incidents reported to the police, Prosecutor's office and The Commissioner

The most common reason for deciding not to report hate-motivated incidents is distrust in institutions. This reason is followed by the lack of knowledge about the procedures with 11 cases, fear of the perpetrator in 7 cases, and in 2 cases survivors did not report the case out of fear of revealing their sexual orientation and/or gender identity.

n relation to 2019, distrust in institutions increased in great measure, while choosing not to come out as the reason for not reporting incidents decreased significantly. Fear of the perpetrator as the reason for deciding not to report cases decreased mildly, while the lack of knowledge of procedures as the reason slightly grew in relation to data from 2019.

Reason for not	20	19	2020	
reporting	Number of incidents	Percentage	Number of incidents	Percentage
Distrust in institutions	7	21,2%	22	71,0%
Survivor has not come out	14	42,4%	2	6,5%
Fear of the perpetrator	10	30,3%	7	22,6%
Lack of knowledge of the procedures	8	24,2%	11	35,5%
Other	3	9,1%	5	16,1%

Table 1.22. Comparative overview of incidents according to the reason for the decision not to report cases



Chart 1.16. Overview of incidents according to the reason for the decision not to report cases in 2020

BRIEF DESCRIPTIONS OF THE MOST SEVERE HATE CRIMES

In this section we describe documented hate crime cases classified as cases of physical violence, threats, damage of property and vandalism, according to ¬a predetermined universal system of classification for CSOs which deliver data on hate crimes for annual reports on hate crime written by the OSCE/ODIHR. Each hate crime is documented with information such as a date, source, location, venue, and indicator of perpetrator's prejudice. Nevertheless, one should bear in mind that the majority of cases described here also include a second type of injury, however they are classified according to the most severe form of injury.

THREATS

DATE	LOCATION	SOURCE	PREJUDICE INDICATOR	INCIDENT DESCRIPTION
09.01.2020.	Belgrade	From the witness's testimony	The comments used homophobic vocabulary.	After one Instagram profile posted a video of two feminine boys lip- syncing to a song by a female artist, a range of homophobic comments and threats were posted as a response to the video, including "I support public execution for these faggots" "For these a bullet is expensive" etc. That profile also published the usernames of those boys and called on their followers to disturb them. The case was not reported to the authorities and the reason is not listed.
17.01.2020.	Belgrade	From a CSO	The threats included homophobic vocabulary and were made on a profile of an queer CSO.	The survivor (a queer CSO) posted a photo on their Instagram profile of a girl who was attacked due to her sexual orientation. The post received multiple hate comments and threats to the members of the CSO and other people who commented messages of support. The CSO members deleted threatening comments and blocked the profiles behind them. The CSO did not report the case to the authorities because they were familiar with the fact that the responsible Public Attorney's Office does not accept reports of threats which do not include personal details of the persons to whom the threats were directed to.
27.02.2020.	Novi Sad	From another CSO	The threats included homophobic vocabulary and were directed to the queer CSO.	The queer CSO received threats via the questionnaire they placed on their website asking about the ideas for the Pride Week. The perpetrator filled the form with entries "Death to faggots", proposed activities such as "Killing faggots" and described the activity that included torture and harm to gay people. The CSO reported the incident to the police and were told that the case would be processed and transferred to the office of the prosecutor for high-tech crimes.

27.02.2020.	Belgrade	From a CSO	The threats included homophobic vocabulary and were made on a website of a queer CSO.
02.03.2020.	Leskovac	From the survivor's testimony	The threats included homophobic vocabulary and were prompted by the false announcement of a Pride Parade.
29.03.2020.	Belgrade	From the media.	Threats included homophobic vocabulary and were prompted by a scene of two men kissing.
28.04.2020.	Belgrade	From the survivor's testimony	The threats included homophobic and transphobic vocabulary.
26.05.2020.	Belgrade	From the survivor's testimony	Survivor's perception.

A queer CSO's questionnaire that serves the survivors of discrimination and hate crime to report incidents was filled by homophobic comments which included death threats. The case was reported to the first instance department of the Higher Public Prosecutor's Office.

After posting false information that the Pride Parade will be organized in Leskovac, the survivor (cisgender man, gay, age group 18-30) received multiple threats on social media directed at him, his parents, and his sister. The false information prompted around 300 high school pupils to protest on the streets against the false Pride Parade. It is unknown whether the threats were reported to the police, but the Ombudsman initiated an investigation into the police reaction to the protest and confirmed that the police reacted as per their duties.

The survivor, a Serbian actor (cisgender man, heterosexual, age group 41-50) received multiple threats and messages of hate on his social media after the scene in which his character kissed another man in a TV show that was premiered on television. It is unknown whether threats were reported to the authorities.

The survivor (transgender man, heterosexual, age group 18-30) received multiple threats and hate comments on his YouTube and Instagram posts from unknown profiles. The comments included "I will find you, you know", "die", "kill kill kill the faggot", and "trans=sick". The threats were not reported

to the authorities due to unfamiliarity of reporting procedures. The survivor (transgender man, bisexual, age group 18-30) received warnings from his acquaintances that he should change his usual route to his home because a group of people, who threatened him before, were planning to wait for him, and that they have threatened to physically harm him. The case was reported to the police and the outcome of the investigation is not known.

08.08.2020.	Belgrade	From the survivor's testimony	The perpetrators inquired about the survivor's sexual orientation and stated that they were disturbed by how the survivor looked.
25.08.2020.	Online	From the survivor's testimony	The threats included homophobic vocabulary.
03.09.2020.	Belgrade	From the survivor's testimony	The threats included homophobic and transphobic vocabulary and were made after the survivor came out to the perpetrator.
03.10.2020.	Belgrade	From the survivor's testimony	Homophobic vocabulary.
28.10.2020.	Belgrade	From the survivor's testimony	The threats included transphobic vocabulary.

The survivor (cisgender man, gay, age group 18-30) was sitting in a cafe with his friend. One of the two men who were sitting nearby turned around and asked the survivor whether he liked men or women. The survivor replied that it did not matter, but the perpetrator insisted on receiving an answer. When the survivor told him to leave him alone and turned around, the other perpetrator stood up, approached the survivor, yelled at him, and threatened to physically harm him. The survivor left the place, but his friend stayed behind and asked the perpetrator what the problem was, to which he replied that it was the survivor's "appearance". The survivor reported the incident to the police and went through secondary victimization where the police officers ridiculed him during reporting. He received no information

about his case since reporting it.

After the survivor (cisgender man, bisexual, age group 18-30) came out publicly as bisexual through social media, he started receiving threats and was disturbed by unknown profiles. He reports that an online group was made where he and his friends were made fun of, and after he entered the group other members made threats describing how they would torture and harm him. The case was not reported to the authorities due to the unfamiliarity of the reporting procedure.

After the survivor (transgender woman, lesbian, age group 18-30) refused a sexual offer on Facebook and sharing her gender identity and sexual orientation, the perpetrator insulted her and threatened to kill her and harm her, together with other people from the queer community. The case is not reported to the authorities for the lack of trust in the justice system.

The survivor (cisgender man, bisexual, age group below 18) reported constant bullying and threats made to him by his classmates in school. The case is not reported to the authorities because the person is not out.

The survivor (transgender man, bisexual, age group 18-30) received multiple death threats through social media from unknown profiles, after he promoted a foundation in support of his transition process. The profiles shared his picture and profile and invited other people to write messages of hate to the survivor. The survivor did not report the case to the authorities due to the unfamiliarity of the reporting procedure.

PHYSICAL VIOLENCE

DATE	LOCATION	SOURCE	PREJUDICE INDICATOR	INCIDENT DESCRIPTION
02.01.2020.	Belgrade	From the survivor's testimony	The incident occurred at the queer club.	The survivors (a group of queer people) went to a queer club and reported that a group of around 10 men entered the queer club and attacked the people who were present with neckless chains (typically associated with Serbian nationalism). The survivors did not report the incident to the authorities because they were not familiar with the reporting procedures.
09.02.2020.	Novi Sad	From the survivors' testimony	The perpetrator used homophobic vocabulary.	A group of five surivors (two gay cisgender men, 1 bisexual cisgender man, 1 heterosexual cisgender man, 1 heterosexual cisgender woman) were physically assaulted in a fast-food restaurant by a perpetrator who identified them all as queer persons, shoved them and yelled homophobic remarks. The survivors stated that they have reported the incident to the police and the investigation process is not known.
			The perpetrators are	A group of perpetrators attacked the survivor (cisgender man, bisexual,
		From the	identified by the survivor	age group below 18) near a football stadium while he was walking on the
26.02.2020.	Belgrade	survivor's	as a group of football	street. The group of perpetrators punched the survivor on the face four
		testimony	hooligans, and they used homophobic vocabulary.	times while saying "Kill the faggot". The survivor stated that he did not report the incident out of fear of the perpetrators.
18.03.2020.	Sremska Mitrovica	From the survivor's testimony	The attacker used homophobic vocabulary, has known the survivor from before and knew he was gay, and have also previously physically assaulted the survivor.	The survivor (cisgender man, gay, age group 18-30) was attacked in the street by his pereptrator, who was his ex-empolyer. The perpetrator physically attacked him once before, while the survivor was working for him at which point the survivor stopped working for the perpetrator, but at that time did not want to report what had happened. During the attack on the street, the perpetrator saw the survivor walking towards a kiosk from the cafe, started running towards him while yelling "Faggot, if I see you once again walking down this street, I will break your legs", grabbed the survivor by the neck, and punched him with a fist on the face. The survivor reported the case to the police with the help of another queer organization, and the case development details are not familiar.

05.06.2020.	Belgrade	From the survivors' testimony	The perpetrators used homophobic vocabulary.
28.06.2020.	Belgrade	From the survivor's testimony	The perpetrator used homophobic vocabulary after the attack and expressed his intolerance towards gays and lesbians.
15.07.2020.	Belgrade	From the survivor's testimony	The perpetrator used homophobic vocabulary.

The group of survivors (1 pansexual cisgender man, 1 heterosexual cisgender man) was assaulted by a group of perpetrators while sitting on a park bench. The survivor reports that the perpetrators knew one of them was pansexual and that the perpetrators were using homophobic vocabulary while assaulting the pansexual survivor and holding the other. The perpetrators also damaged the phone of the pansexual survivor and ripped his shirt. It is unknown whether the case was reported to the

authorities.

Two survivors (cisgender women, both lesbian, age group 18-30) were walking through a park when a perpetrator, who was with two other perpetrators, started shouting at them, pushed one of them and asked her why she was looking at him. When he tried to attack the other survivor, she avoided the attack and the perpetrator was enraged that she knew self defence, moved away from them and shouted, "I will get a knife, I will kill you". The two survivors moved away from him, and heard him when he returned to the group of other perpetrators saying, "I hate lesbians, I hate faggots, I cannot look at them". The survivors stated that they have reported the incident to the police but the course of investigation is not

familiar.

The two survivors, which were a couple (1 lesbian cisgender woman, 1 bisexual cisgender woman, both age group 18-30) were sitting in the park when a group of perpetrators approached them and sat on a bench next to them. When the two survivors kissed, one of the three perpetrators stood up and approached them while shouting "I cannot look at lesbians, there are children here, go away, you cannot be here". One of the survivors stood up and raised her hand to gesticulate to the first perpetrator not to approach her, but he got close to her and continued shouting. The second and third perpetrator approached them and one of them punched her in the face, after which she fell on the ground. At that moment, all three of them started kicking her. They pushed the second survivor to the ground as well, at which point the first survivor stood up, yelled at the perpetrators, grabbed her girlfriend, and left the scene. The perpetrators did not go after them. The survivors did not report the incident and the reason for that is the unfamiliarity with the procedures.

17.08.2020.	Belgrade	From the survivor's testimony	The perpetrators used homophobic vocabulary and the incident started when they saw the survivor's rainbow flag key chain.
07.09.2020.	Šimanovci	From the survivor's testimony	The perpetrator used homophobic vocabulary.
05.12.2020.	Novi Sad	From the survivor's testimony	The perpetrators used homophobic vocabulary.

The survivor (cisgender man, gay, age group 18-30) was approaching the building where he lives, and when he took out his keys which contained a rainbow flag key chain, he was approached by two perpetrators and was pulled by his shirt. One of the perpetrators asked him if he "was a faggot" and why does he have a "faggot key chain". After the other perpetrator suggested to the first they should let him go, they did and shouted homophobic remarks to the survivor. The survivor did not report the incident to the authorities and stated that the reason for this is that he is

not out.

The survivor (cisgender man, bisexual, age group below 18) was physically assaulted in a café by a perpetrator unknown to him. The perpetrator asked the survivor if he had a cigarette to which the survivor replied "no" and went to get a coffee. When the survivor returned the perpetrator shouted "Faggot, what if you do have a cigarette?" and punched the survivor. The survivor spilled his coffee on the perpetrator at which point the perpetrator grabbed the survivor, threw him on the ground and kicked him multiple times. The perpetrator ran from the café and the survivor called the police who came but refused to take the statement from the survivor on the grounds of him being underaged. The survivor did not want to privately

sue the perpetrator because he is not out to his parents.

The survivor (cisgender man, bisexual, age group 18-30) was assaulted by two perpetrators while returning to the apartment building where he worked. Before the assault, the perpetrators yelled "Faggot" and ran towards the survivor, who managed to unlock the gate, but one of the perpetrators grabbed him and started punching him and kicking him. The survivor managed to break free and ran into the building from where he called the police. The perpetrators ran before the police came. The survivor gave the account of the incident to the police, but later had difficulties finding out the information about his case. With the help of our organization, it was found out that the police transferred the case to the prosecution which did categorize the incident as a hate crime.

23.12.2020.	Šimanovci	From the media	The attacker used homophobic vocabulary and stated that he does not want to be associated with the survivor as to avoid being identified as a gay person.
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After one TV show participant (cisgender man, bisexual, age group 18-30) came out as bisexual and was expressessing his interest in another participant, he was physically assaulted by him. The perpetrator and the survivor were friendly before the survivor's coming out. It is unknown whether an official investigation was conducted by the authorities

DAMAGE OF PROPERTY

				PREJUDICE			
DATE		LOCATION	SOURCE	INDICATOR	INCIDENT DESCRIPTION		
	24.02.2020.	Belgrade	From another CSO.	The incident occurred in a place connected to the queer community.	The Pride Info Center was attacked by three perpetrators who first threw stones at the Center window, then showed rude gestures to the employees who were inside and provoked them to come outside, spat on the glass multiple times, and kicked the glass door of the Center. The perpetrators ran away after a couple of minutes and the employees reported the incident to the police. The development of the investigation is not familiar.		
	29.02.2020.	Belgrade	From another CSO.	The incident occurred in a place connected to the queer community.	Near the closing time of the Pride Info Center, when the security guard left, five perpetrators attacked the window entrance and kicked it for several minutes, breaking the handle and inventory that was placed behind the glass. The employee who was still inside the Center called the police after the perpetrators ran away, and the police came and conducted the investigation. The Ombudsman ex officio sent a letter to the Ministry of the Interior requesting information on the reaction to the attack, after finding out about the attack from the media. The Ministry of the Interior informed the Ombudsman that the officers of the Department for Public Peace and Order for the city of Belgrade identified all five persons who participated in the attack. After informing the duty prosecutor of the First Public Prosecutor's Office in Belgrade, it was determined that there were no elements of a criminal act in the attack.		

VANDALISM

DATE	LOCATION	SOURCE	PREJUDICE INDICATOR	INCIDENT DESCRIPTION
04.12.2020.	Belgrade	From another CSO.	The incident occurred in a place connected to the queer community.	The Pride Info Center was spat on multiple times during the previous night by unknown perpetrators. The incident was not reported to the police due to a lack of trust in the authorities.



UNREPORTED HATE CRIMES AGAINST QUEER PERSONS 2017-2020

his part of the report covers hate crimes which occurred between 1st of January 2017 and 31st of December 2020, and which have been reported to Da se zna! until 1st of May 2021. After hate crime incidents were documented, collected data were statistically analysed, and the answers obtained through open-ended questions were subjected to qualitative analysis, which supplemented the understanding of quantitative results. From the total number of 161 hate crime cases which have been documented in a four-year period, the largest number of incidents, 90 (55.9%) were not reported, for 6 (3.7%) incidents it is not known whether they were reported or not, while 65

(40.4%) incidents were reported to a stakeholder other than Da se zna! Due to their importance for considering the issue of under-reporting, these 90 unreported incidents are the subject of analysis of this part of the report. These unreported cases were first analysed according to the reasons for not reporting them that survivors have stated. After that, the incidents with the most common reason for not reporting have been analysed according to the type of crime and place of incident, as well as according to the relevant characteristics of the survivors (SOGIESC), whether the survivors were human right defenders or not, and whether the survivors were a part of the group or they were alone).

REASONS FOR NOT REPORTING HATE CRIMES TO COMPETENT AUTHORITIES

Out of the 90 unreported hate crimes, the reason that appears the most, in 27 (30.0%) of them, is survivors' lack of trust in institutions. Hereafter, survivors' not being familiar with procedures is stated as a reason for not reporting in 22 (24.4%) cases, and survivors' fear of the perpetrator is noted as a reason for not reporting in 21 (23.3%) cases. Furthermore, the survivor not being out appears in 20 (22.2%) cases of unreported incidents. Other reasons for not reporting the incident appear in 12 (13.3%) cases, and range from worry for other family members (case of hate-motivated domestic violence) to cases in which the survivors achieved reparation outside the criminal-justice system. Lastly, in 8 (8.9%) cases the reasons for not reporting the incidents are unknown.

Reason for not reporting	Number of cases reason is noted	Percent of total cases
Lack of trust in institutions	27	30.0%
Not familiar with procedures	22	24.4%
Fear of the perpetrator	21	23.3%
Not being out	20	22.2%
Other reasons	12	13.3%
Unknown reasons	8	8.9%

Table 2.1. Number of cases a specific reason for not reporting an incident is noted

t should be noted that it was possible to note more than one reason for not reporting a case. Therefore, it is worth considering which reasons appeared more as singular answers, and which appeared more together with some other reason, and lastly, what is the modality of pairing of reasons for not reporting hate crimes.

of 90 unreported ut hate crimes, 17 (18.9%) cases are not reported due to lack of trust in institutions, as a sole reason. The reason with which it is paired the most, 6 (6.6%) times, is the fear of the perpetrator. This pairing is hardly surprising if we bear in mind that competent authorities are responsible for protecting the survivors from violent perpetrators. If survivors do not have trust in institutions, they will not trust that the competent authorities are able or willing to protect them from potential retribution of perpetrators because they reported the case. After the fear of the perpetrator, fear of disclosing the survivor's SOGIESC is the reason which is in most cases, 5 (5.6%) of them, paired with the lack of trust in institutions. Although the problem of coming out for queer people is complex and goes beyond the scope of this report, it is worth mentioning that all burden of coming out ought not to be solely on the individual. Competent

authorities also have responsibility to welcome queer persons with ostensive practices (ie. police officers and prosecutors actively using queer inclusive language, placing queer friendly messages on visible place in premises where complaint is made, being familiar with actual prevalence of homophobia and transphobia and how queer persons are affected by them, increasing number of openly queer police officers, etc.) in order for them to feel comfortable to share their SOGIESC. One problem that is prevalent for survivors that are not open about their SOGIESC and who live with their family is that prosecution is not obliged to send calls for hearing and similar mail to the address that survivor is comfortable with (for example address of CSO which provides support to survivors). This is one of the main reasons why survivors in this kind of situation are prevented from reporting hate crimes competent authorities. Finally, to unfamiliarity with procedures is in 3

(3.3%) cases paired with distrust in institutions.

Out of 90 unreported hate crimes, 11 (12.2%) cases are not reported due to fear of disclosing SOGIESC as a sole reason. This reason is mostly, in 6 (6.6%) cases, compounded by the fear of the perpetrator which is understandable because in some cases not being open about their SOGIESC increases the vulnerability of the survivors of hate crimes, and gives additional tools to the perpetrators to harm them by outing them against their will.

Unfamiliarity with procedures are the most independent reason for not reporting hate crime, with 17 (18.9%) cases being stated as the only reason. The only pairing worth mentioning here is with the fear of perpetrator, which appeared in 3 (3.3%) cases. Fear of perpetrator is mainly a supplementary reason with only 9 (10.0%) cases in which it is stated as a singular reason for not reporting hate crimes.

First intersecting reason	Second intersecting reason	Third intersecting reasons	Fourth intersecting reason	Number of incidents	Percent of total unreported incidents
Lack of trust in institutions	/	/	/	17	18.9%
Not being out	/	/	/	11	12.2%
Not familiar with procedures	/	/	/	17	18.9%
Fear of the perpetrator	/	/	/	9	10.0%
Lack of trust in institutions	Not being out	/	/	2	2.2%

Lack of trust in institutions	Not familiar with procedures	/	/	1	1.1%
Lack of trust in institutions	Fear of the perpetrator	/	/	3	3.3%
Not being out	Not familiar with procedures	/	/	0	0.0%
Not being out	Fear of the perpetrator	/	/	4	4.4%
Not familiar with procedures	Fear of the perpetrator	/	/	2	2.2%
Lack of trust in institutions	Not being out	Not familiar with procedures	/	1	1.1%
Lack of trust in institutions	Not being out	Fear of the perpetrator	/	2	2.2%
Lack of trust in institutions	Not familiar with procedures	Fear of the perpetrator	/	1	1.1%
Not being out	Not familiar with procedures	Fear of the perpetrator	/	0	0.0%
Lack of trust in institutions	Not being out	Not familiar with procedures	Fear of the perpetrator	0	0.0%
Other reasons	/	/	/	12	13.3%
Unknown reasons	/	/	/	8	8.9%
			Total	90	100.0%

Table 2.2. Number of unreported cases by reasons for not reporting, and by reason intersections

CHARACTERISTICS OF HATE CRIMES NOT REPORTED TO THE COMPETENT AUTHORITIES

y dividing the incidents on D the basis of where they happened, it can be seen that the majority of incidents, 68 (75.6%) of them, occurred in Belgrade. Only a smaller portion of recorded unreported incidents happened in other cities, 9 (10%) in total, and 10 (11.1%) incidents occurred in smaller places. For 3 (3.3%) unreported incidents the place of occurrence is not known. This distribution is not surprising as it is in line with the distribution of the general number of recorded incidents by Da se zna! on a yearly basis, regardless of whether they were reported to competent authorities or not, but it also corresponds to the dis-

tribution of cases reported to relevant institutions based on the place where they occurred.¹ These numbers should be interpreted in accordance with under-recording and under-reporting, discussed previously, that point out to the prominence of these problems in smaller communities.

Such a distribution is similar for the 27 cases that were not reported due to lack of trust in institutions: 18 (66.7%) of them happened in Belgrade, 6 (22.2%) happened in cities other than Belgrade, and 3 (11.1%) cases happened in smaller places. However, when we compare the total number of unreported cases with the

¹ Kovačević, M. and Planojević, N. (2020). *Grasp the truth based on facts: Report on hate-motivated incidents against LGBT + people in Serbia from January 2017 to June 2020.* Belgrade: Da se zna!, p. 27, 65.

number of those that were not reported due to lack of trust in institutions, we see that the distribution somewhat changes. More than half of the unreported incidents that occured in cities other than Belgrade (6 out of 9, or 66.7%) were not reported due to lack of trust in institutions. Furthermore, this reason accounts for nearly a third of unreported incidents that occured in smaller places (3 out of 10, or 30%), whereas it is noted as a reason for not reporting around a quarter of incidents (18 out of 68, or 26.5%) that occured in Belgrade. Interpreted together, these figures point out to the fact that the unreported cases that occur in cities other than Belgrade, as well as cases occurring in smaller places in Serbia, are more likely to be unreported due to lack of trust in institutions than because of other reasons. Moreover, they also show that lack of trust in institutions features more prominently as a reason for not reporting the incidents of hate crimes in other places in Serbia than in Belgrade.

Place of incident	Number of all unreported cases	Percent of all unreported cases	Number of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions by place
Belgrade	68	75.6%	18	66.7%	26.5%
Other cities	9	10.0%	6	22.2%	66.7%
Smaller places	10	11.1%	3	11.1%	30.0%
Unknown	3	3.3%	0	0.0%	0.0%
Total	90	100.0%	27	100.0%	30.0%

Table 2.3 Number of total unreported cases and because of lack of trust in institutions, divided by place of incident

By dividing all 90 unreported cases by the type of incident that occured, it can be seen that nearly half of them, 42 (46.7%), were cases of psychological violence, and 12 (13.3%) cases of threats. Physical violence without bodily injuries occurred in 26 (28.9%) cases, and physical violence with bodily injuries occurred in 8 (8.9%) cases, making it a total of 34 (37.8%) unreported cases of physical violence. Lastly, 2 (2.2%) cases were incidents of attacks on property of the survivors.

When we subsequently look at the unreported cases where lack of trust in institutions was noted as a reason for not reporting, we see that the distribution of cases significantly changes. Out of 27 cases unreported due to lack of trust in institutions, 16 (59.3%) were incidents of physical violence without bodily injuries, and 2 (7.4%) were incidents of physical violence with bodily injuries, making it a total of 18 (66.7%) cases of physical violence. Psychological violence occurred in 9 (33.3%) cases, and lack of trust was not noted as a reason in any unreported cases of threats or attacks on property.

aking into account the divi-sion of all unreported cases by type of crime, it can be seen that the lack of trust in institutions features. more prominently as a reason for not reporting in the cases of physical violence, than other types of injuries, noted in 16 out of 26 (61.5%) unreported cases of physical violence with, and 2 out of 8 (25.0%) cases without bodily injuries, making it a total of 18 out of 34 (52.9%) of cases. The only other type of injury that has a significant portion of cases unreported due to this reason is psychological violence, where it is noted in 9 out of 42 (21.4%) of unreported cases. These numbers indicate that incidents of psychological violence constitute mostly of the unreported cases, but that the lack of trust in institutions accounts for most of the unreported incidents of physical violence, both with and without bodily injuries.

Type of crimes	Number of all unreported cases	Percent of all unreported cases	Number of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions by type of crimes
Physical violence without bodily injuries	8	8.9%	2	7.4%	25.0%
Physical violence with bodily injuries	26	28.9%	16	59.3%	61.5%
Physical violence in total	34	37.8%	18	66.7%	52.9%
Psychological violence	42	46.7%	9	33.3%	21.4%
Threat	12	13.3%	0	0.0%	0.0%
Attack on property	2	2.2%	0	0.0%	0.0%
Total	90	100.0%	27	100.0%	30.0%

Table 2.4. Number of total unreported cases and cases unreported because of lack of trust in institutions, divided by type of crimes

CHARACTERISTICS OF HATE CRIMES NOT REPORTED TO THE COMPETENT AUTHORITIES

The following sections, besides analysing all unreported cases, discuss cases where survivors stated distrust in institutions as a reason for not reporting, due to straight-

he following sections, be- forward responsibility of the compesides analysing all unreport- tent authorities for under-reporting of discuss cases where survivors these cases.


unreported cases, in 9 (10.0%) incidents the survivors were human rights defenders, and in 81 (90.0%) incidents the survivors were not. From all cases which are not reported due to distrust in institutions, in 6 (22.2%) incidents the survivors were human rights defenders, and in 21 (77.8%) incidents were not. Greater prevalence of human rights defenders amongst survivors who did not report cases due to distrust in institutions can be explained with the fact that they are, because of their activist engagement, more open about their SOGIESC and better informed about reporting procedures compared with survivors who are not human rights defenders. Moreover, this could also explain why most of the unreported cases that happened to human right defenders are not reported due to lack of trust in institutions (6 out of 9, or 66.7%), than due to other reasons.

Activist engagement	Number of all unreported cases	Percent of all unreported cases	Number of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions	Percent of cases unreported due to lack of trust in institutions by activist engagement
Human right defenders	9	10%	6	22.2%	66.7%
Not human right defenders	81	90%	21	77.8%	25.9%
Total	90	100%	27	100.0%	30.0%

Table 2.5. Number of total unreported cases and because of lack of trust in institutions, divided by survivors' activist engagement

rom all unreported cases, in 68 (75.6%) incidents the survivors were individuals, and in 22 (24.4%) incidents survivors were a part of the group. Excluding the reported incidents committed against groups, the majority, 39 (57.4%) of them, were committed against gays and lesbians, followed by bisexual people who were survivors in 11 cases (16.2%), 10 (14.7%) cases were reported against straight people, 2 (2.9%) against survivors who identify as queer, and 1 (1.5%) against a pansexual and an asexual individual each. Persons who did not find themselves in any of the offered answers were survivors in 3 (4.4%) cases, and for 1 (1.5%) information on sexual orientation is not known.

rom all cases where distrust in institutions is stated as a reason for not reporting, with a total of 27, in 18 (66.7%) incidents the survivors were individuals, and in 9 (33.3%) part of the group. Excluding the reported incidents committed against groups, the majority, 10 (55.6%) of them, were committed against gays and lesbians, followed by bisexual and straight people who were survivors in 3 cases (16.7%) each, and 1 (5.6%) against a pansexual, and asexual person each. Comparing sexual orientation of survivors who do not trust institutions with general data about sexual orientation of survivors who have not reported their case, it could be clearly seen that there is no significant difference in distribution of survivors' sexual orientation.

83

Sexual orientation of survivors	Number of total unreported incidents including individuals	Percent of total unreported incidents including individuals	Number of unreported incidents due to lack of trust including individuals	Percent of unreported incidents due to lack of trust including individuals
Homosexual	39	57.4%	10	55.6%
Bisexual	11	16.2%	3	16.7%
Heterosexual	10	14.7%	3	16.7%
Queer	2	2.9%	0	0.0%
Pansexual	1	1.5%	1	5.6%
Asexual	1	1.5%	1	5.6%
Other	3	4.4%	0	5.6%
Unknown	1	1.5%	0	0.0%
Total	68	100.0%	18	100.0%

Table 2.6. Sexual orientation of individual survivors who did not report incidents in total and due to lack of trust in institutions.

Then it comes to gender identity of the survivors, the majority, 45 (66.2%) of the reported incidents were recorded against cisgender survivors. Against trangender survivors, 22 (32.4%) cases were recorded. Men were survivors in 43 (63.2%) cases, and women in 18 (26.5%) cases. The same number of both transgender and cisgender women were survivors of hate crimes in 9 (13.2%) cases each, while there were 36 (52.9%) cisgender men survivors, and 7 (10.3%) transgender men survivors. Against 6 (8.8%) trans persons who do not identify as either men or women were committed hate crimes. In 1 (1.5%) incident information on gender identity of the survivor is not known. When it comes to sex characeristics, 1 (1.5%) incident was recorded against intersex, and 67

(98.5%) against endosex persons.

n regards to gender identity of the survivors who stated distrust in institutions as reason for not reporting, with a total of 27, in 18 (66.7%) incidents the survivors were individuals, and in 9 (33.3%) part of the group. Taking into account only the cases where survivors were individuals, the majority, 11 (61.1%) of the reported incidents was recorded against cisgender survivors. Against trangender survivors 7 (38.9%) cases were recorded. Men were survivors in 11 (61.1%) cases, and women in 6 (33.3%) cases. Comparing with cisgender women, twice as many transgender women stated lack of trust in institution as reason for not reporting. This is understandable considering failure of criminal justice

85

system, not just to find and sentence perpetrators of hate crimes (Kovačević 2018, Kovačević 2019, Kovačević & Planojević, 2020) motivated by transphobia, but also to prevent secondary survivorisation of trans women (Kovačević 2019). There is 9 (50.0%) cisgender men survivors and 2 (11.1%)

transgender men survivors. Against 1 (5.6%) trans person who do not identify as either men or women hate crime was committed. When it comes to sex characeristics, all 18 (100.0%) incidents recorded were comitted against endosex persons.

Gender identity and sex characteristics of survivors	Number of total unreported incidents including individuals	Percent of total unreported incidents including individuals	Number of unreported incidents due to lack of trust including individuals	Percent of unreported incidents due to lack of trust including individuals
Cisgender Woman	9	13.2%	2	11.1%
Transgender Woman	9	13.2%	4	22.2%
Total Women	18	26.5%	6	33.3%
Cisgender Man	36	52.9%	9	50.0%
Transgender Man	7	10.3%	2	11.1%
Total Men	43	63.2%	11	61.1%
Other Trans Identities	6	8.8%	1	5.6%

Unknown	1	1.5%	0	0.0%
Total Transgender	22	32.4%	7	38.9%
Total Cisgender	45	66.2%	11	61.1%
Intersex	1	1.5%	0	0.0%
Endosex	67	98.5%	18	100%
Total	68	100.0%	18	100.0%

Table 2.7 Gender identity and sex characteristics of survivors who did not report incidents in total and due to lack of trust in institutions

CONCLUSION

nder-reporting of ti-queer hate crimes could be addressed in various ways. The most effective way is at the same time the most straightforward and obvious one - professional, sensitive, and respectful treatment of survivors, as well zero tolerance for secondary victimization. In this sense, changing the legal framework that made maltreatment of survivors possible is crucial. Allowing survivors to be accompanied by a person of trust while reporting hate crimes would certainly have a beneficial effect on reducing survivors' reluctance to report incidents due to lack of trust in institutions. Bare presence of a possible witness in the room, and especially when the person of trust is a human rights defender, would prevent police offi-

cers from exposing the survivor to secondary victimization. But hate crimes survivors are an especially vulnerable class of survivors, so some additional proactive measures are needed, such as campaigns which will encourage reporting, training for prosecutors and police officers and improvement of representation and visibility of queer people amongst criminal-justice professionals. These measures should be informed by findings discussed in the previous sections of the report and to center parts of queer community that are most reluctant to report incidents due to distrust in institutions. Thus, special focus should be put on survivors: 1) of physical violence, 2) who are trans women, and 3) who are outside Belgrade, as it is shown by this report.



DA SE ZNA! VERSUS VLADIMIR DIMITRIJEVIĆ

n the previous two reports, Da se zna! has written about the case of discrimination expressed in articles by the Christian Orthodox publicist, Vladimir Dimitrijević, published on his website of which he is also the editor. Discrimination in the article "In Defence of Natural Family", published on January 12th, 2018, was at first the subject of the complaint we made to the Commissioner. In her opinion, the Commissioner ascertained that it is the case of discrimination (violation of the provision of the Article 12 of the ADL)¹ and issued a recommendation that the perpetrator of discrimination publicly apologises and refrains from further violation of the ADL (Janković, the internet). Instead of issuing an apology, Vladimir Dimitrijević repeated the act of discrimination, and in response to our complaint to the Commissioner, published a second article in May 2018, entitled "A Response to a complaint filed by "LGBT activists" or Again "As Long As There is One Hundred".

n our last year's report, we wrote about the reasons for making the complaint, discriminatory statements in the articles concerned, as well as Vladimir Dimitrijević's statements from his response to the complaint, up until which only a preliminary hearing before the main court hearing had been held. For that reason, we will repeat here the most significant arguments both sides presented in that part of the judicial proceedings, for the purpose

¹ Zakon o zabrani diskriminacije, Službeni glasnik RS, br. 22/2009, *Article* 12. (Anti-discrimination Law)

of facilitating the following analysis of further proceedings.

n the article entitled "In Defence Natural Family", which according to the author was created on the eve of passing of The Law on gender equality "whose effects to our already destroyed institution of family would be disastrous", Vladimir Dimitrijević stressed that the article's objective was to inform the people about "the most horrific assault of totalitarian authorities on the institution of family, assault so grand that it can only be compared to a Communist attack on spiritual and family values", with that in this case "instead of Communism. homosexualism is now being imposed upon Serbs, under a cloak of the gender equality narrative whose mouthpiece are LGBT activists".

n the before-mentioned article, Vladimir Dimitrijević quoted parts of the letter from Branislav

Vujić, whose statements he accepted as his own. In that letter same-sex relationship is exclusively reduced to sex, stripped of all other human characteristics, such as emotional connection, and in comparison to heterosexual relationship, which can exist without sex. Moreover, same-sex relationship is qualified as perverse and inappropriate, bourgeois and consumerist, at the same time warning the readers that same-sex relationships destroy family relations and distort normality criteria. These attitudes imply that same-sex and heterosexual couples cannot be considered equal, which is repeated in the article's conclusion.

The article is a vehicle for attitudes such as the following: the only natural union is the union between a man and a woman, and that only such union, natural family, is the road to happiness which leads to a good life, authentic joy, prosperity and the source of sound political life.

n the text entitled "A Response to a Complaint made by "LGBT activists" or Again "As Long As There is One Hundred", Vladimir Dimitrijević which presented attitudes again reflect essential ignorance about human sexuality, deepen and intensify negative stereotypes, degrade queer people and incite a creation of the hostile and offensive surroundings for queer people. It is so that Vladimir Dimitrijević with disapproval states the fact that in contemporary society "there are tendencies to understand homosexuality, not sexual as perversion and deviation, but as sexual orientation which has equal rights to equal expression and appreciation and respect".

> Additionally, he also wrote about the opinion of

the Church, accepting it as his own, that "homosexual relationships are sinful and should be subject to condemnation", as well as that "homosexual inclinations are treated and cured, just as other passions torturing a fallen man". In the end, he also stated that "occasionally, perversion of human sexuality is expressed in the form of the sick feeling of belonging to the opposite sex, which results in the attempt to change one's sex".

Due to all this, in January 2019, Da se zna! filed a lawsuit to the High court in Belgrade against Vladimir Dimitrijević, with the suggestion that the court ascertains that Vladimir Dimitrijević discriminated against queer community in his articles "In Defence of Natural Family" and "A Response to a "Complaint made by "LGBT activists" or Again "As Long as There is One Hundred", and to obligate Vladimir Dimitrijević to take down the before-mentioned texts from his web site. We also suggested the Court issues an order to Vladimir Dimitrijević banning him from publishing texts on his website and other publications in which he discriminates against queer community, as well as obligate him to publish the verdict at his own expense.

n the lawsuit filed to the High court in Belgrade, Da se zna! also stressed that Vladimir Dimitrijević's opinions expressed in the published articles represent a negative stereotype about same-sex relationships, and that they lead to the unacceptable conclusion that samesex couples cannot be treated as equal. Additionally, Da se zna! expressed an opinion that with his statements, Vladimir Dimitrijević directly insulted the dignity of queer people and encouraged the creation of hostile and offensive surroundings for them, making the unreasonable conclusion that the rights of queer people endanger family and family values. Da se zna! also finds that his opinion that queer people represent a significant cause and factor of all negative phenomena in the society, for example such as the decrease in birth rate, is unfounded. Da se zna! pointed out to queer people's position in society, as well as the place and time context in which the articles in question had been published.

nhisresponse to the lawsuit from April 2019, Vladimir Dimitrijević, defending his opinions, stated that in the article "In Defence of Natural Family" he expressed an attitude that all tendencies not in spirit of "the family values" should be prevented, as well as that it is a fact that in our Constitution and legal system, same-sex couples are not recognised and cannot marry or adopt children, concluding that in that sense, his statements cannot represent discrimination of queer people.

Furthermore, he stated that those articles' objective was to direct general public's attention to problems which can eventually come about as a result of the potential adoption of heterosexual and same-sex couples' equality, in terms of adoption of children and marriage.

the words of Vladimir n Dimitrijević, the usage of provocative terms in the beforementioned articles, is not resorted to in order to insult and humiliate "homosexual couples and individual homosexuals", but to criticise a social phenomenon he dubbed "ideology of political homosexualism". Vladimir Dimitrijević thinks that in that sense, all intellectuals, including himself, feel it as their moral duty to evaluate and criticise each and current phenomena or tendencies which appear in our

society, which is why they must be allowed a broad understanding of the idea of the freedom of thought and expression. In the words of Vladimir Dimitrijević, the goal of his articles is partaking in a public debate and criticising the potential adoption of the Draft Law on gender equality, in order to stop it from being passed, therefore, he finds it his legitimate right, from the standpoint of what he deems family values, faith and Serbian tradition, to criticise possible legal solutions which clash with these values, and one of those is certainly "the ideology of political homosexualism".

Validimir Dimitrijević stated that the lawsuit filed by Da se zna! represents a threat to his right to freedom of religion and freedom of thought and public expression, additionally questioning the constitutionality of The Law on gender equality, saying that it is not

in the spirit of the law of the CRS² which calls upon a special protection of family, adding that among special grounds for discrimination guoted in The Constitution, there is no mention of sexual orientation. However, such statements by Vladimir Dimitrijević are obviously unreasonable, especially bearing in mind that with Article 21, Paragraph 3 of the Constitution, discrimination of any type and on any grounds is prohibited.³

t the main court hearing, suggested evidence was presented, and civil procedure parties confronted their arguments in a number of briefs. After the main court hearing ended, the assigned court rejected the claim made by Da se zna! at first instance as unfounded, and at the time of the publishing of this report, the case was still not legally resolved.

amely, during the court case. Da se zna! directed its arguments to the fact that in the specific case Vladimir Dimitrijević exceeded his right to freedom of thought and expression at the expense of queer people's rights. On the other hand, Vladimir Dimitrijević, with his statements, pointed out that he acted within the limits of his rights, and that the limitation of his rights would have been unjustified from the democratic society's point of view.

mong other things during the court case, Da se zna! stressed that queer people's right to life without discrimination cannot be associated with socio-political systems, such as Communism – the very thing that Vladimir Dimitrijević had done since same-sex attraction is not a socio-

² Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006. (The Constitution of the Republic of Serbia) 3 Ibid., Article 21. Paragraph 3.

political system. It is unacceptable that Vladimir Dimitrijević, publicly, completely unjustifiably, allegedly while defending "traditional values", expresses opinions which directly stigmatize a minority group on the grounds of a personal characteristic sexual orientation - and thus intensifies stereotypes in the society in which this group, besides Roma people and migrants, is the most discriminated against. Furthermore, in our opinion, differentiating between the so called "ideology of political homosexualism" and queer community in the way Vladimir Dimitrijević attempted, is unacceptable, since the attacks on the alleged "ideology of political homosexualism" have been used for years as an excuse for direct assaults on queer people and community.

D^a se zna! stressed that Vladimir Dimitrijević is not denied the right to publicly debate about the significance of family, the reasons for which he thinks the institutions of marriage and family may be endangered in the society, the reasons behind the dissolution of marriage, the decrease of birth rate, and so on. No one is either intruding on his right to religion and freedom of thought, but it is unacceptable that within such debate, he expresses opinions which in an undeniable manner offend the dignity of a minority group, while that very group is being presented as the one which endangers the rights of the majority and damages "natural" family.

n addition, freedom of expression in relation to "family values" does not justify the expression of opinion that same-sex orientation is a sexual deviation, nor is it justified to present same-sex relationships as the cause of eventual destruction of "family values". The right to family life clearly belongs to samesex couples, as well as people of heterosexual orientation, therefore in our opinion, one cannot "defend family and traditional values" by stigmatising a minority which also has the right to family life, especially not in the way of putting the blame on said minority for the alleged destruction of family.

n relation to the beforementioned, Da se zna! also directed the court's attention to the decision of the ECtHR, in the case of Bayev and Others V. Russia,⁴ since this court in the before-mentioned case discussed arguments of the Russian Federation's defence that same-sex relations are not in keeping with the Russian traditional values, and that the majority of Russians allegedly do not approve of same-sex relations. The ECtHR did not accept these arguments as valid, concluding that Russia had failed to show how affirmative expression on the topic of queer human rights could have negative impact on the existing "traditional families" and endanger their future.

Da se zna! also pointed out to the fact that in the Article 18 of the CRS⁵ it is established that human and minority rights are directly applied and interpreted in keeping with the current international standards of human and minority rights, as well as practice of international institutions overlooking their implementation, and we reminded the court that Serbia, as the member of the Council of Europe is obligated to regulate same-sex unions. We also especially stressed the ECtHR's decision in the case Oliari and Others V. Italy⁶ which clearly states the

⁴ Bayev and Others v. Russia, briefs no. 67667/09, 44092/12, 5671/12.

⁵ Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006, Article 18. (The Constitution of the Republic of Serbia)

⁶ Oliari and Others v. Italy, No. 18766/11 i 36030/11.

obligation that all member states have to legally regulate and recognise samesex unions.

a se zna! also stressed that the objective of the lawsuit is not to cancel a debate in a democratic society, but that Vladimir Dimitrijević had expressed opinions which cannot be justified, nor are they proportional to the objective of the debate on family. Through his expressed opinions, Vladimir Dimitrijević encourages stereotypes entailing that the respect of one group of people means the loss of respect for another group, and also that the issue of same-sex couples having rights to private and family life in some way endangers the rights of heterosexual people.

On the other hand, among other things during the procedure, Vladimir Dimitrijević stressed that his intention had not been to offend queer people, that his

attitudes cannot be associated with humiliation and abuse, because, as he stated, he had not denied any rights to queer people, nor had he advocated for the denial of any rights to gueer people, he did not incite or call to violence against those people, but that he had the right to express his value judgements. He also stressed that as a professor and religious publicist, he had publicly stated his opinion about a certain social phenomenon – ideology, and that in that sense, he has the right to criticise such issues and analyse their negative aspects, as well as possible future legal solutions, adding that he had expressed his disapproval of certain ideology's propaganda which can have potentially disastrous effects on minors in the society. He also emphasised that he had used terms such as "illness and immorality" in the context of his religious beliefs, not in order to offend on the grounds of sexual orientation and differentiating

between same-sex minority and heterosexual majority, as well as that his articles had not brought about the increase in violence against queer people.

zna! also pointed se relevant the international documents from which it is concluded that in order for there to be discrimination, it is not necessary to have calls to violence, and that in line with the European parliament resolution on homophobia in Europe⁷, each statement on existence of danger from the alleged "homosexualisation of society" must be deemed equivalent to racist or antisemitic statements about the all eged Jewish or Muslim conspiracy to rule the world, and as such they must be adequately sanctioned, since homophobic remarks and statements are characterised by the same level of

absurdity, and are equally dangerous for they stir up social paranoia.

a se zna! also pointed out to the European Commission against Racism and Intolerance **General Policy Recommendation No15** on Combating Hate Speech⁸, in which it is said that hate speech should be understood as advocacy, promotion or encouragement in any form of belittling, hatred and humiliation of a person or group of people, as well as any type of harassment, offence, negative stereotypes, stigmatisation or threats, and that in his articles Vladimir Dimitrijević was sending messages to the public which basically contribute to the development and intensification of socially conflict-ridden environment. This in turn brings about the permanence of discrimination and the rise of intolerance. Attitude that

⁷ European Union: European Parliament, *European Parliament resolution of 24 May 2012 on the fight against homophobia in Europe*, 24 May 2012, P7_TA-PROV(2012)0222.

⁸ Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI General Policy Recommendation N°15 on combating Hate Speech, 8 December 2015.

calls to violence are not necessary for the existence of discrimination was expressed by the ECtHR in the case Vejdeland and Others v. Sweden⁹.

We also pointed out to the fact that systemic discrimination as a result of the absence of legal regulations in terms of specific issues such as the issue of partnership or civil union of same-sex couples, cannot be an instrument for the strengthening of discrimination in domains in which legal regulations clearly guarantee the protection from discrimination.

n line with the already existing rights, we emphasised that with Article 23, Paragraph 1. of the CRS it is stipulated that human dignity is inviolable and that everyone is obliged to respect and protect it, but also that on a number of occasions during the procedure, Vladimir Dimitrijević expressed opinions from which we can conclude that he publishes his articles as part of his struggle for a society in which same-sex orientation will not be deemed sexual orientation, but an immoral phenomenon.

fter the conclusion of the main court hearing, the assigned court in the first instance reached a verdict in May 2021, in which it rejected Da se znal's lawsuit as unfounded. As the crucial reason for this decision, the court stated Vladimir Dimitrijević's "passive demeanour", and the fact that the articles concerned were published on his own website, that is, the activity which is used to impose a certain attitude to a specified or unspecified group was absent, and that such imposition would be contained in actions such as distribution of leaflets, giving speeches at meeting, and the like. In other words, the court

9

Vejdeland and Others v. Sweden, No. 1813/07.

took a stand that the publication of articles on "a private website" could not bring about consequences which would justify the limitation of Vladimir Dimitrijević's rights, and actually Vladimir Dimitrijević that did not have the intention to impose his opinions on others. The court did not evaluate whether the articles in question were discriminatory, since the before-mentioned circumstance was sufficient for the rejection of the lawsuit in the court's opinion. In this way, in the explanation of the decision it is stated that the court did not especially or in detail address the very opinions of Vladimir Dimitrijević, but that during the analysis of texts in question it noticed certain significant circumstances we will discuss below. although they were not crucial for the reaching of the verdict in this legal matter.

a se zna! filed an appeal against beforethe mentioned court decision in June 2021. Firstly, we find it unacceptable that the conclusion of the court was that Vladimir Dimitrijević did not actively work to impose his opinions on others, specific people or group of people, or that it was not his intention, bearing in mind that this is obviously in contradiction to his statement, his statements during the procedure, and also his behaviour as a public figure and a political actor. For example, during the hearing, Vladimir Dimitrijević stated that he is a public figure and a publicist, while it was undeniable that he was also a member of the movement Dveri, whose programme he quoted in his text "A Response to a complaint filed by "LGBT activists" or Again "As Long As There is One Hundred". During the hearing he stated that expressing extremist attitudes relating to queer people was justified at the time of the

writing of the article, after an alleged attempt by "political homosexuals" to introduce school programmes through education on non-violence which, according to him, propagated "homosexual behaviour" to children, and that owing to his public activism, the introduction of sexual education in schools was prevented.

Therefore, Vladimir Dimitrijević himself, confirmed that the publication of his articles was a part of political struggle, in other words, that their objective was to animate the wider public about eventual legal solutions and public policy.

Valadimir Dimitrijević never denied that he disseminated his articles publicly, those in question and others, as well as his opinions, with the aim to impose them on as many people as possible, he claimed that his attitudes were not questionable, and that as such, that is "unquestionable", they should be adopted by as many people as possible, all in order to prevent what he deems propaganda and imposition of "homosexualism". The fact that there was intention to reach as many people as possible was not even debatable in the first instance proceedings, since Vladimir already revealed Dimitrijević his intentions by answering the lawsuit, stating: "The whole paragraph cited in the lawsuit boils down to directing the wider public's attention (...) serves the purpose of awakening the public and attempting to prevent the penetration tendencies into our society, of tendencies which are in any case in opposition to our tradition..."

n the lawsuit, among other things, Da se zna! also pointed out to the fact that Vladimir Dimitrijević's website has a lot of visitors, a great number of hits, which can be viewed on the website, so that one cannot think of it as "a private website", especially taking into account that all content there is available to everyone, and the very objective of the web site is always in communicating to the public, in order to reach certain commercial or noncommercial aim.

n the other hand, the court did not take into account the fact that Da se zna! was made aware of the article "In defence of natural family" by people from the queer community, who found the text extremely disturbing, nor did the court take into account the fact at least one of those articles was shared by other portals as well. This is exactly where the special danger of publicly published, uncontrolled content which is easily shared lies. In addition, bearing in mind the fact that Vladimir Dimitrijević is a professor and a public figure, it is guite certain that his work is followed by his

students, especially on the internet.

herefore, in our opinion, ne court's evaluation that Vladimr Dimitrijević did not impose his opinions is questionable, since from his public appearances up until now, the fact that he has an internet page where he presents and spreads his ideas, his political activism, but also his statements from the proceedings, it can be clearly concluded that Vladimir Dimitrijević not only has the intention and wants to impose his opinions on others and the majority in the society, but he is also doing whatever is in his power to reach as many people as possible and influence public opinion. Vladimir Dimitrijević himself finds that due to his influence and profession he has a moral duty to publicly express his opinions.

f one is to accept the court's ruling, one could also pose a guestion whether the court took a stand that Vladimir Dimitrijević can publish whatever he wants without any legal consequences on an internet page available to everyone only because it is an internet page he himself edits.

mong other things, the court concluded that in this specific case there was no room for the upholding of our claim, even though it relied on the ECtHR's decision in the case Veideland and Others V. Sweden, in which the court ruled that it was the case of discrimination, since leaving leaflets with discriminatory statements in students' lockers meant that those young people got them without being able to decide whether they wanted to receive them or not. However, in our opinion, this argument cannot be applied unconditionally to this specific case, since we here have a case of publicly published articles. We find that Vladimir Dimitrijević, besides his attitudes, had to also present other

objective facts and all aspects of the discussed topics to the reader, and in that way leave the choice to the reader in terms of forming an opinion when it comes to certain phenomena. However, contrary to that, in his articles, Vladimir Dimitrijević sent an inaccurate message to the readers, saying that queer people are to blame for the decrease of birth rate and that they pose danger to the institution of family, all the while expressing offensive opinions about queer people, inviting the readers and general public for that matter, to resist this, but actually urging them to participate in the tyranny of the majority.

f the explanation of the court had been accepted, then it could be concluded that no one ever would have to be responsible for what they publicly stated, in the media or on the internet portals, since the readers can decide whether they want to visit a certain portal, whether they want to turn off the TV set, whether they want buy daily newspapers, etc.

Such opinion of the court is also disputable because when the reader decides to buy newspaper and read the article on family, that does not mean that he/she decided to read about extremely negative views on queer people. Therefore, if one is to accept such opinions of the court, the responsibility for the spreading of prejudice would be transferred onto public opinion, while the responsibility of those who spread prejudice through their opinion would be annulled.

n its explanation, the court stated that it had not dealt with Vladimir Dimitrijević's opinions expressed in the articles in detail, but that in analysing the articles it had noticed certain crucial circumstances.

> herefore, the court states that in his articles Vladimir

Dimitrijević clearly expressed attitude against the introduction of same-sex unions in the legislation of our state, as well as against the adoption of children by same-sex partners. The court stresses that one can or cannot agree with such attitudes, but that the topics in question are certainly sensitive and that for this reason precisely European union does not prescribe the introduction of same sex unions in national legislations as an obligation, but rather that their introduction is given as a type of recommendation.

t is unclear why the court calls upon the European union's recommendations, taking into account the fact that the Republic of Serbia is not a member of the European union. On the other hand, Serbia is a Council of Europe member state, and in this way is bound to respect the decisions of the ECtHR. In that sense, in the appeal, we once again reminded the court about the ECtHR's decision in the case Oliari and Others V. Italy, which concludes that the obligation of all Council of Europe state members, and in that sense Serbia as well, is to legally regulate same-sex partnerships, with that the choice about how this legal regulation would be enforced and implemented is member states' decision.

The court also stated that in the lawsuit we had pointed out to a segment of the article in which Vladimir Dimitrijević writes that "homosexual relations are not truly and sincerely emotional, but lustful, bourgeois, hedonistic and consumerist", so in the explanation of the decision the court asks whether such qualifications (as one's personal opinion) can be given and presented as opinion in relation also to modern heterosexual marriage and relations, and concludes that

noticeable avoidance of obligations and the absence of acceptance of obligations, marrying out of interest, either economic or in order to gain a position, that is, marrying not for the reasons of emotional connection, tell us that the specific problem, if it really existed, could be perceived within a larger framework and in relation to both heterosexual and to same-sex relationships, and that shifting certain opinions into another perspective clearly relativises the existence of a serious effect on a certain group, which could then be classified as discriminatory.

To a question the court posed whether the beforementioned qualifications can be given also as an opinion expressed in relation to modern heterosexual marriages as well, we can certainly reply affirmatively. However, in its explanation, the court failed to notice that precisely that part of the text begins with the following: "there are no homosexual relationships without sex, while heterosexual relationships can exist without it", as well as that in the part that follows the before-mentioned gualifications are used only in relation to same-sex relationships (statement that "homosexual relationships are not truly and genuinely emotional, but lustful, bourgeois, hedonistic and consumerist"). In conclusion, it is clear that Vladimir Dimitrijević intentionally uses those qualifications only in relation to same-sex relationships, and that exactly in this way he differentiates between same-sex relationships and heterosexual ones. Consequently, Vladimir Dimitrijević expresses an attitude that same-sex relationships, as opposed to heterosexual, are devoid of emotions.

n its explanation of the decision, the court states that it

viewed a part of the article entitled "A Response to a complaint filed by "LGBT activists" or Again "As Long As There is One Hundred" though the fact that Vladimir Dimitrijević holds traditional beliefs, and that he concluded that in statements "homosexual relationships are sinful and should be subject to condemnation" and "homosexual inclinations are treated and cured just as other passions torturing a fallen man", he was using religious terminology.

Scould only be partially accepted, since in the same article Dimitrijević made other statements in which he is certainly not using religious terminology, such as statements that "occasional perversion of human sexuality is expressed in the form of a sick feeling of belonging to the opposite sex, which results in the attempt to change one's sex (transexualism)" and "that in modern society there are tendencies to understand homosexuality, not as sexual perversion and deviation, but as sexual orientation which has equal rights to public expression and respect".

n any case, the usage of reliaious vocabularv and traditionalist convictions cannot pose as excuse for discrimination, and the court was also obligated to view the articles in question from queer people's point of view, who are recognised as an especially vulnerable group in the society through antidiscrimination legislation and public opinion research, and not only from Vladimir Dimitrijević's point of view and attitudes, which in the articles in question, in our opinion were abused at the expense of queer people's rights.

ere we would like to repeat that the ECHR in Article 9.¹⁰ guarantees freedom of thought, conscience and religion, and prescribes that this right includes the freedom to change religion or religious beliefs and the freedom of man to either alone or together with others, publicly or privately, expresses religion or belief through prayer, sermon and service, customs and rites. Additionally, it is stated that the freedom to express religion or belief can be subject only to those limitations prescribed by law and deemed necessary in democratic societies and in the interest of public safety, for the protection of public order, health and morality, or for the protection of the rights and freedoms of others.

Similarly, this issue is regulated by the CRS, which with Article 43, guarantees freedom

¹⁰ 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, Article 9.

of religion and expression of religion, performing religious rites, attending religious service and Sunday schools, individually or in the community with others. Freedom to express religion can be regulated by law, only if that is necessary in democratic society, for the protection of life and health of people, democratic society morality, freedoms and rights of citizens, public safety and public order or for the prevention of incitement to ethnic, racial or religious hatred.

Therefore, the right to freedom of religion means first and foremost the freedom of beliefs and performance of religious rites, change of religion and expression of religion, but it cannot serve as an excuse to violate the rights of others and discrimination.

The court had to take into account both the time and space context in which the articles in question were published, and the court failed to do that. Homophobia and transphobia have deep roots in our society. Great social distance and negative attitude of the public towards queer people are both present, while people of different sexual orientation and gender identity are faced with the lack of understanding and judgement, even in their own families, and often suffer physical and psychological violence.

Essential danger in expressing opinions with elements of discriminatory speech lies in the fact that messages sent out in these attitudes and expression to the public cause negative consequences to a certain group of people on the grounds of their personal characteristic, which can manifest through the creation and intensification of disdain of a certain group of people, causing the feeling of fear and insecurity among certain group of people, inflicting physical and psychological pain on members of a certain group, and finally through creation of opinion and feeling among the majority of people that this is justified and that it will be tolerated.

Writing about "family values" and certain tendencies in the society such as the decrease of the birth rate, Vladimir Dimitrijević is at the same time insulting queer people, incorrectly interpreting that the issues of family life do not concern queer people, presenting same-sex relationships as something immoral, a sickness which has to be cured, and in this way misguides the readers and makes unfounded conclusions about how the rights of queer people endanger the rights of heterosexual majority, lead to the destruction of family and society, saying that queer people are the cause for the drop in birth rate and eventually calling for discrimination against a minority.

Appeals court in Belgrade, we will find out whether the sentence of the High court will be upheld or whether the court will conclude that Vladimir Dimitrijević overstepped the limits of his rights at the expense of queer people's rights by expressing opinions in the articles in question.

DA SE ZNA! VERSUS MILOVAN BRKIĆ

n the previous report, Da se zna! wrote about the case of discrimination in the article "Where is this world going?", published on May 3rd of 2018, in an online edition of "Magazine Tabloid: Truths and misconceptions".¹ The editor-in-chief of this magazine is Milovan Brkić. Until the publication of the previous report, in the civil procedure led by the lawsuit filed by Da se zna! to the High court in Belgrade, not one hearing had been held for the main hearing, and now the case is considered solved with the decision passed, however, the decision is not yet final.

n May 2018, Da se zna! filed a lawsuit to the Commissioner against Magazine Tabloid's editor-inchief, Milovan Brkić, as in the beforementioned article, ideas and opinions which humiliate people of different sexual orientation from heterosexual, as well as against transgender people, were expressed. Additionally, they were expressed in a way which insults queer people's dignity and creates a hostile, humiliating and offensive environment.

Milovan Brkić responded to the claims from the complaint, and among other things called upon the freedom of expression. Nevertheless, this independent institution did not accept his statement and reached a decision that the article in question violates the provisions of Article 12 of the ADL which was in effect at the time, and Milovan Brkić, as the editor-in-chief, was issued

Kovačević, M. and Planojević, N. (2020). Grasp the truth based on facts! Belgrade: Da se zna! Asso-

¹ ciation.

a recommendation to "publish a written apology to queer community in "Magazine Tabloid: Truths and misconceptions", and in the future to refrain from publishing texts which contribute to the creation of fear, and hostile, degrading, and offensive environment for queer community".

n the electronic edition of the "Magazine Tabloid: Truths and misconceptions" on May 3rd, 2018, an article "Where is this world going?" was published. The headline of the article "Where is this world going?" was preceded by the overline which said: "The Third Millennium Plague: Is the triumph of death, sodomy, paedophilia and the destruction of family, final objective of the European union, or is it its end?"

The topic of the text "Where is this world going?" was further explained in the summary which said: "And not only European union, but also the whole Western world has nowadays sunk into the darkness of sodomy, paedophilia, dissolution of family and the destruction of everything which has up until today held the European and Christian civilization together."

n the article, among other things, the following is stated: "Systematic destruction of ethical, moral, Christian, and generally human, in European civilisation, has reached its peak. Either this continent whose destiny is shared by Serbia as well, will resist this horrible danse macabre, the adoration of Sodom and Gomorrah, sodomy, gay marriage, aggressive transsexual propaganda, paedophilia, or will it cease to exist."

A fter expressing the opinion that the first victims of global violence are families and the youngest, and with them also society and state, the article reads: "In order for this horrible project to work, the profile of a person in charge of the European institutions is swiftly changing as well. Gay diplomacy has taken the top of European political being, while members of the so-called gay-lesbian community have been deployed to EU administration with care, to positions responsible for faithful decisions for all member states and those aspiring to become members states. Laws are quickly being changed, as well as constitutional principles, at the expense of the institutions such as family and marriage..."

n the part of the article which deals with "homosexual rights" and Pride parade in other states, it is said: "In this way, through laws protecting the rights of homosexuals and socalled 'transgender' minorities, we now have the tyranny of that minority over the majority. The principles of individual freedom and freedom of minority, written down during the French Revolution, are today being trampled upon in the name of sodomy, paedophilia, and the rights of the perverted ones. Laws which sanctioned this evil, are little by little replaced with the laws which glorify it. Serbia,

and Serbian legislation are following this trend." Furthermore, in relation to the legalisation of "homosexual marriage" in Ireland and establishing new "forms of family", the text poses a question: "What are the consequences of this pestilence?", followed by the statement: "Sexual perversion has become protected by all human rights organisations in the Western societies. Special organisations and associations have been founded for homosexuals and lesbians working with enormous budgets and armies of lawyers who protect and represent their interests."

Taking into account that Milovan Brkić did not act in accordance with the Commissioner's recommendation, Da se zna! filed a lawsuit at the High court in Belgrade in April 2019, in order to obtain protection from discrimination, with the suggestion that the court establishes discrimination, forbids future publication of articles which discriminate against gueer people, obliges the editor-in-chief to issue an apology to the queer community, take down the article in question from the web site, and to publish the court decision at his own expense.

n the lawsuit, among other things, Da se zna! stressed that from the content of the article in question it is clear that samesex orientation is referred to by a derogatory term "pederasty" and together with transgender states it is associated with paedophilia, in this way sending out a message to queer people that they are the ones contributing to the dissolution of family and the destruction of everything representing a positive value for the particular part of the public. In addition, Da se zna! pointed out that in the text, same-sex orientation and transgender states are labelled evil ("danse macabre"), and that they represent such form of danger for the society that it is essential to "resist" them, or everything "positive and human" in the European civilisation will disappear. Moreover, queer people are called perverted, while the legalisation of same-sex marriage in other European countries is labelled "pestilence".

Da se zna! also pointed out to relevant regulations of the CRS,² ADL,³ ECHR,⁴ and to the fact that the right to freedom of expression is not unlimited.

Namely, Article 21 of the CRS⁵ forbids any type of discrimination, direct or indirect, on any grounds. The CRS guarantees freedom of thought and expression, as well as the usage of speech, writing, painting or any other form of expression, in order to ask, receive

² Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006 (The Constitution of the Republic of Serbia)

³ Zakon o zabrani diskriminacije, Službeni glasnik RS, br. 22/2009. (Anti-discrimination law)

⁴ 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.

⁵ *Ustav Republike Srbije*, Službeni glasnik RS, br. 98/2006, Article 21. (The Constitution of the Republic of Serbia)

and distribute announcements and ideas, however it also prescribes that freedom of expression can be legally limited, if necessary, in order to protect, among other things, the rights and respectability of others.

Furthermore, Article 2, paragraph 1, item 1 of the ADL⁶ determine that discrimination and discriminatory behaviour refer to every unjustified differentiating or unequal behaviour, in relation to persons or groups, as well as their family members, or persons close to them, in an open or covert way, based on, among other things, sexual orientation and/or gender identity.

 of a person or a group on the grounds of their personal characteristic, and especially if it creates fear and a hostile, degrading and offensive environment.

rticle 14 of the ECHR⁸ discrimination and prescribes that enjoyment of rights and freedoms given in the beforementioned convention is guaranteed discrimination without on any grounds, while Article 1, Protocol 12 of the before-mentioned Convention⁹ states that enjoyment of all rights prescribed by the law is guaranteed without discrimination on any grounds. Additionally, Article 10 of the ECHR¹⁰ prescribes that everyone has the right to freedom of expression, which includes freedom of holding one's own opinion, receiving and communicating information and ideas without the

⁶ *Zakon o zabrani diskriminacije*, Službeni glasnik RS, br. 22/2009, Article 2. Paragraph 1, Item 1. (Anti-discrimination law)

⁷ *Ibid.*, Article 12.

⁸ 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, Article 14.

⁹ 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.

¹⁰ 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, Article 10.

interference of public authorities and regardless of the borders, but also since the exercise of these freedoms entails duties and responsibilities as well, it can be subject to formalities, limitations conditions. and fines necessary in the democratic society in the interest of national security, territorial integrity or public safety for the purpose of preventing disorder and criminal activity, protection of health and morality, protection of respectability and rights of others, prevention of revealing information obtained in confidentiality, or for the purpose of protecting authority and impartiality of the court.

Therefore, the right to freedom of expression is not unlimited. According to the regulations of the CRS and the ECtHR, the protection of respectability and the rights of others is one of the legitimate limitations of this right.

of the ECtHR, it is necessary

to view limiting the right to freedom of speech in the light of each specific case, which includes the analysis of the statements and messages sent out, as well as the space and time context in which the statements are made; it is also essential to ascertain whether the limitation of the freedom of expression is necessary in the democratic society and whether it is in proportion with the legitimate aim.

Therefore, in the lawsuit, Da se zna! stressed the fact that with the association of words "pederasty", "aggressive transgender propaganda" and paedophilia, these terms gained an extremely negative connotation, sending out a negative message to the queer community, and creating an impression that a different sexual orientation from heterosexual is something bad, just as that being transgender is something bad. In conclusion, it is apparent that derogatory terms were used in the text. Additionally, the media have the
right to publish attitudes and opinions of journalists on a variety of social phenomena and events. Nevertheless, it is unacceptable that an opinion on a certain social phenomenon is expressed by insulting a whole social group only on the grounds of their personal characteristic, as demonstrated in the given case, with sexual orientation and gender identity.

When it comes to space and time context, Da se zna! pointed out to the position of queer people in our society. Namely, prejudice towards queer community is prevalent, and to corroborate that fact, we have various relevant and recent reports and research (at the time the lawsuit had been filed), to which Da se zna! also pointed out in court.

Milovan Brkić denied the lawsuit, adding that it is untimely, and he also stressed the objection of the lack of passive legitimacy. During the first instance proceedings, he stressed that the article was published because the authors only expressed their opinions in it, practising the right guaranteed to them by the Article 10 of the ECHR.¹¹

fter the main hearing had been finalised, the court assigned reached a decision, denying the lawsuit filed by Da se zna!, and calling it unfounded. Namely, in the explanation of the decision, the court stated that Da se zna! made it predominantly probable, i.e. succeeded on the balance of probabilities to prove that the information and attitudes, that is, opinions expressed in the article "Where is this world going?" violated the provision of the Article 11 of the ADL,¹² since they incite discrimination and hatred, and even violence against a person or a group on the basis of

11 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, Article 10.

12 *Zakon o zabrani diskriminacije*, Službeni glasnik RS, br. 22/2009., Article 11. (Anti-discrimination law)

their personal characteristic, in this case, sexual orientation.

wever, the court rejected the lawsuit filed by Da se zna!, bearing in mind that Milovan Brkić was not passively legitimised according to the lawsuit filed on the basis of ADL.

n court's opinion, lawsuit for the reason of protection against discrimination, that is based on ADL in this specific case could only be filed against the author of the said article, but not against the editor-in-chief of the media which published said text. Milovan Brkić, as the editor-inchief can be held responsible for the act of publishing a text which incites to discrimination, hatred or violence against a person or group of people based on their personal characteristic, that is, sexual orientation. However, this can only be done in accordance with the Law on public information and media,¹³ since his responsibility in this way is regulated by the beforementioned law, which also prescribes special types of lawsuits.

A s in this specific legal matter the lawsuit had been filed for the purpose of protection from discrimination based on ADL, and not based on the Law on public information and media, the court found that Milovan Brkić, as the editor-in-chief was not passively legitimised, and therefore cannot be held accountable for discrimination in the article in question.

Da se zna! filed a complaint against the beforementioned court decision of the High court in Belgrade in June 2021, for the reasons stated below.

 \mathbf{A}^{DL} and Law on public information and media are

¹³ Zakon o javnom informisanju i medijima, Službeni glasnik RS, br. 83/2014, 58/2015 i 12/2016 - authentic interpretation. (The Law on Public Information and Media)

two separate laws, but this does not mean that they are mutually exclusive, therefore claimants have the right to seek protection on the grounds of both laws. In conclusion, protection on the grounds of one law, does not exclude the protection on the grounds of another.

the beforedditionally, narrow interpretation of the court can cause the impossibility of protection from discrimination in certain cases, so it is necessary to view the purpose and objective of relevant legal regulations, and reach a conclusion by connecting legal norms, not by mutually excluding them.

rticle 29, paragraph 3 the Law on public information and media¹⁴ prescribes that media do not have the capacity

1 of the same law¹⁵ prescribes that media must have an editor-in-chief, while paragraph 3 of the same article prescribes that the editor-in-chief of a particular publication, section, that is, programme whole, is responsible for the content he edits.

herefore, this provision regulates the editor-inchief's responsibility for all the content published regardless of who the author is, whether there is one, or whether the piece is signed. Editor's responsibility is prescribed in this manner, among other things precisely because the media do not have the capacity of a legal entity.

rom the court practice and the practice of the Commissioner to date, in cases of discrimination within a statutory authority or business entity, passively legitimised are state authority, that is the Republic of a legal entity. Article 48, paragraph of Serbia and business entity, not an

¹⁴ Zakon o javnom informisanju i medijima, Službeni glasnik RS, br. 83/2014, 58/2015 i 12/2016, Article 29, para. 3. (The Law on Public Information and Media).

¹⁵ Ibid., Article 48, para. 1.

employee of the statutory authority who, for example, refused to issue a document to a person due to his/her sexual orientation or employee in the business entity who refused to provide a service to a person due to his/her sexual orientation. Therefore, legal entity is responsible for discrimination performed by an employee in that legal entity. In this way, in our opinion, provisions of Article 29, paragraph 3 and Article 48 of the Law on public information and media should be interpreted, as they prescribe that media do not have the capacity of the legal entity, but that they are obligated to have an editor-in-chief who is responsible for the entire content he edits.

f one is to accept the legal interpretation of the court, in the situation when the author of the article is not signed, the person discriminated against could not seek protection from discrimination at all, and that is disputable.

urthermore, the defendant is actively legitimised, if from the material-legal relationship, out of which the lawsuit arose, comes his right to claim the determination of a certain right, the execution of an act or suffering, and the defendant is passively legitimised when out of the same relationship comes his duty to suffer or perform what the claimant has the right to demand. Bearing in mind that Article 48, paragraph 3 of the Law on public information and media prescribes responsibility of the editorin-chief for the entire content he edits, and with that also the responsibility for the content published which discriminated against a party, the opinion of the court that in this case one cannot seek protection under The ADL is disputable.

n legal terms, but also factually, when it comes to media, the editor-in-chief is the editor who publishes content, and therefore he is responsible for it. The act through which discrimination is done is the act of publishing. If the authors of the article wrote down the discriminatory text in their notebook, for example, the very existence of discrimination would be questionable. Additionally, the authors are not the ones who publish the content in the media, it is the editor-in-chief.

n that sense, in court practice through a lawsuit in the case concerning protection from discrimination when articles are published on web portals etc., which are not media, the claimant seeks the court to ascertain whether a particular person acted with discrimination, that is, whether he/she committed the act of discrimination by publishing a certain article. Consequently, the act of committing in specific cases is not narrowly perceived as the act of writing, but the act of publishing an article, and bearing in mind that by publishing a text, it is made available to the public which is being served discriminatory attitudes and opinions, it creates a hostile environment for certain people.

n the lawsuit, we pointed out that Article 13, item 3 of the ADL,¹⁶ prescribes as the severe form of discrimination the promotion of discrimination via public media. Therefore, discrimination can also be done through promotion (dissemination of ideas and attitudes, distribution), and that Milovan Brkić, as the editor-in-chief, by publishing an article for whose content he is responsible, committed the act of distribution of discriminatory attitudes.

n its practice to date and in this specific case, the Commissioner acted according to the complaints filed against editors in chief and carried out the procedure prescribed by the ADL against editors in chief and reached decisions about the committed acts of

16 *Ibid.,* Article 13, item 3.

discrimination.

Commissioner, calling upon the Article 43, paragraph 3 of the Law on public information and media, and according to its practice and decisions made to date, issued an opinion that the editor-in-chief had been passively legitimised in the proceedings for the protection of discrimination.

n our opinion, protection from discrimination cannot be selective, and if one were to accept the decision of the first instance court, that would precisely entail selective protection, since we would have the before-mentioned situations in which the right to protection from discrimination was absent. Legal protection is prescribed in several laws in order to enable the most extensive application of protection, and therefore one cannot unconditionally accept the narrow interpretation of the first instance court.

On the accuracy and validity of the first instance court's interpretation of the passive legitimacy of the media editor-in-chief in the proceedings for the protection against discrimination, the Appeals court in Belgrade, as the second instance court in this legal matter will have a final say.

TABLES AND CHARTS INDEX

Table 1.1. Comparative overview of unlawful conduct expressed in percentages	31
Table 1.2. Comparative overview of unlawful conducts expressed in absolute values	32
Table 1.3. Incident overview according to the source of information in 2020	33
Table 1.4. Comparative overview of incidents according to the source of information	34
Table 1.5. Incident overview according to location and type of location in 2020	35
Table 1.6. Comparative overview according to the type of location	36
Table 1.7. Comparative overview of incidents according to place	37-38
Table 1.8. Comparative overview of share of incidents including physical violence in the overall number of incidents	39
Table 1.9. Overview of incidents according to the type and degree of injury in 2020	40
Table 1.10. Comparative overview of relation between physical violence excluding bodily harm and physical violence including bodily harm	41
Table 1.11. Overview of the number of survivors and their activist engagement in 2020	42
Table 1.12. Overview of relation between human rights defenders and the rest according to the number of survivors in 2020	43
Table 1.13. Comparative overview of the number of survivors	44
Table 1.14. Comparative overview of survivors' activist engagement	44
Table 1.15. Comparative overview of survivors' gender identity (groups excluded)	45
Table 1.16. Comparative overview of survivors' sexual orientation (groups excluded)	47
Table 1.17. Intersection of gender identity and sexual orientation in 2020 (groups excluded)	48
Table 1.18. Comparative overview of survivors' age (groups excluded)	49
Table 1.19. Overview of the reporting of incidents in 2020	50
Table 1.20. Overview of incidents according to an institution/ organisation to which they were reported in 2020	51

Table 1.21. Comparative overview of incidents reported to the police, Prosecutor's office and The Commissioner	52
Table 1.22. Comparative overview of incidents according to the reason for the decision not to report cases	53
Table 2.1. Number of cases a specific reason for not reporting an incident is noted.	74
Table 2.2. Number of unreported cases by reasons for not reporting, and by reason intersections	76-77
Table 2.3. Number of total unreported cases and because of lack of trust in institutions, divided by place of incident	79
Table 2.4. Number of total unreported cases and cases unreported because of lack of trust in institutions, divided by type of crimes	81
Table 2.5. Number of total unreported cases and because of lack of trust in institutions, divided by survivors' activist engagement	82
Table 2.6. Sexual orientation of individual survivors who did not re- port incidents in total and due to lack of trust in institutions.	84
Table 2.7. Gender identity and sex characteristics of survivors who did not report incidents in total and due to lack of trust in institutions	86-87

Chart 1.1. Comparative overview of unlawful conduct expressed in percentages	31
Chart 1.2. Incident overview according to the source or information in 2020	33
Chart 1.3. Incident overview according to the type of location in 2020	36
Chart 1.4. Incidents overview according to the place in 2020	38
Chart 1.5. Comparative overview of share of incidents including physical violence in the overall number of incidents	39
Chart 1.6. Overview of incidents according to the type of injury in 2020	41
Chart 1.7. Overview of engagement of survivors in 2020	43
Chart 1.8. Overview of engagement of survivors in 2020	43
Chart 1.9. Overview of survivors' gender identity in 2020 (groups excluded)	45
Chart 1.10. Overview of survivors' gender identity in 2020 (groups excluded) 2	46
Chart 1.11. Overview of survivors' gender identity in 2020 (groups excluded) 3	46
Chart 1.12. Overview of survivors' sexual orientation in 2020 (groups excluded)	47
Chart 1.13. Overview of survivors' age in 2020 (groups excluded)	49
Chart 1.14. Overview of the reporting of incidents in 2020	50
Chart 1.15. Overview of incidents according to an institution/ organization to which they were reported in 2020	52
Chart 1.16. Overview of incidents according to the reason for the decision not to report cases in 2020	53



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