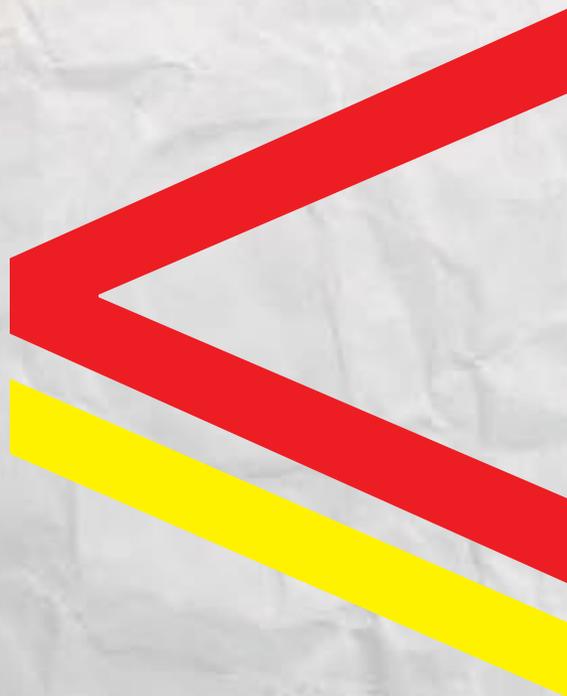


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LEGAL PROTECTION OF LGBT PERSONS:



ROLE AND ACTIONS
OF THE PROSECUTOR'S OFFICE

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Podgorica 2016

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WELCOME ADDRESS OF PARTNERS

ENHANCED TRANSPARENCY, ACCESSIBILITY, EFFICIENCY AND CONFIDENCE IN THE STATE PROSECUTORS ORGANIZATION

The past year has been strongly committed to building the State Prosecutor's organization of Montenegro towards improving its capacity, organization and professional determination in the implementation of constitutional and legal jurisdiction. Besides raising awareness about the importance of social the role of public prosecutors, we have especially improved the transparency of public prosecution and the confidence of the total public in its work. In the process of building and transformation of prosecutorial organization in modern European prosecution and the concept of strengthening the rule of law in Montenegro relation towards the vulnerable social groups, especially to those who deal with the serious challenges of security, equality and social innacceptance was not put to side . We have a special satisfaction of both sides, to conclude that we have enhanced mutual contacts, communication and information on all aspects of relevance, for timely and effective criminal law protection of LGBT people. We are particularly grateful to the Government of the Kingdom of the Netherlands, which has been a partner in the establishing of this, important historical, cooperation . Proudly, we can conclude, on the basis of clear arguments, the increase of the confidence of the public, particularly LGBT people, in the work of public prosecutors and Montenegrin prosecutorial organization as a whole. The LGBT community very satisfied with the overall communication and cooperation with the competent state prosecutor's office. Enhanced approach, heightened sensibility and closer, more direct, communication, of the state prosecutors with members of the LGBT community and its structures, resulted in improved criminal law protection of the LGBT community as a whole and heightened confidence in prosecutorial organization . The members and the leaders of the LGBT the community, through communication with the state prosecutor's office or through public appearances, respected the function of the state prosecutor and their approaches, without pressure, and have contributed that it is done in an impartial and objective way, on the principles of legality and equality before law. We are jointly actively contributing to the promotion of national and international standards and practices in the field of human rights and protection from discrimination, and the promotion of the strengthening of the rule of law and an independent and autonomous prosecution, which is necessary and essential democratic value of every society, transparency and access

to public prosecutors and the prosecutor's office, further improving the capacity of countries-including prosecutors when it comes to human rights and freedoms of lesbian, gay, bisexual and transgender (LGBT) people and work more efficiently to protect from discrimination and violence against LGBT people.

The developed contact network within the LGBT public prosecution which, in many practical situations, helped communicate, and helped the availability of state prosecutors for all interested members of the LGBT community and their efficient actions.

Established communication and cooperation has contributed to the empowerment of implementation of the system measures and improvement of operational procedures that are related to combating the phenomenon of hatred and violence against LGBT people, including increased availability of members of the LGBT community and the consistent and effective prosecution of perpetrators of criminal and other punishable offenses as provided by law to the detriment of LGBT people, generating data on criminal charges relating to violation the rights and freedoms of LGBT people, which has developed practical and reliable picture of the adequacy of the process and extent of the problem of violence and hate speech based on sexual orientation and gender identity in Montenegro. Through field work, workshops, consultations, visits to the state prosecution and monitoring the effectiveness of the Prosecution a full openness has been demonstrated as well as the improved capacities of the LGBT community for professional communication with the Supreme state Prosecutor's Office, the heads of state prosecutors and state prosecutors and improved knowledge of the LGBT community about the state prosecutors' offices, their role and mandate, national judicial system, and forms and possibilities of access to state prosecutors in the cases of the need to protect human rights and freedoms . Through our joint publishing and editorial production we have supported the creation of national professional literature, focusing on the place and role of public prosecutors in relation to the right of sexual orientation and gender identity.

We are convinced that in this manner we are also continuing to strengthen the rule of law, and the availability of dedication of the state prosecution organization executing the Constitution and the legally determined responsibilities and Montenegro's integration into the European Union.



INTRODUCTION

In modern democracies, many forms of discrimination have become unacceptable and prohibited. Today, the prohibition of discrimination is enshrined in numerous international documents on human rights and freedoms and the countries adopt and promote laws that explicitly prohibit discrimination and defined the protection of the same. The purpose of the standard is to enable everyone equal and fair access to the opportunities offered by the society.

This today is very dynamic area in the world, causes us to realize our own stereotypes and prejudices, problems originating from the established social norms of our community, but also the shortcomings of the legal and institutional framework of the country we live in defense of the right to equality of all citizens.

And besides the fact that, around the world, more and more work on combating discrimination against LGBT people is being done, in addition to the burden of traditionalist heritage, LGBT persons are discriminated against in many ways, which includes all forms of violence and consequences in some societies less, some more. LGBT people of all ages, including minors, can be - and are - victims of discrimination not only by people from broader environment or unknown persons, but also in their own families.

Discrimination and hate crimes, motivated by a variety of gender identity and sexual orientation, pose a serious threat to personal security and democratic, tolerant and inclusive society.

Violence against LGBT people is often ignored. Ignoring violence against LGBT people in part reflects the lack of information and lack of legal and other forms of protection of these persons that exist in many countries in Europe and the rest of the world.

LGBT persons as victims of violence are characterized by extremely refraining from reporting discrimination and violence to which they are exposed. The main reason is caused by the fear that reporting will cause harder conditions on their lives, in which their environment to find out their sexual orientation and gender identity, which is often hidden for life or details of their personal lives. Other, less common reason reflects the unwillingness of some LGBT people to accept the fact that violence towards them motivated by their sexual orientation or gender identity. Thus, the main motive for the non-reporting violence LGBT people find in the hiding of their sexual orientation and gender identity from the environment. So, invisibility is a major survival strategy for LGBT people in environments that are not favorable to them, or who are prone to stereotypes and where prejudices are widespread, which is unfortunately our environment. Vic-

tims often do not speak neither to the NGOs nor other relevant institutions such as the Ombudsman, which is a problem that is linked not only to prosecution of the perpetrators of the crimes, but also for preventive action in combating discrimination and criminal acts that occur at the expense of LGBT people.

In recent years in Montenegro considerable efforts have been made, mainly by civil society, to improve the recording and monitoring the extent of discrimination based on sexual orientation and gender identity. A non-governmental organization (NGO) "LGBT Forum Progress", through several technical books published in the period from 2010-15, gave a serious contribution to the formation of data on hate speech, violence and discrimination against the LGBT community in Montenegro.¹

The authors, while working on this analysis, consulted the available data sources in the social acceptance of LGBT people in Montenegro considering that they documented evidence of the atmosphere and the conditions in which the community lives, and both politically and culturally acts.

Therefore, we recommend that with consideration of the specific subject analysis, and developing discussion in this regard, take account of, and consult, the previous books that are testimony to the social (non) acceptance of the LGBT community and the social criminalization of LGBT persons.²

Joint publishing editions of the Supreme State Prosecutor's Office and the LGBT community, as part of the Library "Improvement of the judicial system", contributes to better protection of human rights but also better quality criminal protection of LGBT people.³ We believe it is a significant step forward, and progress, as the book (analysis) of this kind is jointly published, within the established cooperation between the Supreme State Prosecutor of Montenegro and the LGBT community.

This and other books in a series of "Improvement of the judicial system" confirm that the established good cooperation between civil society organizations, groups that are facing serious challenges in the social acceptance and the Montenegrin judiciary.

1 The problem of determining the scale of discrimination based on sexual orientation and gender identity, is expressed in almost all member states of the Council of Europe.

2 "Representation of cases of discrimination based on sexual orientation in Montenegro: From Principle to Practice", the authors Marijana Laković Drašković i mr Aleksandar Saša Zeković; (2) "Myths and stereotypes - Violence and hate speech against LGBT people: Police and judicial practice in Montenegro," the authors mr Aleksandar Saša Zeković (ed.), Dr. Jovan Kojičić and Predrag Tomovic and (3) "Social acceptance of LGBT people Montenegro: challenges and obstacles experiences," a group of authors, editor Stevan Milivojevic; All books are available at www.lgbtprogres.me under the heading "Publications".

3 Earlier, within the same library, we have realized joint publishing production of the Supreme Court of Montenegro and NGO "LGBT Forum Progress"; Available at: <http://sudovi.me/vrhs/biblioteka/publikacije/>

The present analysis assumes that the increase in security and the creation of a safe, inclusive, environmental are the most important needs and expectations of the LGBT community. It is, still, a serious challenge for all social actors, as homosexuality and transgenderism are dominantly, still, perceived as immoral and unnatural.

Problem of hatred, violence, prejudice, hostility and discrimination against LGBT people is extremely pronounced. That's why the important aspect is the quality of the work of the police and the prosecutor's office and having the full confidence of the public in their professional conduct.

Analysis of the operations and actions of state prosecutors in specific, selected cases, is a function of confidence in the state authorities to prosecute offenders. This is crucial to their effectiveness and the concept of the rule of law. We believe that books can encourage professional and professional discussion within the state prosecution organization and contribute to the approximation of practice after basic state prosecutor's offices.

The present analysis is divided into several sections or chapters.

The first chapter provides an overview of the constitutional and statutory criminal law protection as well as an overview of the crimes that usually make at the expense of LGBT persons.

In the following, second section, we have created detailed proposals for improvement of the constitutional and legal protection of LGBT people in Montenegro.

The third chapter, which is the most important, is an analysis of specific cases in which the government handled the prosecution or the police. The book presented and analyzed twenty-one (21) case⁴. Each case presented in the analysis, follows a brief description of the event, a description of all actions taken by the state prosecution and the police organization, with a comment and conclusion of all actions taken by the prosecution. Also, any analysis of the specific case ends with an overview of the Supreme State Prosecution of Montenegro. The analysis which we created, we have found, in our opinion, the execution of these groups of offenses: crimes against life and body, crimes against freedom and human and civil rights, offenses against public order and peace, and crimes against humanity and other goods protected by international law. Details, concrete statistics and the final assessment, opinions, on the work of public prosecutors in this regard are presented in the Conclusions (see Section 4)

⁴ They became available to us by the NGO "LGBT Forum Progress", which since 2010 is working hard to improve the security and legal protection of persons belonging to the LGBT community in Montenegro. This NGO for five years of active work in this field, the police, the prosecution and the court put forward several hundred cases. The selection of cases for analysis, and presentation of the book was done by LGBT organizations which we believe strengthens objectivity of the comments and issued, final, remarks.

In the fourth section we present the conclusions of a team of authors and recommendations were issued to the Parliament of Montenegro, the Supreme State Prosecution of Montenegro, the Montenegrin Government, the Ministry of Internal Affairs and the Police.

State prosecutors in Montenegro, especially in 2015, showed sensitivity, responsibility and commitment to provide legal protection of human rights of LGBT persons. Openness of the state prosecution organization, conducted training, established prosecutorial contact LGBT networks, a significant number of cases that were confirmed professionalism of public prosecutors and their own concept and content of the analysis, continuously contribute to the elimination of early distrust of victims and members of the LGBT community.

In Podgorica, at the end of May 2015

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SECTION 1



LEGAL PROTECTION OF LGBT PERSONS IN MONTENEGRO

CONSTITUTION OF MONTENEGRO

The article 6 of the Constitution of Montenegro guarantees and protects the rights and freedoms. The prohibition of discrimination is prescribed by Articles 7 and 8 of the Constitution of Montenegro in 2007. Thus, Article 7 provides that it is prohibited from causing or inciting hatred on any ground, by personal characteristic of individuals or group, while the first paragraph of Article 8 explicitly prohibits any direct or indirect discrimination, also, on any basis. The provision of the first paragraph of Article 8 is completed in its second and third paragraph of the rules on the exclusion from the legal concept of discrimination of the so called measure of affirmative action, ie. measures for improving the situation of individuals and groups in order to achieve their full equality with others. The provision of the Article 9 of the Constitution of Montenegro gives priority to international treaties and generally accepted rules over national legislation and allows the direct application of both when they regulate relations differently than the domestic legal system. The Article 17 says that all are equal before the law, regardless of personal characteristics or property. This rule is supplemented by the provision in Article 19 that says that every person has the right to equal protection of their rights and freedoms. Also, Article 18 guarantees equality of men and women and undertake public authorities to develop the policy equal opportunities . The Article 25 of the Constitution of Montenegro allows a temporary restriction of rights and freedoms. Simultaneously with it, it is prohibited its discriminatory limitation based on personal characteristics of individuals or groups. The same article, moreover, states he does not suffer the limitations of the constitutional prohibition of instigation and incitement of hatred and intolerance, as well as the prohibition of discriminatory treatment. Article 50 of the Constitution states that the distribution of information may be prohibited, if it is necessary to prevent incitement to acts of violence or criminal behavior, ie. propagating racial, national and religious hatred and discrimination. Despite numerous good solutions of the existing Constitution, there is room for improvement of the highest legal act. More on this is discussed in section 2 of this book.

LAWS THAT PROVIDE PROTECTION FROM DISCRIMINATION

Prohibition of and protection against discrimination against people of different sexual orientation and gender identity in the legal system of Montenegro, except the Law on Prohibition of Discrimination, the Law on the Protector of Human Rights and Freedoms and the Criminal Code which will hereinafter be discussed, are provided they the following laws:

- the law on gender equality,
- Law on health Care;
- Law on Social and Child Protection;
- Law on pension and disability insurance;
- Law on work;
- Law on Civil Servants;
- Law on Employment and Rights of unemployment insurance;
- General Law on Education,
- Law on media;
- Law on Protection from Domestic Violence;
- Law on Internal Affairs,
- Law on Free Legal Aid and others.

CRIMINAL CODE OF MONTENEGRO

Every citizen, regardless of their personal characteristics, the difference of any kind, should enjoy criminal legal protection against all forms of violence, abuse and torture. Modern society is faced with various forms of discrimination, and the issue of sexual orientation and gender identity is one of the most controversial and require a particularly effective and timely legal response. A special social danger constitute criminal offenses whose motive is hatred for belonging to: sex, race, color, national or social origin, religious or other belief gender identity, sexual orientation, poly-tick or other belief, age, health, disability , belonging to the group, or other personal property. Protection against discrimination requires an efficient legal response in all cases of hate crimes and hate speech.

The Law on Amendments to the Criminal Code⁵ came into force on 21 August 2013, by which the Criminal Code was amended, inter alia, in the general part of the Criminal Code were adopted introducing mandatory aggravating circumstances for crimes committed out of hatred. So that "if the crime was committed out of hatred because of race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, that circumstance the court will appreciate as an aggravating, unless it is defined as a feature of basic or severe criminal offense."⁶

The legislator has provided this provision more severe punishment, and thus enhanced the legal protection in relation to certain vulnerable social groups, whose members are victims of various criminal offenses committed out of hatred because of this affiliation. As a part of the group of criminal offenses against the rights and freedoms of man and citizen, it was supplemented by a criminal offense "violation of equality" (Article 159.) expanding on two grounds of discrimination on the grounds of sexual orientation and gender identity. Article 159 of the Criminal Code, which refers to the violation of equality stresses that those who, due to national or ethnic origin, membership of a race or religion or due to the absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, sexual orientation, gender identity, financial status or other personal characteristics, denies or restricts the rights and freedoms stipulated by the Constitution, laws or other regulations or general acts or ratified international treaties or on the basis of these differences grants privileges or exemptions, shall be punished with imprisonment up to three years, and if committed by an official person in duty, shall be punished by imprisonment of one to eight years.

This criminalization represents the realization of the constitutional prohibition of discrimination of citizens. The prohibition is contained in the Constitution of Montenegro in the Article 8, which reads: "Any direct or indirect discrimination on any basis is forbidden." The protective object is legal equality, and the basis for it is located and in certain international documents. Compared to the previous solution there was to its expansion primarily due to compliance with, meanwhile, ratified international acts.

5 "Official Gazette of RCG", br. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", no. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013. Dana 1.9.2012.godine, ceased to apply provisions of Title VI - see Art. 189.Law - 64 / 2011-1

6 Article 42a of the Criminal Code of Montenegro "Official Gazette RCG", br. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", no. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013. Dana 1.9.2012.godine, ceased to apply provisions of Title VI - see Art. 189. Law - 64 / 2011-1

The act of execution of this offense takes two forms: denial or limitation of citizens' rights, in which case a person is completely deprived of a right, ie. some are partially deprived of certain rights, the right is being narrowed, regarding the rights that are anticipated in the Constitution, the law, regulation or other general acts and ratified international treaties. The second case is giving the citizens privileges or advantages, and it is about giving certain rights which did not belong to a person and which may be predicted by some of these acts, but it can also be seen as a privilege, or advantage which was not prescribed by any law. In both cases it is a violation of the Constitution, laws or regulations. The most significant difference compared to solutions from the previous legislation is the broadening the basis for discrimination and "other personal characteristics". Although it is relatively imprecise term, it is about different personal characteristics that could not be exhaustively enumerated (age, sexual orientation, physical or mental disability, lifestyle, etc.). This expansion is in line with the opinion of the European Court Human rights in the application of Article 14 of the European Convention on Human rights. A more severe form of legal qualification represents a certain motive. Namely, if the offense was committed as a result of hatred towards a member of some of these groups, the work gets heavier which carries a stricter punishment. In other words, hatred is not only optional aggravating circumstance in determining the sentence for the basic form, but offense is made more difficult, which is in accordance with the standards and recommendations of the European Union and the Council of Europe. The most severe form is present when the offense was committed by a public official in the performance of official duties.

Also, with the criminal offense of "endangering security" (Article 168) and a new qualifying circumstances "if the offense was committed out of hatred" was adopted. Offense done out of hatred should be interpreted in a way that is motivated by hatred on any ground, including sexual orientation and gender identity. Furthermore, within the group of criminal offenses against public order and peace a new criminal offense is adopted, which is violent behavior at sports events or public assembly (Article 399A). Law on the Prevention of violence and inappropriate behaviour at sporting events in 2007 provided for a series of measures to prevent this kind of violence, and certain offenses have been prescribed.

Within the group of criminal offenses against humanity and other goods protected by international law amendments have been adopted to the criminal offense of racial and other discrimination (Article 443) by the specified forms referred to in paragraph 3 which relates to racial hatred or racial discrimination, on the way which will prohibit the propagation of racial hatred or intolerance and incitement to racial and other discrimination based on sex, disability, sexual orientation, gender identity or other personal characteristics. As part of the same criminal offense was introduced a severe form (paragraph 4) in case the offense

is made by abusing the position or if it is due to these offenses result in riots or violence.⁷

Presently effective Code stipulates the introduction of mandatory aggravating circumstances for crimes committed out of hatred. Furthermore, the Act does not define a hate crime which can be a problem in the practical application of the Act. However, despite a number of good solutions of the Criminal Code of Montenegro, when it comes to criminal protection of persons of different gender identity and sexual orientation, there is room for improvement of the legal text. More on this is discussed in Section 2 of this book.

CRIMES THAT MAY BE MADE AGAINST LGBT PEOPLE WITH CLARIFICATION

Aggravated murder under Article 144 of the Criminal Code

Imprisonment of at least ten years or the imprisonment of forty years shall be imposed onto those:

who deprives another person of life in a cruel or insidious way;

who deprives another person of life while acting ruthlessly and violently;

who deprives another person of life, thereby intentionally endangers the life of any other person;

who deprives another person of life out of greed, to carry out or cover up another criminal offense, out of unscrupulous vengeance or from other low motives causes death of an official or a military person in the exercise or in connection with the exercise of official duties;

Causes death of a child or a pregnant woman;

who kills a member of your family or a family that had previously abused;

who intentionally kills more people, but it is not a manslaughter, murder, infanticide or manslaughter out of compassion.

⁷ The Criminal Code criminalises racial and other discrimination, and Article 443, paragraph 3 states that when one spreads ideas about the superiority of one race over another, or promotes hatred or intolerance based on race, sex, gender identity, sexual orientation, gender identity or other personal characteristics or incites racial or other discrimination, shall be punished with imprisonment of three months to three years. Furthermore, when the offense is made by abusing the position or if the result of these acts result in riots or violence, one shall be punished with imprisonment from six months to five years. The act of committing of the offense the dissemination of ideas of superiority of one race over another, propagation of hatred and intolerance and incitement to discrimination, all of which actually represents racist propaganda.

The provision that we have stressed, involves more qualificatory the circumstances surrounding the offender initiative (greed, commission or concealment of other criminal offense, ruthless revenge, other low excitement). Greed exists when the offender carried out the offense to obtain (himself or another) certain material benefits. It can be seen, and in the prevention of material loss. It is necessary that the perpetrator acted out of greed for the best benefit, not in order to meet some of their of basic material needs, although this question is relevant in determining the sentence. Murder for carrying out or cover up another criminal offense exists when the killing is done, or in order to cover up a crime was already committed (eg. Murder of the eyewitness), or to allow the performance of an offense (where the offense does not have to be executed) .

It is not of importance whether this is some related crime or a heavy one. In terms of defining the notion of ruthless revenge problem is the distinction between ordinary and ruthless revenge. The main criterion for distinguishing between is an obvious disparity between the applied harm and that which is done through revenge. The Criminal Code does not provide for such of legal qualification and feuds. The attempt of the criminal offense of ruthless revenge killings can be carried out only with direct intent, which means that there was an awareness and the will of high intensity to commit the offense (VSS. Kz. I 877/96). The law as a of legal qualification states and other low initiatives. All initiatives that are morally negatively valued initiatives are not always low in terms of aggravating circumstances.

So, for example, hatred represents a morally negative incentive, but considering that the murder is often made from the negative moral motive, even hate, it would be just ordinary, not aggravated murder. It is necessary that the in scale of the negative moral evaluation a motive is a high enough to be seen as low in terms of aggravating circumstances. Where the line is it is hard to say, so that the application of this standard to a great extent depends on the attitude of judicial practice. The crime of aggravated murder under Article 144 of the Criminal Code can be applied in cases relating to LGBT persons, bearing in mind the initiatives that lead to the commission of criminal offenses against the community, which are usually hate, intolerance, and similar non-acceptance of negative moral values .

*Serious bodily injury
under Article 151 of the Criminal Code*

Whoever inflicts grievous bodily harm or severely impairs one's health, shall be punished with imprisonment from six months to five years.

Whoever inflicts grievous bodily injuries or impairs one's health so severely that he consequently endangered the life of the injured or destroyed or permanently and significantly damaged or weakened an important part of one's body or an im-

portant organ or made permanently unable to work or permanently injured and grave damage to his health or disfigurement took place, shall be punished by imprisonment of one to eight years.

If the offense referred to in paragraphs. 1 and 2 of this Article, has caused the death of the injured person, the offender shall be punished by imprisonment of two to twelve years.

Whoever carries the deed from the line 1 and 2 of this Article out of negligence, shall be punished with imprisonment up to three years,

Whoever carries the deed from the line 1 to 3 of this Article having been brought through no fault in the position of the strong irritation by an attack, maltreatment or serious insult by the injured person, shall be punished for the offense from paragraph 1 by imprisonment up to three years for the offense from paragraph 2 by imprisonment from three months to four years and for the offense referred to in paragraph 3 by imprisonment of six months to five years.

The most general notion of bodily injury can be defined as a violation of bodily integrity or health of a person, provided that it does not have to be the case of a serious violation. There are five forms of serious bodily injury: (1) Ordinary grievous bodily harm - which exists in several situations: if as a result of violations the life of the injured is not endangered or brought to the abstract danger; when destroyed or permanently and significantly weakened a body part or organ that is not considered important; when the relevant body part or organ is weakened, but not significantly, or weakened considerably but not permanently (eg. the position has been taken that every bone fractures, except fractures of the teeth, represent grievous bodily harm); in the case of causing the inability to work, from a common grave bodily injuries this inability must be temporary, not permanent and regular serious bodily injury exists when it causes some permanent changes to the body that are not considered disfigurement; (2) Serious bodily injury - has five forms: it exists when he endangered persons life is at stake, and that danger must be concrete and direct and it must exist at the moment of bodily injury; When there is destroyed or permanently and it exists when there is destroyed or permanently and significantly weakened an important part of the body or an important organ of the injured; when a person was made permanently unable to work, as absolutely, and relatively, that is the work that is hurt person performed up until the injury; it consists in permanent and serious impairment of health of the injured, ie. violation that has caused a disease (physical or mental) that is by its nature difficult and that is permanent, ie. incurable; There is the case of the violation resulted in the disfigurement of the injured. It is about permanent and visible changes in the body that cause certain emotions with other people (pity, disgust, outrage, etc.), although even in the cases where such emotions are not caused, but are real; (3) Serious bodily injury a qualified by death - when the injured dies as a

result of ordinary or particularly serious bodily injury; (4) Serious bodily injury on purpose and (5) Serious bodily injury by negligence. Consequences for all forms of the offense of grievous bodily injury consists in severe violation of bodily integrity or health is seriously impaired. Any act of committing is one action that is similar to that caused by a grave violation of bodily integrity, or serious impairment of health.

*Light bodily injury
under Article 152 of the Criminal Code*

Whoever inflicts bodily injuries or impairs his health slightly shall be punished by a fine or imprisonment up to one year.

If such injuries were inflicted by weapons, dangerous tools or other means suitable to bodily injuries or for seriously impairing health, the offender shall be punished with imprisonment up to three years.

The court may referring to the paragraph 2 of this Article, impose a judicial admonition, if the offender was provoked or rude behavior of the victim.

Prosecution for the offense referred to in paragraph 1 of this Article shall be undertaken by private action.

Light bodily injury consists in a slight violation of bodily integrity or in light health harm. Its term is determined on the basis of common serious bodily injury, which means that everything that is not an ordinary grievous bodily harm is a light bodily injury. There are two forms of light bodily injury: (a) Ordinary light bodily injuries - there are several situations: when not in any way endangering the life of the injured; it is understood that the light bodily injuries is incompatible with the destruction of any organ or body part, but it does not when a body part or organ is not substantially or permanently impaired; when light bodily injury caused no lasting no temporary incapacity for work; there and then when the health of the injured person is not permanently or severely impaired, or when it is temporary and easily injured; the light body harm will be done when there has been no disfigurement, nor do any permanent deformation of the body of the injured; in the appearance of the injured at light bodily injury may occur only to temporary changes in appearance (bruises, scratches, etc.)

(B) Dangerous light bodily injuries - exists when there is a light bodily injury inflicted by weapons, dangerous tools or other means similar to bodily injuries or for seriously impairing health. This means that this more severe form of light bodily injury is different from the basic form only by means which are harmful. For example, there is no doubt that the metal bar is capable of inflicting serious bodily injuries, or to seriously impair health (VSP in the decision KŽ. Br. 86/09 and the Basic Court in Bar K. no. 615/07). However, when it comes to the kind of

resources, it is justified by the case law that, in any particular case to determine whether there was indeed a possibility that by using a certain tool, with respect to the type of the asset and the current circumstances, inflict serious bodily injuries or seriously impair health. For example, this question arises when the head, fist or teeth are used for the inflicting of the injury. The judicial practice mainly takes the view that it is not a means suitable for inflicting heavy bodily injuries or for seriously impairing health (VSS, Kz. 878/77 regarding the teeth). The opposite attitude, however, is taken in a decision in respect of the head as a means by which inflicted a slight bodily injury (OSB Kž. 1784/92). Therefore, normally, under the expression of the means suitable to grievous bodily harm or seriously impair health should be understood that means of which use of in a certain way and under certain circumstances, as a rule cause the grievous bodily harm, and not every asset which, under certain cause in extreme cases of serious bodily injury. In terms of guilt, light bodily injury may be made only with intent.

*Violation of equality
under Article 159 of the Criminal Code*

Who due to national or ethnic origin, membership of a race or religion or due to the absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, sexual orientation, gender identity, financial status or any other personal property, denies or restricts the rights and freedoms stipulated by the Constitution, laws or other regulations or general acts or ratified international treaties or on the basis of these differences grants privileges or advantages, shall be punished with imprisonment up to three years.

If the offense was committed due to hatred towards a particular member of a group based on race, color, religion, ancestry, national or ethnic affiliation shall be punished by imprisonment of three months to five years.

If the offense was committed by an official in the performance of official duties shall be punished by by imprisonment of one to eight years.

This prohibition is contained in the Constitution of Montenegro, Article 8: "Any direct or indirect discrimination on any basis is forbidden." The protective object is legal equality, but it is protected under certain conditions. The basis for it is can be found in certain international documents. Compared to previous solutions there has been its expansion primarily due to compliance with ratified international acts.⁸

8 Protocol 12 to the European Convention on Human Rights.

The act of committing of this offense takes two forms: (1) The denial or restriction of citizens' rights, when someone is completely deprived of a right, ie. his right is being denied as a whole, or that his right is limited, ie. some has been partially deprived of certain rights, or the right is being narrowed. This is about rights enshrined in the Constitution, the law, regulation or other general acts, and ratified in an international agreement; (2) Giving citizens privileges or advantages, which means that someone is given a certain right which does not belong to him, that is, a person is being given a particular privilege or benefit. This might be a case of a law that was provided by some of these acts, but it can be about the privilege, or advantage not prescribed by anything. For the crime, it is necessary that the action is being done due to some of the above grounds.

Discrimination in broader exists when someone is being favoured on any of the named grounds, or when one is given a privilege or advantage that it does not belong to them, because it affects other people, and undermines the principle of legal equality. The offense can be done only with the intent that by doing it, it denies or restricts a right, or give privileges or benefits on any of these grounds. A more severe form demands the existence of motif. Namely, if the offense was committed as a result of hatred towards a member of some of these groups, the offense gets heavier, which is prescribed for a more severe punishment. The most severe form exists when the crime is committed by an official on duty. Criminal report with this offense should cover that the injured party was denied or limited in any way, and what consequence had arisen, and secondly which privilege or benefit, or right was given to a specific person at the same time which does not belong to them and what is consequence of such activity as well as how the other citizens have been affected by it. Finally, if the applicant considers that the offense was committed due to hatred towards a member of some of these groups, ie. the reason that the initiative of the offense, should also identify circumstances for which they deem is the reason of the offense violation of equality.⁹

*Abuse
under Article 166 of the Criminal Code*

Who abuses or treats another in a way offensive to human dignity shall be punished by imprisonment up to one year.

If the offense was committed by an official in the performance of official duties, one shall be punished by imprisonment of three months to three years.

⁹ Saveljić Milica and Aleksandar Saša Zeković, "Legal protection: The Prosecution and safety of LGBT people in Montenegro", the Supreme State Prosecutor of Montenegro and NGO "LGBT Forum Progress" with the support of the Royal Netherlands Embassy, Podgorica, 2015; Available at: <http://lgbtprogres.me/publikacije-/>

The act of committing a criminal offense violation is set as abuse or acting in a manner offensive to human dignity. Abuse includes certain actions when damaged cause certain physical or mental suffering less severe, and that do not represent a light bodily injury. To determine whether this act was accomplished, it is necessary to evaluation in terms of standards, customs and other svatanja that exist in an environment. It should be noted that the legislator, this work is considered a bit more difficult than the criminal offense of light bodily injury, and should not extend the action execution. So, for example, the opinion that there can qualify bureaucratic behavior should not be accepted unless accompanied by other actions that offend human dignity. Mistreatment, as a rule, is accompanied by other actions that violate human dignity. For example, a decision of the Basic Court has taken that there is a criminal offense of abuse in service (which had the third act of commission) in case of when a police officer called a a person thief, cursed his mother, and then hit that person.

The most important novelty of this crime is that the perpetrator may be any person, and a more severe form is when it is carried out by an official in discharge of duty, while requiring the existence of intent, ie. awareness that the act of execution is implies mistreatment of a person or offends his human dostojanstvo. Within the criminal complaint, the applicant states the act of execution, which is the result that occurred, whether in the form of bodily pain or mental suffering. It is necessary to accurately describe the activity of the executor of the specific crime, given that the legislator does not specify which are those actions of abuse and it is necessary to interpret and determine whether the specific acts are considered as acts of abuse. If there have been minor or serious bodily injury, should also enclose a doctor's report, if any, given that in this case the work of concurrence. However, it should be noted that if it comes to rape, kidnapping or murder a consequence, this will be a crime of abuse, but it will only be an aggravating factor when determining the sentence.¹⁰ Most important novelty of this criminal offense in relation to the earlier decision did that the perpetrator of the basic form can be any person, and that if it comes to the official who did this work in office, there is an aggravated form.

*Torture
under Article 167 of the Criminal Code*

Whoever inflicts severe pain or suffering, whether physical or mental, in order to acuire confession or other notice from that or third person, or to illegally punish or to intimidate or exert pressure on a person, or to intimidate or exert pressure on

¹⁰ The same.

a third person, or for any other reason based on discrimination shall be punished by imprisonment of six months to five years.

If the offense referred to in paragraph 1 above was made by an official in duty, or if the offense was committed with one's express or tacit consent, or if the official incited another person to commit any offense referring to the paragraph 1 of this Article, the perpetrator shall be punished by for the act referring to the paragraph 1 of this Article by imprisonment from one to eight years.

The execution implies infliction of severe pain or serious suffering (physical and mental) to any person with a view to obtaining from him or a third person a confession or other notice or to unlawfully punish or intimidate onto him or a third person , or to exert pressure onto him or a third person . Alternatively, it was prescribed that it can be done and for some other reason, except that he must be based on some form of discrimination. The execution must be undertaken with the intention of the person being tortured or of any other person, in order to gain recognition, statement or other information. It can be done and with the intention or intimidate another person or to punish the violation of the law. Instead of intent that can be directed to one or the other goal, as a subjective element intent is sufficient. Namely, the act of torture in that case is undertaken because compared to the passive subject some form of discrimination exists (because of ethnicity or religion, advocating certain political beliefs, because of sexual orientation or gender identity, etc.).

*Endangering safety
under Article 168 of the Criminal Code*

Whoever endangers the safety of a person with a threat to attack the life or body of that person or a person close to him, shall be punished by a fine or imprisonment up to one year.

Who committed this offense against several persons, or if the offense has caused anxiety of citizens or other serious consequences or was committed out of hatred, one shall be punished by imprisonment of three months to three years.

If the offense was committed by an official in discharge of duty, one shall be punished by imprisonment of three months to three years.

The execution of the basic form of the offense is the use of threat that one will attack the life or body of a person or a person close to him, thus jeopardizing

the safety of that person. It is not necessary that the threat is addressed directly to the victim by this act, it is sufficient that he undoubtedly knew it. For example, the threat exists when the perpetrator told another person that he is going to kill the victim, and he heard those words. The threat can be addressed in writing, where it is also not necessary that the written threats are directly delivered to the injured party. It is enough, for example, to spray paint a threat at the place where the injured party will certainly notice it (for example at his house). The threat can be addressed with gestures. But it should be noted that in cases where the threat is not directly addressed, regardless of the way, but the injured party found it, it is necessary to carefully determine its seriousness and its effects on the victim. The consequence of the offense has endangered the safety of the injured party, which manifests itself if injured party thinks about it that much, which can endanger their feeling of safety. On the other hand, if the threat is not taken seriously by the injured party, this crime will not exist, but perhaps attempt that is not punishable.

For example, in one case, the Basic Court, where the accused said, "I will liquidate you", with insulting words, the court based its opinion according to a previous statement where she stated that "She does not give a damn" to the previous similar statements of the accused, concluded that these words said to her were not able to create a sense of vulnerability, and that therefore there is no element of the offense of endangering safety. The offense can be done only with the intent directed at jeopardizing the sense of security of the injured party. Heavier forms exist if it achieved one of three conditions: that the offense was committed against several persons, that the act was causing public concern, given the way of execution, or if the harm which was threatened may jeopardize and if the offense has caused serious consequences, is expressed through a causal link with the basic act. The applicant must indicate a threat that has caused a sense of threat and security of a specific person, the way in which this threat is addressed, directly or indirectly, in what way did the injured side realized this threat, seriously or not, as well as the result that occurred. If the threat is directed against several persons, it is necessary to specify as to which way they understood the threat, and whether the same has caused anxiety of citizens, bearing in mind that this will pose a more serious form of the criminal offense of endangering of safety.¹¹

11 The same.

*Unauthorized collection and use of personal data
under Article 176 of the Criminal Code*

Whoever acquires illegally the personal information that is collected, processed and used in accordance with the law, without authorization, communicates to another, or uses for the purpose they were not intended, shall be punished by a fine or imprisonment up to one year.

The punishment referring to the paragraph 1 of this Article shall be imposed to those who contrary to the law collects personal data of citizens or uses the collected data .

Whoever assumes the identity of another person and by using the name of that person uses its right to a benefit or gain for himself or another utility or using his identity engages in the personal life of the person or impairs his personal dignity, or harming another, one shall be punished by imprisonment up to one year.

If the offense referred to in paragraphs 1 and 3 of this Article was committed by an official in discharge of duty, one shall be punished by imprisonment of three months to three years.

The object of criminal protection is the right of citizens to the private sphere. Modern information technology and everyday its progress provide that in various areas of life collect, process and use personal data. However, it must be used only in cases provided by law, or with the consent of citizens. Therefore it is necessary in relation to the possible misuse to react with legal actions. The execution is the unauthorized acquisition, disclosure or use for the purpose that personal data is not intended for , processed and used in accordance with the law. It is essential that these are unauthorized acquisition, use, or other misuse of the personal data, which is normally obtainable by the law, and can be processed or use, ie. it is the misuse of personal data. A severe form exists when the act referring to the paragraph 1 was made by an official in the performance of official duties. The deed referring to the paragraph 2 makes the person who collects the personal data of citizens in violation of the law. This means that one either, collects data which by law can not collected or does so in a way that is contrary to law. For example, if data is collected for purposes that are not prescribed by law, and one has not previously obtained consent of the person to whom the data is related. The offense would be exercised by the person who is not authorized by law to collect data. The execution of this type represents the use of personal data collected unlawfully. We emphasize that the prosecution of paragraphs 1 and 2 of this Article shall be undertaken by private action. LGBT organizations have registered dozens of cases of

unauthorized data collection in order to blackmail and harm the reputation and dignity of the person.

*Violation of freedom of speech and public expression
under Article 178 of the Criminal Code*

Whoever unlawfully denies or restricts freedom of speech and public expression, shall be punished by a fine or by imprisonment up to one year. If the offense was committed by an official in discharge of duty, one shall be punished by imprisonment of three months to three years.

This is a new criminal offense that complements the criminal law protection of basic human rights. Of course, in those basic rights including the right to freedom of speech and public appearance. Although this right is prescribed by relevant international instruments, and in a certain way by the Montenegrin Constitution (freedom of expression), so far it did not receive criminal protection. The execution is the deprivation or restriction of freedom of speech or public appearance, and consists of coercion, prohibition, blackmail and in any other procedure that mentally or physically partially or completely prevents the person from exercising his right to freedom of speech or public appearance. It should be borne in mind that freedom of speech and public appearance under certain conditions, can be restricted by law in cases envisaged by the Constitution (Article 47, paragraph 2), it is necessary not to be related with these cases. A severe form exists if the offense committed by an official in the exercise of his duty. In the criminal complaint it is necessary to specify what action has disabled the person in his actions of public appearance and speech, and what was the consequence. Of course, taking into account that the activity of the injured party was not unlawful, or that the person had the right, in this case, to publicly come forward and speak freely, which means that it should include the grounds for such an activity.¹²

*Preventing of the public gathering
under Article 181 of the Criminal Code*

Whoever by force, threat, deception or in any other way prevents or obstructs public gathering organized in accordance with law, shall be punished by a fine or imprisonment not exceeding one year.

12 The same.

If the offense was committed by an official in discharge of duty, one shall be punished by imprisonment of three months to three years

The protective structure of this Criminal offense is the right of citizens to assemble and maintain public gatherings, persons whose number and identity is not pre-determined, organized in accordance with the law. Freedom of assembly is the right provided by the Constitution of Montenegro, Article 52, and in certain international documents. For public assembly does not require prior approval, but it requires a prior application to the competent authority, which is currently regulated by the still in force, the Law on Public gatherings. The deed has a basic and a heavy form. The execution of the basic form of the use of force, threats, deception or other means that prevents or interferes with a public meeting. The criteria for closer determining the actions related to "other means", is their capability to prevent or disturb public gathering. The question that arises is the question of time when this offense can be performed, ie. whether it is necessary that the public gathering has already been held. The legislator provides that this offense can be performed immediately after the public gathering was convened, therefore it is not necessary that it has already begun, and that is ongoing. A severe form of the deed will exist when the offense was committed by a public official in the performance of their duty. Accordingly, the criminal report should clearly outline the activity or action that was causing public disturbance or stopping of the public gathering, the action which was made and its capability to prevent or interfere with a public gathering, when it was done and what was its consequence.¹³

*Preventing of the public gathering
under Article 182 of the Criminal Code*

Who consciously violating the law or in any other unlawful manner prevents or disturbs political, trade union or other organization or a citizen action or action of their political, trade union or other organization, shall be punished by a fine or imprisonment up to one year

The act of committing is preventing or impeding political, trade union or other organization and activities of citizens or their political action, trade union or other organization. In addition to the relevant international documents (eg. Article 11 of the European Convention on Human Rights), freedom of political, trade union and other association and action is guaranteed by the Constitution. The freedom of political, trade union and other association and action is

13 The same.

guaranteed, without approval, by registering with the competent authority. The Constitution prescribed for the organization, whose establishment is prohibited (secret subversive organizations and irregular armies). It is forbidden and operation of political and other organizations aimed at the violent overthrow of the constitutional order, violation of territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, religious and other hatred and intolerance.

*Making public of the personal and family circumstances
under Article 197 of the Criminal Code*

Whoever makes public or propagate anything from personal or family life of a person which can damage his honor or reputation shall be punished by a fine of three thousand to ten thousand euros.

If the offense referred to in paragraph 1 of this Article is performed through media or other similar means or at a public gathering, the offender shall be punished by a fine of five thousand to fourteen thousand.

If what is stated or transmitted has caused or may cause serious consequences to the victim, the offender shall be fined at least eight thousand.

For disclosure or transfer of personal or family circumstances that was done in the performance of official duty, journalistic profession, defending a right or protecting justified interest, the offender shall not be punished if he can prove the truth of his allegations or if he proves that he had reasonable grounds to believe the veracity of what is disclosed or disseminated.

The truthfulness or untruthfulness of what is or is transferred from the personal or family life of a person can be proved, except in the cases referred to in paragraph 4 above.

This crime has similarities with the criminal offense of defamation. The execution of the offense is the same as with the criminal offense of defamation and it consists of presenting or transmitting. The difference exists in relations to what is asserted or circulated. First, it must be an assertion concerning the personal or family life of a person. Second, the truth or falsity of what is asserted or circulated is irrelevant, except when the offense was committed in the exercise of certain duties. But, as with defamation, that what is transferred or circulated must be capable to violate the honor or reputation of the person from whose personal or family life have asserted or circulated. The subjective side of this offense constitutes intent, which should include awareness of the fact that the information transferred or something that relates to personal or family life of a person, and can damage his honor and reputation. A severe form exists in case the offense is committed

through the press or other media, or at a public gathering. The most severe form is in the case that there has been serious consequences for the passive subject. It is enough that there was a possibility that these effects do occur. Proving the truth of what is asserted or circulated is not allowed. This, apart from possibly at weighing penalty, is not relevant to the crime. Exceptionally, the truth may be proved because it represents one of the conditions for the application of the special grounds for excluding unlawfulness of this criminal offense.

Violence in the family or a family community
Article 220 of the Criminal Code

Whoever, by applying serious violence endangers physical or mental integrity of members of his family or family community, shall be punished by a fine or imprisonment up to one year.

If the execution of this offense referred to in paragraph 1 of this Article included the usage of weapons, dangerous tools or other means suitable for inflicting heavy bodily injuries or seriously impairing health, the offender shall be punished with imprisonment of three months to three years.

If the offense referred to in paragraphs. 1 and 2 of this Article results in serious bodily injury or serious damage to health or committed against a juvenile, the offender shall be punished by imprisonment of one to five years.

If the offense referred to in paragraphs. 1, 2 and 3 of this Article, results in the death of a family member or family community, the offender shall be punished with imprisonment of three to twelve years.

Anyone who violates the measures of protection from domestic violence by the court or other state body appointed pursuant to law, shall be punished by a fine or imprisonment up to six months.

The basic form of this offense exists when using serious violence endangers physical or mental integrity of a member of his family or family community. Application of gross act of violence is the act of execution, while the violation of bodily integrity or mental is the consequences of this crime. Application of rough violence involves the application of force or threats. Given the nature of the offense, as a rule, this offense consists of continuous acts of execution by the perpetrator undertaken towards a member of family. However, in some cases it is enough property is done once in order to lead to distortion of physical or mental integrity of the passive subject. To determine what constitutes the use of coarse violence it is important delineation of the offense with a misdemeanor referred to in Article 36 of the Law on Protection from Domestic Violence. Namely, what constitutes the act of execution of that misdemeanor, as a rule, can not be criminal acts of violence

in the family or household. Only if these actions are taken by continuously and systematically, and as a result have a violation of physical or mental integrity of the passive subject, this crime will be present. The execution is finalized when there is a result the result of, or when there is a disturbance of physical or psychological integrity of a family, otherwise it was an attempt which is not punishable. Also the consequence is the most important criterion for demarcation between this offense and the offense referred to in Article 36 of the Law on Protection from Domestic Violence in which there are no consequences. The passive subject is a member of the family of the perpetrator. The members of the family in the sense of this crime are considered spouses and parents and children, but the law stipulates that the family members are considered and former spouses, blood relatives and relatives from full adoption in direct line without restriction, and lateral to the fourth degree, relatives by incomplete adoption, in-law relatives to the second degree, persons living in the same household and persons who have common child or a child about to be born, although they never lived in the same household.

Instigator or accomplice may be persons outside the circle of family members. A severe form exists in relation to the manner of execution, ie the instrument used, and that would be the use of weapons, dangerous tools or other means suitable for bodily injuries or for seriously impairing health during the execution of the underlying act. Other severe form exists in the event that the serious bodily injury or serious damage to health are committed against a minor. The most severe form exists in case of death of a family member. There is a special form to determine the sanctions for violation of protective measures against domestic violence. The new Law on Protection from Domestic Violence has planned more such measures, such as removal from the home, restraining a family member.¹⁴

14 We recommend attention, regarding the topic of domestic violence, this book: (1) "Police integrity from the perspective of vulnerable social groups", publishers MUP of Montenegro and the Council for Civil Control of Police, a group of authors, editor mr Aleksandar Saša Zeković, Podgorica 2015. In particular, we recommend in it, the author of this Annex: Biljana Zeković and M.Sc. Slavko Milic "Order on suspension from the apartment: Practical experiences and dilemmas"; Maja Raičević "Domestic Violence: The most common failures of the police"; M.Sc. Slavko Milic: "Domestic Violence - Role and responsibilities of the police and social services in the obstructed-ju domestic violence against LGBT persons"; (2) "Creating a safe environment for LGBT people: The role and responsibility of the social work, police and civil society", a group of authors, editor Aleksandar Saša Zeković, publishers Ministry of Labour and Social Affairs and the Council for Civil Control of Police, Podgorica, 2015. Recommended books are available on the website of the Council for civil control of police, www.kontrolapolicije.me, under the heading "Publications".

Blackmail
under Article 251 of the Criminal Code

Whoever, with the intention to acquire himself or another an unlawful material benefit threatens another that will against him or persons close to him to reveal something which would harm their honor or reputation harm and thus force him to do something or not to do so at the expense of his own or someone else's property shall be punished by by imprisonment from three months to five years.

If the offense referring to the paragraph 1 of this Article, resulted in a material gain exceeding the amount of three thousand euro, the offender shall be punished by imprisonment of one to eight years.

If the offense referring to the paragraph 1 of this Article, resulted in a material gain exceeding the amount of thirty thousand euro, the offender shall be punished with imprisonment from two to ten years.

Anyone who deals with committing offenses referred to in paragraphs. 1 to 3 of this Article or if the offense was committed by several persons in an organized manner shall be punished by imprisonment of two to twelve years.

Blackmail is a special form of extortion. The act of execution is to force a passive subject it to do or not do something at the expense of their own or someone else's property. Blackmail consists in the use of threats that against a passive entity or person close to him to discover something that would harm his honor and reputation. Most often one threatens with presenting truthful statement that the perpetrator usually has some evidence of which make threat seems serious, but it can be threatening and presenting something that is untrue. For example, the perpetrator has, by fact that he threatened the injured party to notify members of his family and friends he was gay if he does not make money, made a criminal offense of blackmail (OSB Kz. 2239/03). The consequence of the offense consists of any act or omission of passive subjects at the expense of his own or someone else's property and damages must perform in order to constitute the crime of blackmail, otherwise it will be an attempt. A severe form of the offense exists when the execution of the offense, results in a material gain exceeding the amount of three thousand euros, and even more weight if the benefit exceeds the amount of thirty thousand euro. The most severe form is in the case of practicing blackmail, a legal qualification is the fact that the offense referred to in paragraph 1 to 3 committed by several persons in an organized manner.

*Destruction and damage the property of others
under Article 253 of the Criminal Code*

Whoever destroys, damages or makes useless another person's property shall be punished by a fine or imprisonment up to six months.

If the offense caused damage in the amount exceeding three thousand euro, the offender shall be punished by a fine or imprisonment up to two years.

If the offense caused damage exceeds the amount of thirty thousand euro, the offender shall be punished with imprisonment from six months to five years.

For the offense, if it is damaged thing privately owned, prosecution shall be instituted by private action.

The act of execution of this offense has three forms: (1) Damage to property belonging to another, when the properties are actually partially changed so that it changes its appearance, reduces the value in use, etc; (2) Destruction of property belonging to another, completely changing the properties of things so that it no longer exists or has changed so much that it is another matter; (3) suppression of other people's things, when a thing can no longer be used when it no longer serves its intended purpose. In addition, its external appearance must not be changed, but because of the nature of things as a result of having its full lack of usage For the existence of the crime it does not matter whether the matter can be rectified. In some cases it is difficult to distinguish whether a thing is damaged or has been made non-useable, and in such cases, notes that the next thing it is made unusable to use and damaged, which is sufficient for the crime. The object of the crime does not have to be only mobile, but also an immobile thing or part of the immovable property. A severe form shall exist where the damage caused by damaging someone else's property exceeds three thousand euros, and the most severe form when it exceeds the amount of thirty thousand euro. If the thing that is the object of the offense in private ownership, the prosecution for all three forms undertaken by private action. When filing a criminal complaint, the applicant is required to state the thing that was damaged, destroyed or rendered unusable, in any way, as a result of acts of commission of the offense. Also, to specify the value of things, which is relevant in determining the forms of crime. If the object is previously valued cost by a professional person a proof of it needs to be submitted with a with a criminal report. Finally, one should indicate whether it is a matter of private property because of it depends on whether the proceedings would be conducted ex officio by the competent prosecutor or the injured party will take the case after a private tužbi.¹⁵

15 The same

*Preventing an official in the performance of official acts
under Article 375 of the Criminal Code*

Whoever by force or threat of immediate use of force prevents an official in the performance of official acts undertaken by the scope of their powers or in the same way compels while performing official duties, shall be punished with imprisonment of three months to three years

If during the execution of the offense the perpetrator insults or abuses official person or inflicts light bodily injury or threatens to use a weapon, shall be punished with imprisonment of three months to three years

When this work against a judge or public prosecutor in the exercise of their judicial or prosecutorial duties or official person in performing public or state security or the duty to maintain public order, prevention or detection of the crime, apprehension of a perpetrator or guarding a person deprived of liberty shall be punished with imprisonment from six months to five years.

The attempt of this crime, the offender shall be punished.

If the perpetrator of the offense has been provoked by illegal or rude conduct of a public official he may be released from punishment.

The actions of execution of this criminal are preventing an official in discharge of duty actions and forcing to perform an official act, and in both cases used force or threat to use force, which is applicable to is directed. Therefore, it should not be considered as an act of execution in this case a mild force, as is usually the reluctance, but a force, or the threat must be directed at preventing or forcing an official directly, ie. that official is prevented to perform an official act or forcing to perform an official act. If the official is being prevented to perform the action that oversteps their mandate, there will be no criminal offense. However, in this case it does not matter what kind of action is about because there is a criminal offense as well when the official is forced to perform an official act which he should not do. In both cases, it does not matter to whom the official act applies, ie. whether it is directed towards the perpetrator of the offense or according to any other person. Injured party by this criminal offense is a public official. Due to the nature of this work, in practice they were frequent cases in which the injured side occurred as officials who were authorized, under certain conditions, within undertaking their official actions to apply physical coercion (eg. Police officer). However, after the amendments to the Law on criminal proceedings only a limited circle of police officials are considered as an injured party in this offense. Here are also considered the persons who perform public duty in the public sector, for example, it can be Electric Distribution workers when they perform an official act of shutting down power to electricity consumers. A severe form exists if the perpetrator in the execution of this offense offends official person, abuses him, cause a light bodily

injury or threatens to use a weapon. And here's the punishment provided for the attempt. Also, a severe form of this offense will exist if done towards a judge or public prosecutor in the exercise of their judicial or prosecutorial duties or official person in performing public or state security or the duty to maintain public order, the prevention or detection of the offense, catching a perpetrator offense or guarding a person deprived of liberty. The law provides for the optional grounds for exemption from punishment, provided that the perpetrator of the offense was provoked by unlawful or brutal treatment of the face. It should be borne in mind that this is essential to the action of an official was legal, but he acted in a manner which is not in accordance with the law. However, in some cases such behavior calls into question the legality of official actions as a whole. Criminal Report in this case, ie. in this crime should include, first of all information on the official, official action that is exercised and the manner in which it was prevented from carrying out the same, taking effect if it comes to the force or the threat of such intensity that the injured party to prevent fully in the exercise of official action. Official identification is needed to determine whether this is a basic form of offense or heavier, which has already been detailed above. Also, it is necessary to specify the consequence of acts of commission, ie. whether, despite the fact that he was prevented, did the injured side suffered insult, threat or light bodily injury. If the offense was an attempt it also may be filed criminal charges with the same data, because the law punishes in this case and attempted offense. The applicant is, in principle, official as well as damaged, but it may be another person who attended as well directly witnessed acts of commission.¹⁶

*The attack on a public official in the performance of official duties
under Article 376 of the Criminal Code*

Anyone who attacks or threatens to attack an official in the performance of official duties, shall be punished with imprisonment up to three years.

If during the execution of the offense official person has suffered light bodily injury or has been threatened with the use a weapon, the offender shall be punished with imprisonment of three months to five years.

If the offense is committed against a judge or public prosecutor in connection with the exercise of their judicial or prosecutorial duties or official person in performing public or state security, the offender shall be punished with imprisonment from six months to five years.

For the attempt of the crime, the offender shall be punished offender who was provoked by illegal or rude conduct of a public official may be released from punishment.

16 The same.

The act of execution of the offense is an attack or threat of attack on the officer. The attack must be understood in the physical sense, ie. it is more than a mere violation, and less than bodily harm and includes activities that are physically and directly directed to the body of an official. However, it is not necessary that there is a physical contact between the perpetrator and the official person, for example, it is sufficient to throw an object at the official. It is only necessary that an attack or threat of attack comes at a time when an official is performing his duties. The attack, which occurred after the execution of an official act does not constitute the crime. A severe form exists in the case of the commission of the offense inflicted light bodily injury or is accompanied by with the use a weapon towards the official. If he inflicted serious bodily injury, there will be concurrence with this criminal offense, and in this form the attempt is punishable.

Also, as with the criminal offense under Article 375 of the Criminal Code, a more severe form of this offense will exist when this is done towards the judge or public prosecutor in the exercise of their judicial or prosecutorial duties or towards the official person in performing public or state security. In the case of judges and prosecutors, criminal zone is wider set, because it includes not only the attack in the exercise of judicial and prosecutorial duties, rather than any attack that is in connection with the performance of these duties, which means that the offense exists even when the attack took place later because a certain duty in the context of judicial or prosecutorial function has been performed. On the other hand, in the case of official persons performing public or state security, on the contrary, the attack must be undertaken only during the performance of official duties. And with this criminal offense, the law provides an optional basis for exemption from penalties when the offender was provoked by illegal or rude conduct of a public official. When filing criminal charges in the case of the execution of this crime, the situation is almost the same as for the previously said under Article 375 of the Criminal Code, except that in this case it is an attack, not only preventing an official from performing his actions. Therefore, within the official report, it should be pointed out that the official was attacked, how and what are the consequences of the attack, or that there was a threat that they will be attacked and that the the threat was taken seriously.¹⁷

*Violent behavior
under Article 399 of the Criminal Code*

Whoever uses harsh insult or maltreatment to treat another person, exercises violence by provoking a fight or by insolent or arrogant behavior endangers the

17 The same.

tranquility of citizens or disturbs the public order, if committed in a group or a person has suffered light bodily injury or severe humiliation of citizens shall be punished with imprisonment from six months to five years.

The offense of violent behavior may consist in taking some of the following actions: coarse insults and abuse, the exercise of violence against another, provoking fights, daring or reckless behavior. In addition, in order to exist this criminal offense of violent behavior requires that it achieved one of three conditions: (1) That the offense was committed in a group, the existence of a "group" means at least three persons who together carried out this crime; (2) If any person in execution inflicted light bodily injuries, light bodily injury must be inflicted during the commission of criminal offenses. What is a light bodily injury, the legislator does not define precisely, but we can say that everything that is not just a serious bodily injury is a light bodily injury. If there is a serious bodily injury, there will be concurrence with that crime, which means that in addition to the criminal offense of violent behavior, the perpetrator correspond with the criminal offense of grievous bodily harm; (3) In the severe humiliation of citizens, which means that there has been such a humiliation that is expressed intensity, which is estimated taking into account that the offense was committed, to whom, under what circumstances, etc., And bearing in mind the understanding the middle of what is considered degrading act. The perpetrator may be any person. Earlier require the existence of preferences for such behavior, but it is no longer relevant, given that the conditions requiring that means indirectly punishment for a particular lifestyle or personality traits. So, in the criminal report it is necessary to specify the identity of the persons who committed this act, if not known, some physical traits that are characteristic and which will be the inputs for easy identification of persons (height, hair color, a visible sign of the body etc.) then what harm is inflicted on the injured party. If there is a finding of a doctor, shall be submitted to to the application. The issue of humiliation, in the case of LGBT persons may also be called. "Hate crime", which the applicant may indicate in the police report, but that, given the understanding of the environment, the competent public prosecutor should have taken into account already in the legal qualification of the criminal offense of violent behavior¹⁸.

18 Saveljić Milica i Aleksandar Saša Zeković, "Legal protection: The Prosecution and safety of LGBT people in Montenegro", the Supreme State Prosecutor of Montenegro and NGO "LGBT Forum Progress" with the support of the Royal Netherlands Embassy, Podgorica, 2015; Available at: <http://media.lgbtprogres.me/2016/02/vodic-za-zajednicu-korice-i-prelom-za-web.pdf>

*Racial and Other Discrimination
under Article 443 of the Criminal Code*

Whoever at grounds of race, color, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by the generally accepted rules of international law and international treaties ratified by Montenegro, shall be punished with imprisonment from six months to five years.

The punishment referred to in paragraph 1 of this Article shall be imposed on those who persecute organizations or individuals for their advocating equality among the people.

Whoever spreads ideas about the superiority of one race over another, or promotes racial hatred or incitement to racial and other discrimination, shall be punished with imprisonment of three months to three years.

Basis of this criminalization is primarily in the Convention on the Elimination of All Forms of Racial Discrimination of 1965 ("Official Gazette of the SFRY - international agreements", No. 6/67) and the importance of the Convention on the Suppression and Punishment of the Crime of Apartheid 1973 ("Official Gazette of the SFRY - International Treaties", No. 14/75). In paragraph 2 criminalizes persecution of those (either organizations or individuals) who are committed to equality of people. Persecution is the systematic abuse that may be made from a variety of acts such as intimidation, causing suffering, harassment, isolation, imprisonment, dismissal from work, exclusion from certain associations and the like. Persecution includes the specific goal that can be achieved. It is based on membership to a particular nation, religion, political belief, etc. those who are being discriminated, but in this case the persecution is directed against an individual or group, ie. an organization that is committed to the equality of people. In paragraph 3 of this Article, all three types of execution represent racist propaganda.

SECTION 2



THE PROPOSALS FOR THE IMPROVEMENT OF LEGAL AND CONSTITUTIONAL PROTECTION OF LGBT PERSONS IN MONTENEGRO

PROPOSALS FOR IMPROVING THE CONSTITUTION OF MONTENEGRO WITH THE GOAL OF EFFICIENT PROTECTION OF ALL CITIZENS AND FIGHTING DISCRIMINATION ON THE GROUND OF SEXUAL ORIENTATION AND GENDER IDENTITY

Despite numerous good solutions of the existing Constitution, there is room, when we talk about constitutional protections for LGBT people and the promotion of the highest law. We appreciate that the proposals can be designed to encourage discussion and advocacy efforts, which will take part the legal profession, the academic community, political parties, civil society, the media, trade unions and LGBT pokret. Here we will look at possible amendments to the Constitution in order to improve the position of persons of different sexual orientation and gender identity. Article 8 should be supplemented by the words that directly point to examples of certain personal characteristics on the basis of which it is forbidden to make a distinction between persons and groups. Such amendments would be closer to the users since it would clarify the content of the constitutional guarantees, and it would eliminate any doubts about the circle of protected persons and groups, which together contribute to raising the level of legal certainty in this area. Of course, this list of personal characteristics should not be locked, but just as an example should indicate those properties in respect of which there is actual or expected risk of discriminatory treatment (sex, sexual orientation, gender identity, health status, disability, belonging to a minority, etc.).The title and content of Article 18 of the Constitution of Montenegro should be harmonized with each other. Category of gender equality is of a broader character and the headline includes any person (not a binary concept of male and female), that is the persons of different gender identity, including one's own experience that does not have to depend on the sex which is registered at birth. In this connection it is necessary to make an linguistic modification of the constitutional provision to be introduced with the guarantee of equality that binds to a gender, not sex. The existing wording of Article 71 of the Constitution of Montenegro implies the rule that only persons of different sex have the right to form a marriage. The constitutional provision which referred to marriage, which immediately preceding the current constitutional solution to this issue, was contained in the Small charter¹⁹

¹⁹ In accordance with Article 8 and 61 of the Constitutional Charter of Serbia and Montenegro, the Federal Assembly, at the session of the Council of Citizens of 28 February 2003 and by the Council of Republic on 28 February 2003 adopted the Decision on proclaiming the Charter on Human and Minority rights and Fundamental Freedoms, and the so-called. Small Charter, and on the fact that human and minority rights, the foundation of every community.

and it is guaranteeing the right to marry, without limiting the circle of beneficiaries to those persons who have a different gender ("In Montenegro, everyone has the right to enter into marriage"). Bearing in mind that now, the discriminatory nature of legal problems with which are faced by LGBT people are being recognized, including problems related to the conclusion of marriage, as well as the direction of development of national legal systems and international standards in this field, with the developing consensus of the signee countries of the European Convention for the protection of human rights and Fundamental freedoms in this area, then it is justified to remove words that refer to persons of different sex from content of Article 71 of the Constitution.

PROPOSALS FOR THE IMPROVEMENT OF THE PENAL CODE OF MONTENEGRO

However, in order to improve the legal text, and thus increase criminal protection of persons of different gender identity and sexual orientation, as well as other victims on the basis of a personal characteristic, we consider it necessary prescription of qualified forms of criminal offenses in case they are made of hate, namely: Aggravated Murder (Article 144), Light bodily injury (article 152), Forced (Article 165), Abuse (Article 166a.), torture (Article 167²⁰). 20 Rape (article 204), Aggravated theft (Article 240th), robbery (art. 241), destruction of or damage to property belonging to another (Article 253), causing general danger (Article 327).²¹

Furthermore, the Act has not defined a hate crime which can be a problem and is a problem the practical application of the Law which in the future should be eliminated. This issue is particularly necessary to be advocated by the LGBT community with the support of expert public and supporting civil and political structures.

20 According to the current law exists as a description of the basic form of the offense - "or for any reason based on discrimination" - note by the authors.

21 We have listed the crimes which usually occurs at the expense of LGBT people, taking into account domestic and practices in the region

SECTION 3



ANALYSIS OF ACTIONS OF STATE PROSECUTORS IN SPECIFIC CASES

**CASE:
MP FROM BAR COMPROMISED THE SAFETY
OF AN LGBT ACTIVIST (2012)**

A short description of the case: the Basic Court in Bar, Judge Mrs. Lj.J., in the criminal case after the indictment proposal by the Basic State Prosecutor's Office (BSP) in Bar, declared guilty M.P. (1988), a student from Bar, because he has, on 2. October 2012, compromised the security of ZC, threatening to attack his life and body, in a way that he used his computer and profile via social network "Facebook", to send the following words: "You Faggot slimy you shame Montenegro and the suffering people living there . I will kidnap you and I will rip of that small dick of yours. Shame on you, you human piece od shit. Ask your father how beautiful it is when you make love to a woman. Go treat yourself or shoot yourself in the head ... That's all Satan! Stop the parade of sinners !!! " by which he committed criminal offense - endangering the safety of Art. 168.st.1. Of the Criminal Code. Basic Court in Bar brought a suspended sentence which by which he has been sentenced to a prison term of three months and also the verdict also provides that the sentence shall not be executed if the accused within two years after the verdict becomes final, does not commit a new criminal offense. The defendant M.P. had admitted all the allegations in the criminal complaint and said that he was annoyed by the media statement that Z.C. plans to hold a gay parade in Montenegro. He was a very annoyed, and the Z.C. answered the his message, and that he does not see it as a threat. He regrets what he did this but he was, as already stated, revolted by statement of Z.C. and its supporters. At the main trial held on 31 January 2013 M.P. stated that the allegations from the indictment were true. Namely, he felt provoked, he was sitting with friends, he saw something on television, was provoked by the heat of the moment had sent the terms specified in the Indictment. The defendant M.P. Before the Court said that the words he addressed to Z.C. were in the heat of the moment and that there is no intention to actually make the threat into a reality. Z.C. stated that on 02 October 2012. he logged into his profile and found the mail message from M.P. with the already stated content. He felt threatened by the message as well as the lack of safety because it was a threat on his life. The threat was taken extremely seriously considering that the message came from a person who has not concealed his identity and therefore

immediately went to the police and filed a report. Court rated the defense of the accused as unfounded and calculated to avoid guilt while the testimony of the witness, Z.C., the Court assessed as a clear, truthful and compelling.

A description of all actions taken by the police and prosecution: On the occasion of this report, the Police has in a timely and professional manner consulted Basic State Prosecutor's Office (BSP) in Bar, which filed a criminal complaint against M.P. due to the threats to Z.C., the director of the NGO "LGBT Forum Progres". Basic Court in Bar, in the criminal case after the indictment proposal BSC u Baru, has declared M.P. guilty.

A comment of all actions undertaken by the prosecution: Here are all institutions joined the professional work on present case, particularly Basic State Prosecutor in Bar, which resulted in a final court decision by which the defendant was found guilty despite the fact that the case took place before the entry into force of the Law on amendments to the Criminal Code, which adopted and a new qualifying circumstances "if the offense was committed out of hatred." In this specific case, the progress in treatment of the State Prosecution Office is registered in the best way, which has made a significant step forward by recognizing the elements of liability in the present case.

Conclusions and recommendations regarding this case: For the crime endangering the security it is necessary for a threat to attack the life and body of the victim needs to be serious. The threat, as an act of execution of a criminal act of endangering safety must be objectively feasible to create fear with the injured party. The consequence of a criminal offense is the fear of the victim, which must be of such intensity that it creates a sense of insecurity and vulnerability. Due to the behavior of the accused, damaged Z.C. felt a threat to their life and body. The actions of the defendant who has, via the network "Facebook" addressed the Z.C. on his "Facebook" profile, by sending a message threatening content, which is further described in the operative part of the judgment, and in the fact that the victim of his own narrative had the conviction that the defendant will realize this threat because he did not hide his identity in the subjective and objective sense represent a serious threat, given the course of events, as well as the overall behavior of the defendant, in connection with any of the circumstances detailed in his testimony presented by Z.C. The defendant has committed a criminal offense with direct intent. By legally qualifying the established criminal state the Court found that the defendant M.P. committed the criminal offense of Endangering the Safety of art.168.line.1. Of the Criminal Code. Opting for a criminal sanction towards the accused, the Court took into consideration all the circumstances of Article 42 of the Criminal Code. The mitigating circumstances on the defendant were the

fact that the defendant was a dependent person, a student, and the earlier life of the accused, because there were no prior convictions. There were no aggravating circumstances. Bearing in mind the quality of the mitigating circumstances, and in deficiencies of the aggravating ones, Court declared a suspended sentence because it was assessed that it is not necessary to impose a prison sentence to the defendant, that the imposition of a conditional sentence will fully achieve the purpose of sentencing and thus enough influence the defendant to refrain from committing criminal offenses in the future. This case, for the LGBT community and professional community, is the first positive example of professional conduct of public prosecution. The court ruling is also represented in the book "LGBT Rights: standards and legal practice".²²

**CASE:
PRIDE PARADES IN BUDVA AND PODGORICA (2013)**

A short description of the case: In Budva, in July 2013, and in Podgorica in October of the same year, the first Pride parade in Montenegro have been held. Pride parades are the key events of the LGBT community and their happening is particularly important in societies where there is ignorance, misunderstanding and resistance to social acceptance of LGBT people. It is also the most effective way to demonstrate and confirm the determination of the state in providing safety and equality as well as its capacity for the rule of law and respect for human rights and freedoms. These events are treated as high risk events and during their holding there have been disturbings the public order and peace. Pride Parade in Budva and Podgorica were the targets of brutal behavior of a number of citizens, who did not hide their discontent, opposition and hatred, and have tried to prevent the event by using violence. At the first peaceful assemblies of the LGBT community attacks the people who had participated in the parade has happened, and to the officials who guarded the procession, but also a significant destruction of property of two municipalities in Montenegro - Budva and Podgorica has happened.

A description of all actions taken by the police and the prosecution: Police deserved the praise of the LGBT community, national democratic forces and international structures for their professional approach and determination to ensure the maintenance of the Prides and to enable LGBT community the right to

²² "LGBT Rights: standards and legal practice"; Editor mr Aleksandar Saša Zeković, the Supreme Court of Montenegro and NGO "LGBT Forum Progress", Podgorica, 2014, available at this link: <http://sudovi.me/podaci/vrhs/dokumenta/1467.pdf>

peaceful assembly. The participants of the Pride after its holding were evacuated from the center of Budva by sea and in Podgorica by police official vehicles from the city center, to the headquarters of the elite police organizational units.

Comment all actions undertaken by the prosecution: The above described situation, numerous photos and video material, gave space to recognize these following crimes: (1) violent behavior under Article 399 of the Criminal Code, because all the three conditions for the existence of this criminal offense have been met. A number of persons have been inflicted by a bodily injury, there was a severe humiliation of people, which was very visible, and everything was done in a group, considering that these persons have, in advance and with intent have organized to prevent the pride parade and have caused harm to the participants ; (2) Prevention of public assembly under Article 181 of the Criminal Code, because force and the threat to prevent pride parades as a public assembly, especially in Budva have been used. The very act of execution was capable of preventing the Pride, because persons threw stones at LGBT persons who were part of the parade, which resulted in injuries and frequent interruptions of the walk in Budva; (3) Endangering of the security referred to in Article 168 of the Criminal Code, which has already been discussed, and what can be observed in this case, given that LGBT persons have taken seriously the said threats;(4) The attack on the officer and obstruction of official persons in performing official actions of the Articles 375 and 376 of the Criminal Code, considering that the persons confronted and attacked police in the performance of their duties, or preventing them in doing their duties, which was obvious, and publicly done and present in the media ; (5) The destruction alienation of people's property from Article 253 of the Criminal Code, bearing in mind that certain assets of these municipalities - Budva and Podgorica - were damaged, destroyed and rendered unusable.

Conclusions and recommendations regarding this case: Authors deem important to remind on evaluation and comments of the NGO "Human Rights Action"²³ (HRA) with whom they express full agreement. HRA has announced that during the first Pride in Budva, the citizens in the parade and the police who protected them were attacked, while in Podgorica, policemen were attacked just because the perpetrators were not able to approach the procession. They, according to the police "threw bottles, chairs, stones and smoke bombs." During parades in Budva two people were slightly injured , participants of the Pride, while in Podgorica as many as 20 police officers were injured. Damage in Podgorica is estimated at 20 thousand euros. Police detained 22 persons in Budva , and in Podgorica, 60 people. The epilogue of these events and the attack is only one crim-

23 Press release of the NGO "Human Rights Action" on the occasion of marking the anniversary of the Pride Parade in Budva <http://www.hraction.org/?p=6862>

inal report filed against unidentified persons for inflicting grievous bodily harm, for assaulting a police officer during the Pride parade in Podgorica. In a written response addressed to the HRA, the Supreme State Prosecutor's Office stated that the prosecution failed to take criminal proceedings because it was determined that there are no elements of criminal acts prosecuted ex officio, and that none of the participants of the Pride parades in the premises of the Center of security did not submit a criminal report . It is also alleged that the in the video footage from Budva not one participant who threw stones and other objects was identified. Alarming and shocking fact, according to the HRA is that the State Prosecution in the behavior of the perpetrators was not willing or able to recognize any of the nine possible offenses under the Criminal Code: Bullying (Article 399), assaulting an officer and obstruction of official persons in performing official duties (Articles 375 and 376), preventing public assembly (Article 181), violation of freedom of speech and public appearance (Article 178), violation of equality (Article 159), abuse (Article 166), endangering the security (Article 168) and destruction and damage to property belonging to another (Article 253). It is incomprehensible that none of the police officer did not reported even one of the numerous perpetrators who pelted them with stones and attacked them, or prevented to perform the service, which are all criminal offenses. On the other hand, we are witnessing the police decision to arrest and to prosecute persons who have peacefully protested by sitting in the street in front of the government building or other reasons the case with the protest gathering in Podgorica (October 2015), when the police filed several dozen, mostly misdemeanor , charges against journalists and citizens who were allegedly preventing them from performing official actions.

**CASE:
POLICE FAILED IN PROCESSING
OF THE REPORT AGAINST V.S. TIVAT (2013)**

A short description of the case: On 1 September 2013, the NGO's (NGO) "LGBT Forum Progress" has filed a police complaint against the Administration services for carpet cleaning company, "Green Clean", operating in Tivat, whose authorized employee / the owner has published on the social network "Facebook" the following commentary referring to homosexuality, during the debate on the recently held pride Parade: 'Animals too have this kind of illness (referring to homosexuality), but the farmer cuts the throat of the animal ... Maybe this is a solution? ' This threat, according to the applicants, was taken very seriously, because the organizing of the first pride Parade in July 2013, resulted in an increased

intensity of threats, insults and violence against LGBT people. They further noted that the profile on which public comment was set is public, and that the members of that "Facebook" website such as representatives of diplomatic missions, representatives of the media, NGOs or the LGBT community itself have been exposed to announcements of violence and hate speech, and feel fear and discouragement through these comments.

A description of all actions taken by the police and the prosecution: of the NGO "LGBT Forum Progress" has received official notification from the Police Administration that the owner of "Green Clean Tivat 'V.Š. was summoned to the premises of the security center in Herceg Novi who confirmed that the profile on the network "Facebook" was his, but only as an advertisement of his company. This was made familiar to the Basic State Prosecutor in Kotor, Deputy Basic State Prosecutor, which stated that there are no elements of the criminal offense in this particular case which are prosecuted *ex officio*. This NGO has expressed doubts about the professionalism of the police in this case.

Comment all actions undertaken by the prosecution: The filer of the police report, NGO "LGBT Forum Progress", in this particular case has presented the remarks at the behavior of police officers who acted on this report. In the given information there was no further information about who of the workers at the company could publish a controversial comment given that the authenticity of the profile is not disputed. Given that the consultation of the competent state prosecutor's office is often done by telephone without closer communication, or essential information, and bearing in mind the very remark NGO applicant, for which we believe is founded, the study authors were not able to establish any failure in the conduct of the Basic State Prosecutor's Office in Kotor. According to the NGO "LGBT Forum Progress", in this case the police did not deliver reports and other documentation to this NGO, in order to acquire more detailed information on the work of the police, so in this case the authors were not able to analyze in detail the aspects of their work.

CASE:

**M. L. THREATENED THE SAFETY
OF LGBT ACTIVISTS IN KOLAŠIN (2013)**

A short description of the case: After completion of regional consultations of members of the LGBT community in the north of the country in Kolasin, on the 13. October 2013., in the centre of the city, in the garden cafe "Langolo" four members of the "LGBT Forum Progress" have been attacked. An unknown citizen, young, drunk, repeatedly walked past the table where they sat and harassed them. He shouted "Faggots" and spoke loudly to the passers-by along the promenade. He pointed his finger toward their table, and yelled "Faggots came to the city." One of the present members of "LGBT Forum Progress", A.S.Z., the then Chairman of the Board, contacted the headquarters of the police and then the police branch office in Kolasin. He informed them about the situation and asked to send a patrol in order to act preventively because everything indicated that the incident will happen. The yelling of the young drunk man continued even after the arrival of the police patrol. Police have warned the young men's behavior. When the activists decided to stand up the yelling continued. A.S.Z. approached them and asked them, "Sorry, guys, why do you mind if I sit here, what's the problem?". The young man tried to physically come at A.S.Z. addressing him with the words, "What do you want, motherfucker, go, walk out of here." Physical assault was prevented by police presence. After the incident, members of the LGBT Forum Progress in Police Station filed a complaint against the young man who was formerly employed as a police officer.

A description of all actions taken by the police and the prosecution: Police Ministry of Internal Affairs of Montenegro has informed NGO "LGBT Forum Progress" that the Department of Security Kolasin has filed misdemeanor charges against M. L. (1989) under Article 7, paragraph 1 of the Act on public order and peace. According to the notice of the Misdemeanor Council of Montenegro, in April 2014, the proceedings against M. L. were still ongoing²⁴. Basic State Prosecutor's Office (Basic State Prosecutor) in Kolasin pleaded in his actions there were no elements of a criminal offense for which prosecution acts *ex officio*. According to data from the Council for Civil Control of Police, which monitored the application of police powers due to reports of LGBT organizations, the process is ongoing.²⁵

24 LGBT activists are dissatisfied with the competent prosecutor decided not to participate in misdemeanor proceedings and it will, most likely, as the authors of the study said, will be suspended.

25 Information about this are available at this link Council for Civilian Oversight of Police: http://www.kontrolapolicije.me/index.php?option=com_content&view=article&id=37&Itemid=129

Comment of all of the actions undertaken by the prosecution: In our opinion, bearing into the consideration the fact that, according to the injured party, the physical attack was prevented by the police, and the police witnessed a verbal attack on members of the "LGBT Forum Progress" that the Prosecutor's office should have prosecuted M.L. criminally. The reason being, that in this particular case we believe that there, as in the previous case, the elements of the criminal offense of "endangering the safety" (Article 168th). Processings, such as this one, have generated a significant revolt in the LGBT community. Most reports are treated as an offense which may indicate certain deficiencies in understanding the seriousness of the overall threats and assaults, and attacks on those persons. In the community, which is mentioned in a number of relevant international reports, the impression has been present for years that LGBT people are not protected, as well as other citizens and may be a target of attacks and abuse in any situation, and that it should put up with this as something seemingly completely normal, due to the fact that in the society they are predominantly not accepted. Through the increased attention of the international community, using the processes of integration of Montenegro, primarily the European Union, a closer communication and cooperation between the LGBT community and its structures has been established, and the state prosecution organization in Montenegro which resulted in improving the capacity and improved the criminal law protection in practice. This was also confirmed by almost all cases reported in the second half of 2014 and the entire year of 2015.

CASE:

**M.J. FROM PODGORICA THREATENED
TO KILL AND CUT THE THROATS OF LGBT PEOPLE (2013)**

A short description of the case: The team of the non-governmental organization (NGO) "LGBT Forum Progress" for monitoring hate speech on the Internet reported to police M.J. from Podgorica because he threatened to "kill" and "slaughter" homosexuals, arguing that they are "sick people who should not live," which caused fear and a sense of vulnerability of the LGBT community. He has, via the network "Facebook" at the post intended to interfere and ridicule with the organization of the Pride Parade in Podgorica, peaceful assembly for LGBT people in Montenegro, in mid-September 2013, set the following comment: "We will kill gay people, sick people, and we will slaughter the sick persons which should not live"

A description of all actions taken by the police and the prosecution: Police informed this NGO, the complainant, in mid-April 2014, that has submitted a request for initiating misdemeanor proceedings against M.J. a , Up.br. ** - ***, Under Article 8 of the Law on Public Peace and Order and as late as in April 2014, allegedly almost eight months after filing of the police report. According to the notice of the Misdemeanor Council of Montenegro, which was provided to the Council for Civilian Control of Police, action against M.J. are still ongoing.²⁶ In this specific case the deputies to the Basic State Prosecutor's Office (Basic State Prosecutor) in Podgorica, were introduced with the case and assessed that there are no elements of a criminal offense that is prosecuted *ex officio*.

A comment of all actions undertaken by the prosecution: Basic State Prosecutor in Podgorica should bear in mind that words such as "kill" and "slaughter" can certainly create a sense of fear and vulnerability with any person to whom it was addressed, especially with LGBT people having in mind the overall context under which they are addressed. Having regard to the handling Basic State Prosecutor in other, similar, cases, in this case we can the treatment was different.

**CASE:
M.F., SPORTS FAN FROM PODGORICA,
THREATENED LGBT PEOPLE (2013)**

A short description of the case: ,on-governmental organizations (NGOs) "LGBT Forum Progress" On 29 July 2013, reported a sports fan M. F. from Podgorica, to the Police Directorate due to the announcement of violence against participants of the Pride Parade in Podgorica. He has on the social network "Facebook" on the official website of one NGO, posted a comment: "Just now I heard that the Pride Parade will be held in Podgorica. Let's all join together to fuck their mothers, and to beat them those motherfucking faggots."

A description of all actions taken by the police and the prosecution: Police directorate has in April 2014, informed the NGO "LGBT Forum Progress" that on 14 November 2013 (three and a half months after submission of the report),

²⁶ More detailed information about all misdemeanors available at these links: <http://www.kontrolapolicije.me/images/biblioteka/dokumenti/Ocjene%20i%20preporuke/Dokument-09-oktobar-2015.pdf> and <http://www.kontrolapolicije.me/images/library/documents/Rating%20and%20for/document-16-October-2015.PDF>

filed a request for initiating misdemeanor procedure, Up.br. 03 - *** under Article 7 para. 1 of the Act on public order and peace against M.F, due to publishing the threatening comments. Previously, in this particular case, the deputies of the Basic State Prosecutor's Office (Basic State Prosecutor) in Podgorica pleaded there are no elements of a criminal offense.

A comment of all actions undertaken by the prosecution: In certain cases of the public expression of hatred and threats of attack there has been room that the competent prosecutors consider that there is no element of the offense and that the cases can be solved by running misdemeanor proceedings. This is why we believe that the Basic State Prosecutor in Podgorica acted properly.

CASE:

N.Š. FROM PODGORICA

THREATENED AND INSULTED THE LGBT ACTIVIST (2013)

A short description of the case: Team of the non-governmental organization (NGO) "LGBT Forum Progress" for the monitoring of the hate speech on the internet was addressed by a member of the LGBT community Z.C. with a notification that a certain N.Š. from Podgorica, insults, humiliates, and represent a serious threat to him and the LGBT community in general. Z.C. in his address, stated that he was not sure if that was the well-known sports journalist, N.S., but he suggested that a report should be filed with the police in order to establish first of all the person's identity and then called for further action. NGO "LGBT Forum Progress" filed on 29 July 2013, the report to the Police Directorate of the Ministry of Internal Affairs (MoI) of Montenegro against N.Š. from Podgorica, because he has on several occasions, in July 2013, sent a series of abusive and threatening messages pertaining to the LGBT people in general and to the Z.C., a member of the LGBT community . N.Š. has sent the following message: *"Faggot, I will fuck your mother, you ugly fuck, we will dig you out! My friends will eliminate you from the face of the earth, you fucking abortion, fuck you! This is just a threat, and you will see what awaits you, and what me and my friends from Block 5 are ready to do. We are the children of Podgorica, and we like pussy. I am a public person, and I was the first in Montenegro that raised his voice against you, because for me and for 99% of the citizens of Montenegro our mother, what do you do to the least scandalous. I honestly do not care what you do in your private life, but why don't you walk with pride? What pride fag? "* "You sick person, I will slaughter your family, I will not fuck them, because those who have made you

are also sick" ... "We are waiting for you!!!"²⁷

A description of all actions taken by the police and the prosecution: Police directorate has of the MoI of Montenegro informed the NGO "LGBT Forum Progress" that is acting on this report, against N.Š. on 14 11 2013, (after three and a half months of the submission of the report) filed a request for initiating of the misdemeanor proceedings, Up.br. 03 - ***, under Article 7, paragraph 1 and Article 8 of the Law on public order and peace because he has through electronic communication networks from his profile by a comment sent a insulting and threatening content on official page on the network "Facebook" NGO "LGBT Forum Progress". In this case, as the police said, the deputies of the Basic State Prosecutor's Office (Basic State Prosecutor) in Podgorica familiarized with the case and assessed that there are no elements of a criminal offense.

More information: How is the public debate in the LGBT group, NS indicated that the police filed misdemeanor charges against him without establishing identity, NGO "LGBT Forum Progress" filed a complaint against the police officers for unprofessional application of police powers. Council for Civil Control of Police, which was lodged complaint, requested the declaration of the Director of Police regarding the objections of the NGOs and demanded a complete supporting documents relating to the case. The requested documentation was not submitted to the Council. Director of the Police precisely presented all measures and actions taken by the officers of the police station for public order and peace. Officers of the Police Station, who had previously received explanation of the Deputy ODT in Podgorica that the actions of persons N.Š. had no elements of criminal acts prosecuted ex officio, filed against the person N.Š. request for misdemeanor proceedings to the Court for violations due to misconduct under Article 7, paragraph 1 and Article 8 of the Law on Public Order and Peace. Minor Offences Court, according to the notice of the Director of Police, brought the decision, 18 September 2015, by which it is halting procedure against N.Š. on the grounds that it is obsolete and therefore the misdemeanor proceedings can not be held. Director of the Police informed the Council that the officers of the police station for public order acted in a timely and undertook all measures and actions within its competence according to the report of NGO "LGBT Forum Progress". The Council concluded that the police officers of the police station for public order and peace, after the report of

²⁷ Sports journalist N.Š. January 2016 only challenged his identity and participation in the registered activities. He said that the LGBT community is leading a campaign against him. In this connection between him and the director of NGO "LGBT Forum Progress" is guided by the controversy that accompany you through these links. Director of the NGO invited him to jointly file a complaint against the authorized police officers who worked on the case for unprofessional conduct and falsely established identity. N.Š. refused. NGO "LGBT Forum Progress" has filed its own complaint with the civil control of the police.

NGO "LGBT Forum Progress" acted professionally and in a timely manner until the request for misdemeanor proceedings against persons N.Š. from Podgorica. However, the Council has assessed, examining the documentation of the Court of misdemeanors, that the Police or police officers did not act professionally and in timely manner in terms of securing the participation of the defendant in the proceedings due to which legal consequence of limitation has arisen. Police officials have not implemented the four commands for bringing in the person N.Š. issued by a judge of the Court of misdemeanors.²⁸

A comment of all actions undertaken by the prosecution: In this particular case we believe that the state prosecution had grounds to prosecute criminal of N.Š., especially considering the fact that this is a public figure - a sports journalist. Threats of N.Š. towards LGBT activists Z.C. were so much intensity that the injured party caused fear and concern for life that was serious and thus fulfilled the requirement that the offense is prosecuted. We believe that in this case, there are also elements of the crime of "endangering the safety" (Article 168), and of the crime, "racial and other discrimination" under Article 443 of the Criminal Code of Montenegro.

Conclusions and recommendations regarding this case: It is noticeable that in dealing with cases of violence and hate speech against the LGBT community in Basic State Prosecutor in Podgorica, in almost all cases, the same deputies, pleaded there are no elements of a criminal offense. This is contrary to the practice in other basic state prosecutor's offices and practice Basic State Prosecutor in Podgorica from 2014. We recommend that these professionals, who worked on a number of cases in 2013, refer to additional specialist training and sensitization on this subject.

CASE:

**N.M. FROM CETINJE THREATENED TO ATTACK
AND KIDNAP THE LGBT ACTIVIST (2013)**

A short description of the case: In early September 2013, a non-governmental organization (NGO) "LGBT Forum Progress" reported to the police N. M. (1989), Cetinje, because he has via the social network "Facebook" on the official website of the NGO, threatened its then director Z.C. .. He wrote: "We are waiting

²⁸ Available in the "remarks, recommendations and reports" on the website of the Council for Civil Control of Police - www.kontrolapolicije.me

for you degenerate! 'You'll be attacked and possibly hijacked. Beware hile you're still in alive! ". Z.C. was particularly disturbed by the knowledge that this is a person who has been repeatedly prosecuted for various crimes and for some of them convicted and sentenced.

A description of all actions taken by the police and the prosecution: N. M. has in a written statement admitted sending abusive or written statements. According to the order of the Basic Court in Cetinje his apartment has been searched, in which a telephone device from which messages are sent has been confiscated . By order of the Basic State Prosecutor (Basic State Prosecutor) in Cetinje, a telegram was sent to the Security Centre Podgorica about taking additional statements from the damaged Z.C. , so it would be possible to make the qualification . The police administration was informed about the contact data Z.C. NGO "LGBT Forum Progress" has announced that according to its knowledge Z.C. never, any occasion, has not contacted by the Montenegrin state authorities. According to the available information the procedure is still in progress.

A comment of all actions undertaken by the Prosecution: We believe that this case has the element of the criminal offense of "endangering the safety" (Article 168), especially when one takes into account the fact that N. M. admitted sending offensive and threatening words. Also, without taking additional statements by ZC, indisputably the elements of the crime of "racial and other discrimination" are acquired under Article 443 of the Criminal Code of Montenegro, as Montenegro has ratified key international agreements on human rights, such as: the European Convention for the protection of human rights and Fundamental freedoms, the International Covenant on civil and political rights and other instruments.

CASE:

**R.F. FROM BAR INSULTED LGBT ACTIVISTS
IN PUBLIC PLACE (2013)**

A short description of the case: On Republic Square in Podgorica, 14 February 2013, a meeting was exceptionally attended meeting on the occasion of preventing violence against women, as part of the global campaign. The event was attended by a delegation of the only transparent LGBT group in Montenegro, NGO "LGBT Forum Progress", clearly marked features of the LGBT community. Near the makeshift stage there was an incident which was registered by the police officers present. The young man, who was later identified by the police, asked the

present LGBT activists to surrender to him rainbow flag. He said, "Give me that fagot flag so I could burn it" All have protested and asked him to leave. The young man remained in vicinity and continued making fun of them. He has constantly interfered with their participation in the public gathering. After just ten minutes the young man suddenly attacked and pushed one of the activists trying to take the LGBT flag from his hands. The LGBT community member managed to defend himself with the help of others and to seek shelter nearby the police officers, whom he had informed about the continuation of the incident.

A description of all actions taken by the police and prosecution: Police informed the NGO "LGBT Forum Progress" that in relation to the incident, Deputy Basic State Prosecutor (ODT) in Podgorica pleaded that the presented action does not have elements of criminal acts prosecuted ex officio as well as characteristics of the offenses in the area of anti-discrimination law. Police directorate has informed that the attacker has been identified and that it is R.F., student from Kragujevac, Serbian citizen, residing in Bar against which a request initiating misdemeanor proceedings on reasonable suspicion of having committed an offense under Article 19 of the Law on Public Order and peace - insults on the basis of personal characteristics, has been filed. In mid-April 2014 "LGBT Forum Progress" from the Police Directorate was informed that by the Regional Magistrate Court in Podgorica adopted resolution, PP No. **** / 13-5 from 23.05.2013. , whereby the R.F. fined in the amount of 250 euros with payment of litigation costs in the amount of 25 euros. The decision became final on 18 September 2013.

A comment of all actions undertaken by the police and the prosecution: Author team believes that in this particular case the elements of the crime of "racial and other discrimination" under Article 443 of the Criminal Code of Montenegro have been achieved, as Montenegro has ratified key international agreements in the field of human rights, such as the European Convention for the protection of human rights and Fundamental freedoms, the Covenant on civil and political rights and others, which prohibit discrimination on any grounds, including on the basis of gender identity and sexual orientation, and to prevent the public assembly (Article 181st).

CASE:

**Z.D. NIKŠIĆA PHYSICALLY ATTACKED
A MEMBER OF THE LGBT COMMUNITY (2013)**

A short description of the case: After Budva pride parades LGBT activist groups have registered increased violence against members of the LGBT community. Citizen Z. J. was attacked in Niksic on 6 August 2013, in a bar "Jazz". Some guests have bothered his way of dressing and a silk scarf, "in more colorful", he was wearing around his neck. They called him "fagot" and attacked him. To receive his medical treatment at the Institute for Emergency Medical Services, where he stated that he sustained minor injuries. NGO "LGBT Forum Progress" reported the incident to the police. This citizen felt a heightened fear of movement in the city, due to the incident, especially after learning that the attackers made further inquiries about him.

A description of all actions taken by the police and the prosecution: Officials of the Ministry of Interior - the Police Directorate, Security Centre Nikšić, the Regional body for misdemeanors in Niksic, after consultation with the Deputy Basic State Prosecutor (Basic State Prosecutor) in Niksic, on 17 September 2013 submitted a request for initiating misdemeanor proceedings against the Z.D. (32) from Niksic, on reasonable suspicion that, to the detriment of Z. J. from Niksic, committed the offense referred to in Article 10, Paragraph 2 of the Law on Public Order and Peace - physical assault. Z.D. was, after conducting misdemeanor proceedings in the Regional body for misdemeanors in Niksic, fined in the amount of 350 euros.

A comment of all actions undertaken by the police and the prosecution: the Law on Public Peace and treats physical attack as a misdemeanor. However, given the intensity of the fear of the victim, the total present rhetoric, which was motivated by his diversity but also because of threats that have created doubts that the attack will happen again, there are certain subjective elements of the case to be treated as criminal offense by the Basic State Prosecutor in Niksic. Given that in this case there is no list of injuries, and documents indicating that the Z. J. sustained light bodily injury, it is our opinion that this case could also have been prosecuted criminally because the actions of Z.D. acquire the elements of the criminal offense of light bodily injury, endangering safety and violent behavior.

Conclusions and recommendations regarding this case: The case almost identical to the "P.R. from Podgorica repeatedly attacked LGBT activist and insisted that they leave the nightclub." case.

CASE:

M.J. FROM BAR THREATENED THE LGBT ACTIVISTS (2013)

A short description of the case: Non-governmental organization (NGO) "LGBT Forum Progress" has reported to the Police Directorate, on 17 August 2013, an unknown person, who via social network "Facebook", threatened Z.C., the organizer of the first Montenegrin pride parade and then director of this NGO. "Facebook" profile of this person contained many elements of identification, which was indicated to the police. One of the messages, sent to Z.C., was 'Z.C. nobody prohibits anyone from fucking in the ass as much as you like but it is not enough for you, instead you want to educate the children to be sick as you are. Therefore, we will crack your heads open open in this gathering I will personally take care of yours !!!!'.

A description of all actions taken by the police and the prosecution: Police managed to identify this person. It is a M.J. from Bar, a member of the National Movement "Dinara Drina Dunav". He told police in a statement, that threats are not "serious" and that they are a "product of a joke".²⁹ Deputy Basic State Prosecutor (Basic State Prosecutor) in Bar has informed the police, despite the fact that she knew that he was not in the country, it is necessary to examine Z.C. "In order to fully comment on the possible existence of a criminal offense"³⁰. The NGO "LGBT Forum Progress" expressed their dissatisfaction with this process completely, especially with the police which did not file a misdemeanor charge

29 Otherwise the NGO "LGBT Forum Progress" is fully expressed dissatisfaction with the way the police officers of the security center (CB) Bar acted on its applications. Reported is a reasonable suspicion that the acting police officers directed registered citizens how to take a stand. This is supported by the fact that they all signed, residing in Baru, declared that they were joking against nobody misdemeanor or criminal proceedings. Such a case has not been recorded in other organizational units of the police. For these reasons, was scheduled at the end of April 2014, a protest performance, titled "A hate crime is not a joke", in front of the CB in Bar which this NGO expressed due to security risks, and as indicated pressure from the police canceled. For more information about it visit: <http://www.vijesti.me/vijesti/prvi-lgbt-performans-u-baru-govor-mrznje-nije-sala-198342> <http://lgbtprogres.me/2014/04/poziv-na-javno-okupljanje-lgbt-zajednice-u-baru-performans-govor-mrznje-nije-sala/> <http://www.vijesti.me/vijesti/lgbt-performans-u-baru-otkazan-iz-bezbjednosnih-razloga-198969>

30 Official measures and actions in this particular case have begun to take three months from submitting report. NGO "LGBT Forum Progress" Police Directorate has submitted the address and contact details Z.C., which was already at the time of the request Basic State Prosecutor in Bar granted political asylum in Canada. According to information, NGO "LGBT Forum Progress" Z.C. was never contacted.

towards any person, unlike in other municipalities.³¹

Comment all actions undertaken by the police and prosecution: The authors are of the opinion that the analysis in the present case, the police and the State Prosecutor's Office did not take any actions and measures within its legal powers, and that this case should be criminally prosecuted for the criminal offense "racial and other discrimination" or take a statement from ZC and then assess whether it is a criminal offense "Endangering Safety" from CLME ³².³² BSP in Bar had to had to bare in mind that words such as "kill" and "slaughtered" create a sense of fear and vulnerability with any person to whom it it was intended, and bearing in mind the circumstances under which they are addressed, as well as the persons to whom they are addressed, serious fears that have caused, but also the fact that previously held, pride Parade in Budva resulted in an increased intensity of the violence, threats and insults against the LGBT people, which all together give space for initiating criminal proceedings, which could eventually create in citizens, or in individuals a sense of the seriousness of the consequences of their publicly spoken words and calling for a public lynching and public action against groups that have different properties with respect to them .

Conclusions and recommendations regarding this case: In this example, was obvious failure of the police primarily in treatment whose actions might impact on the handling Basic State Prosecutor in Bar. Reported person, M.J., clearly emphasizes that "made for their C. (LGBT activist) he personally", but that others will not do better to be at the Pride Parade in Podgorica. The examination of the Z.C. it was not necessary to initiate criminal proceedings instituted ex officio, so the conclusion remains that the competent prosecutor was not interested to start the proceedings.

31 Officials CB Bar, acting by telegram CB Podgorica SKP number 64-22 / 23 - **** from 03.10.2013.g, attached to which was submitted reports of the the Executive Director of "LGBT Forum Progress" against fifteen persons, namely: M.B., D.L. , D.P., A.T., V.N., D.A., B.G., D.K., V.V., M.J., B.M., M.R., A.E. i M. L. In the official premises of the CB Bar invited all the persons from whom they collected information as citizens of the circumstances of sending of offensive and threatening comments, addressed to members of the LGBT community, where they have all stated that the comments do not relate to any kind of threat, but to all above comments are seen as a form of jokes; Information the Police Directorate; LGBT FP Documentation

32 We have found some shortcomings in the work of the Basic State Prosecutor's Office in Bar, for the reason that, unlike some threats through social networks and hate speech, in this case, the perpetrator clearly emphasizes that "he will take care of Z.C. personally" but also that the others who attend the pride will not go any better The hearing of Z.C. was not necessary in order to start criminal proceeding ex officio, so that the conclusion is the Prosecutor was not interested to start the procedure or he was looking for a reason to mark the case with "there are no elements of criminal offense". We state this with a certain reserve, due to reasons that we can not neglect the claims of the civil society that the acting police officers intentionally stated the statements of the reported citizens in order to free them of even minimal legal prosecution.

**CASE:
DEATH OF THE LEADING LGBT ACTIVIST
ANNOUNCED BEFORE THE FIRST PRIDE PARADE
IN MONTENEGRO (2013)**

A short description of the case: Non-governmental organization (NGO) "LGBT Forum Progress" reported to security center (CB) Budva distribution, obituaries for Z.C. , Tadashi-year-leaders of the NGOs and the main organizer of the first Pride in Budva. On 23 July 2013, the Z.C. was informed that in Budva, on places provided for it, his obituary poster was set through which the public is informed about his alleged death. Poster of the death notices Z.C. , in their form and content did not differ from standard death certificates. It contained his personal information and photograph. Death certificate was then disseminated over the Internet and its distribution was directly related to the organization of the Pride Parade in Budva. In the police report filed Z.C. has clearly stated that it feels threatened, otherwise he would not have submitted the report, and it is considered a "direct threat to life and the announcement of violence at the Pride Parade. "

A description of all actions taken by the police and prosecution: On the occasion of this report CS Budva has as late as in April 2014 informed that a police officer of the Criminal Police Station A.T. spoke with the Deputy Basic State Prosecutor in Kotor Ž.P. "Which stated that in the event itself there are elements of the criminal offense of endangering the security referred to in Article 168 of the Criminal code, but that there is no subjective element of the crime because Cimbajević through the media declared that the publication of obituaries did not scare him, and that there are no elements for further action in connection with the event. " On the occasion of these claims from BSO Kotor, NGO "LGBT Forum Progress" has requested the opinion of Z.C. who has in a written statement entirely dismissed prosecution claims. *"It certainly was not pleasant to see a death certificate but I said that it will not scare us or stop the organizing of the Pride. Could I really, regardless of personal fear, stop everything and state that the Pride will not take place ?"I had an obligation, moral and activist, not to show publicly any fear although I have, for over three years on a daily basis feared for my life. All of this has later, because of this work of the Prosecution, or rather reluctantcy of the Prosecution, caused my departure from the country".* NGO "LGBT Forum Progress" announced that the State Prosecutor's Office in this example showed complete indifference to protect the LGBT community. Z.C. gave numerous statement on this occasion but none of them was interpreted by anyone, in a way that the Prosecutor of Kotor did. *"It would have been professional that the BSP contacted our organization, "opinions are in this NGO. Z.C. has, on April 2014, addressed the Supreme*

State Prosecutor of Montenegro with a complaint about the work of Deputy Basic State Prosecutor (ODT) in Kotor Ž.P. demanding the initiative for his dismissal for negligent performance of its functions, insulting the reputation of the prosecutorial function and organization, and especially because of unprofessional and negligent work "

A comment of all actions undertaken by the prosecution: The authors are of the opinion that the State Prosecutor's Office in this case failed to take all actions and measures within its legal authority to criminally prosecute this case. In our opinion, and this case acquired the essential elements of the crime of racial and other discrimination and endangering safety, due to the fact that his statement was not interpreted adequately and with enough knowledge by the Deputy Basic State Prosecutor from Kotor. The authors share the view with the NGO "LGBT Forum Progress" that the Basic State Prosecutor in Kotor should achieve direct contact with the victims. The formation of professional opinions and decisions on the basis of partial and selective interpretation of media is not a good approach especially since the State Prosecutor's Office did not react differently in those cases in which the existence of the subjective element of the offense was not questionable.

Conclusions and recommendations regarding this case: the State Prosecutor has the obligation to fully investigate allegations of criminal charges before a decision on further engagement in this particular case is made. The fact that, in case of publication and dissemination of the obituaries for the Z.C. , the injured party stated that "the death certificate is not a deterrent and for him and will not to terminate his further public work", does not justify the decision on rejection of criminal prosecution of the case. It is necessary, and the law strictly requires that the decision of the State Prosecutor is solely based on, primarily, the allegations in the report, and gathered information and evidence, not on media or similar statements of the injured party, and others.

**CASE:
V.M. THREATENED TO THE LGBT COMMUNITY
AND TO THE POLICE (2013)**

Short description: The former director of the Non Governmental Organization (NGO) "LGBT Forum Progress" Z.C. received, after the Pride parade in Budva, disturbing and threatening message from a person which he did not know and which, later, police have identified. The message which this person sent was: "Are you insane, why you are doing this? Are you aware of the consequences? Remember this well... You are not going to walk through the center of Podgorica... I heard that you have good cooperation with the Minister of the interior, hahahah, they do not have enough people to fight against us, we have too much more Molotov cocktails for you... See you in October!" The application was filed to the Police Administration, Security Centre Podgorica, on 17th August, 2013. In the application, Z.C. said that he was feeling upset and that he feared for his own safety.

A description of all actions taken by the police and prosecution: Police Directorate informed the applicant from the NGO "LGBT Forum Progress" that they identified V.M. from Podgorica, against whom they received the application for initiation of offence procedure under the article 8 of the Law on Public Peace and Order³³. State Prosecutor Office (SPO) in Podgorica declared, on the occasion of this application, that there are no elements of the offence.³⁴

Comment of the all actions undertaken by the prosecution: In this case, State prosecution did not make the mistake and the application could be subsumed under the Article 8 of the Law on Public Peace and Order. However, state prosecutors should take into the consideration that a person, among the threats addressed to Z.C., referred also to the state bodies, i.e. to the Police and that Z.C. seen this threat very seriously, having in mind the circumstances and previously held, the first Pride parade, which was the target of serious attacks and extensive disturbance of public peace and order. Also, this person was known to the Police from some problematic situations, which were even followed by the media, and competent prosecutors could take that into consideration. It should also note the time gap between the application submitted on 17th August, 2013 and the submission of the request for initiating criminal proceedings, which occurred three months later.

33 At 12th November, 2013, the request for initiating criminal proceedings PD.n.03.***, at 12th November, 2013, was submitted against V.M. from Podgorica, on the basis on Article 8 of the Law on public peace and order

34 The same person was known for the other incidents, described at the press, which among the members of the LGBT community, and especially to Z.C. who was directly threatened by V.M., caused heightened fear and sense of insecurity. This is one of the threats which, according to his own testimony, further motivated Z.C. to leave the country and seen political asylum in Canada.

**CASE:
STUDENT OF THE HIGH SCHOOL FROM BERANE
THREATENED TO THE LGBT PERSONS (2013)**

Short description of the case: Nongovernmental organization (NGO) "LGBT Forum Progress", headquartered in Podgorica, filed the application against V.D. from Berane because he, at the social-media network Facebook, at the official page of this NGO, published the following comment: "The God created Adam and Eve, not Adam and Steve!!! Motherfuckers! We will be waiting for you! We just want to kick your asses!!! We are waiting for you in all cities of Montenegro, because that fagot said that you are going to walk through all the cities of Montenegro! Go do something, you poor, take care of the children, and do not lose your time on Facebook! Death to the gays!" This announcement, or threat, according to the appeal, was taken seriously by the members of the LGBT community, because the organization of the Pride parade at the July, 2103, encouraged the intensity of the threats, offences and violence against LGBT persons. Please note that the page, where this comment was published, is public page. The page is followed by numerous important persons like representatives of the embassies, journalists, activists of the civil society, and also the members of the community which, by this statements, can be exposed to announcements of violence and hate speech and be discouraged about their activism in the community. This caused the feeling of the fear among a great number of them and affected them not to take part at the peaceful public gatherings of LGBT community. The applicant also added the link of the profile of this person at the network Facebook, in order to ease the identification. Also, among the application, screen-print of his comments and threats was also given.

A description of all actions taken by the police and prosecution: This NGO applied the application to the Police Department and it was not recognized as criminal act. Police Department informed competent Basic Prosecutor's Office (BPO) about the application. In this case, the answer was given by the BPO Berane. This BPO rejected the application of the NGO "LGBT Forum Progress" against V.D. from Berane, the criminal offence "endangering security", according to the provisions of Article 65, paragraph 1, of the Act on the treatment of juveniles in criminal proceedings; because the reported act is not criminal offence and they said that this NGO has right to demand a judge for minors of the Basic Court in Berane to decide about starting proceedings against the reported minor³⁵. This Ngo did not reported that demand with the explanation that they for a long time

35 Answer from BPO Berane KTM number **/2013 from 15th November, 2013, LGBT FP Documentation

insist on changes in educational system which will help young people to develop tolerance and understanding for human rights of LGBT persons.

Comment of the all actions undertaken by the prosecution: We believe that, in the particular case, the State Prosecution had failed take all actions and measures within legal powers to processed V.D. from Berane for the criminal act of “racial and other discrimination” or “endangering security” of the Criminal Code of Montenegro.

CASE:

**L.I. FROM PODGORICA BEHAVED VIOLENTLY
AGAINST LGBT ACTIVISTS (2014)**

Short description of the case: At the 1st March, 2013, about 2 AM, in downtown Podgorica, in front of the bar “The Nag’s Head”, LGBT activist S.D. and M.F. were attacked. Namely, the damaged were together at the bar and, while S.D. was exiting the toilet, one young man said “well dressed the military printed sweater and we quit the army long ago”. The damaged S.D. answered, smiled, and together with M.F. left the bar. While taxi was arriving, someone approached him from behind and hit him with the fist in the left arcade and damaged fell and lost his consciousness. Among that, the same person, later identified as L.I. from Podgorica, hit M.F., after what the police came and arrested him. LGBT community and civil society strongly reacted in public about this attack, which could contribute to the increased attention in treatment of the competent authorities.

A description of all actions taken by the police and prosecution: Police responded quickly after report and arrested the attacker at the scene. The competent public prosecutor, after collected information, raised the indictment before the Basic Court Kolasin against L.I. from Podgorica, for the criminal offence of violent behavior from the Article 399 of the Criminal Code of Montenegro, and the Court sentenced him to a conditional sentence which established a penalty of imprisonment of 3 months and at the same time determined that it will not be executed if the accused do not commit a new criminal offence within one year.

Comment of the all actions undertaken by the prosecution: The above case represents a successful example of prosecution of the attacks on LGBT people, through the cooperation of the competent authorities, in particular the police and Prosecutor’s Office, who gave their full contribution in detecting, tracking down

and punishing the perpetrator of the crime, which like every previous, resulted from hate against the LGBT community and the discrimination of this group.

CASE:

**P.R. FROM PODGORICA ATTACKED LGBT ACTIVIST
MULTIPLE TIMES AND REQUESTED HIM TO LEAVE
THE NIGHT CLUB (2014)**

Short description of the case: Citizen P.R. several times attacked, insulted and threatened twenty-years-old LGBT activist from Bar, S.M., who was at the faculty in Podgorica, and NGO "LGBT Forum Progress" reported him to the police. At the night between 22nd and 23rd February, 2014, LGBT activist went out with his friends in nightclub "District" in downtown Podgorica. One young man, which S.M. earlier reported because of the attack at the gas station Zlatica, also in Podgorica, and once while he was walking, approached their table. The young man, later identified as P.R., approached in extremely aggressive way, pushed him and yelled at him, telling him "So this is where you go out, you gay pussy" and "Come here with us, you fagot". After that, according to the allegations from the report, he took him by the hand and was trying to pool him closer and closer and take him out of the club. After that, friends of the LGBT activist involved, put themselves between them in order to stop further physical contact. P.R. continued to be aggressive. He continued to yell despite the intents of his friends to stop him. In the report, LGBT activist said that he was afraid for himself, for his partner and his friends, so he went out of the club and went home. About the incident, in the Police station for public peace and order, at the beginning of March, 2014, announcements of the persons who were with the LGBT activist and from the LGBT activist himself, were taken. Witness J.R. said to the police that despite her trying to talk with him correctly and kindly, P.R. continued with curse and threats. "He was determined to kill our friend if I do not take him out of the club" she said in the statement given to the police. Witness D.R. said to the police that the reported young man claimed that "Gays will not stand in the same bar with us". "I succeeded to take my friend from the hands of this violent man, and we had to leave the club in order to not experience more discomforts", he said to the police. In the report filed to the police was noted that this was third time that the same person attacks this LGBT activist, and that the motive was the fact that he was the exposed member of the LGBT community. The police was asked for the information about the possibility of restraining order, given that frequent attacks do not make him feel safe at any moment. The earlier attack, also reported to

the police, occurred on 12th December, 2013. LGBT activist was with his friends, going home from the private party in hostel "Izvor". At the gas station "Eko Petrol" he stopped to buy cigarettes. Young man who worked at the counter greeted him in a harsh way. Instead of selling him the cigarettes he asked him about his last name. LGBT activist responded and asked why he was interested in that. Young salesman asked him "Are you gay". LGBT activist responded affirmatively and asked why that was important. Young man said "You are lucky because I am at the work tonight". "I said nothing and avoided the conflict. I paid and went out." When he was getting out from the gas station, the same man who was at the counter called his coworker which was at the other room and said to him: "Come to see a fagot". LGBT activist S.M. said that he was afraid about his further acts, immediately left the object and entered in the vehicle of his friends.

A description of all actions taken by the police and prosecution: Police Department informed NGO "LGBT Forum Progress" that they filed the request for initiating criminal proceedings on the ground of Article 19 and Article 10 of the Law on public order and peace against P.R. on 8th April, 2014. Earlier, the deputy of Basic State Prosecutor (BSP) in Podgorica said that this case had no elements of criminal act.

Comment of the all actions undertaken by the prosecution: Considering that this was a concrete case of several attacks which occurred against the same, publicly exposed activist, prosecution in the concrete case did not take all doings and measures in order to prosecute these cases. In this particular case, there are elements of "endangering security" (article 168). Also, we think that there are elements of other criminal acts: "racial and other discrimination" from the Article 443 of the Criminal Act of Montenegro, because Montenegro ratified key international treaties on human rights, such as the European Convention for Protection of Human Rights and Fundamental Freedoms, the Covenant on Civil and Political Rights and other instruments.³⁶

36 Having in mind the fact that that was the third time that the same person threatens and attacks LGBT activist, and that it was third report against the same person, we think that the State Prosecutor had enough space for criminal charge and for qualification of the act as a criminal offence of endangering safety from the article 168 of the Criminal Law, considering that the person P.R. threatened to attack the life and body of S.M. and that the damaged suffered the big fear for himself and for friends, which is enough to complete basic condition for qualification.

**CASE:
MEDICAL WORKER ACTED NEGLIGENTLY
AGAINST THE LGBT ACTIVIST (2015)**

Short description of the case: Thirty-year-old LGBT activist had, on 25th December, 2014, regular medical examination in the Clinical Center of Montenegro (CC). the doctor who operated him and who was tracking his recovery, was on the vacation, and he was referred to the other doctor. After twenty minutes of waiting, he entered the surgery unit. He was said to take off all of his clothes, what the damaged did. While he was laying on the bad, the doctor, which he taught was named Z. (because that was written at the door), from the other part of the room said: "I am also from LGBT community and I have two boyfriends. One of them I am going to marry and the other to leave." The damaged asked the doctor was that referred to him, which he negation, but it was clear to the damaged that he was mocking his sexual orientation, which he assumed for reason of his medical treatment and linking him with the media exposing. After that, he approached to him and in an extremely rude manner tore the strings from the earlier surgery, as with both hands, without gloves, grabbed and parted his left and right buttocks, which is why the injured felt terrible pain. After the nurse put him new, dry gauze, he asked the doctor when he can come back for the rewinds, and doctor told him that it would be better to go to the health center across the river Moraca. Damaged said that he had no selected doctor, and the doctor said that it was not his problem. After coming home, he felt strong pains. He noticed that he was abundantly bleeding, because of what he was changing gauze fifteen times and went for a review. However, they said that the clinic is not working and that, after being discharged, he has no right to bandage at the clinic. LGBT activist, before the reporting the appeal, informed if Dr.Z. was really the member of the LGBT community (in order not to, how he said, commit a sin by reporting him) but, his doubts were justified, because nobody heard about him, and later he remembered that he heard him saying that he had a family because he was discussing about decorating a Christmas tree with his daughter.

A description of all actions taken by the police and prosecution: damaged thirty-years-old LGBT activist, through the NGO "LGBT Forum Progress", whose

member he was, reported the case to the police and competent prosecutor.³⁷ Basic State Prosecution (BSP) in Podgorica called the damaged on identifying of the face and asked for the medical report and opinion of the medical expert from the profession. From the stated record of the Dr.N.R. from the 16th February, 2015, shows that newly created wound may arise as a result of the rougher handling during bandaging of the patient and that the daily activities of the damaged could weaken the place where was a new wound, so that in this case there was not necessary that the force acting on the emergence of these new wounds have high intensity. However, despite all that, according to Dr.N.R, new wound made temporarily worsening health condition, which was the base for raising indictment by the prosecution and criminal case of Z.R., medical technician. Competent prosecutor, having in consideration given circumstances, submitted indictment proposal to the Basic Court in Podgorica, on 25th February, 2015, for the criminal offence negligent provision of medical assistance under the Article 290 of the Criminal Code. The process is ongoing.

Comment of the all actions undertaken by the prosecution: the damaged and the NGO "LGBT Forum Progress" said that they were fully satisfied with intensity and quality of the communication with BSP in Podgorica. Based on analyses of the essential details available on this case, we can conclude that the role of the prosecutor as a carrier of the investigation had the full expression, and that the authorized police officers expressed corresponding results in their operations.

37 Previously, the competent disciplinary body Director CC, after the procedure and held a disciplinary hearing, on 12.02.2015.godine, adopted a decision on establishing disciplinary responsibility employee Z.R., medical technicians, the Surgical Clinic Clinical Center: "Employees responsible because the days 25.12.2014.godine, indecent treated the patient, which has done violation of the duty in Article 41 Branch collective agreement for health activity and Article 17, item 7 of the Agreement on mutual rights, obligations and responsibilities. For the committed violation of duty the body will appoint a disciplinary measure, a fine, in the amount of 20% of earnings in the month in which the decision was pronounced in duration of three months' standing at the end of the decision No. 03/01 - ** / 7 from 23.02.2015. years

CASE:

M.Č. FROM PODGORICA

JEOPARDIZED HIS EX-WIFE AND HER PARTNER (2015)

A short description of the case: On 28 January 2015, in Podgorica, M.Č. from Podgorica has jeopardized the safety N.Č. and J.G., for which he knew were members of the LGBT population, in a way that he approached the aggrieved N.Č., and because of hatred towards her sexual orientation, grabbed both her forearms with his hands, strongly pulled her and threatened with the words "I'll kill you". Then he proceeded to threaten her by saying "Tomorrow I'll go to B. to leave her jobless. I'll throw her off a bridge". These words are also a result of hatred toward her sexual orientation, and were directed at her partner J.G. To the victims, all of this evoked feelings of fear and vulnerability, which is why they reported the event to the police. Also, the accused carried with him unauthorized ammunition - category B-5 bullets for a gun caliber 9 mm, for which he did not possess a weapons permit, which has, in this case, created suspicion that the accused will use the weapon against life and body of the damaged. Lesbian couple approached the NGO "LGBT Forum Progress" and asked for legal assistance. They announced that they have been under pressure and threats are about half a year. It all started when the M.Č. learned that his ex-wife romantically involved with N.Č. Days before the attack he intensively threatened them over the phone, which was also reported to the police. He particularly threatened his ex-wife due to the contact of their children with her partner, and called LGBT people sick people and said that he "will not get his hands dirty on such persons but that there are people who will do it for him." On the same day when he was reported to the police because of menacing messages, he physically assaulted N.Č.

A description of all actions taken by the police and prosecutors: Through the NGO "LGBT Forum Progress" the application was submitted to the police and they immediately conducted operations of detecting and finding the accused. The police has recommended that the victims got placed in the LGBT Shelter³⁸. The NGO and the victim's point out that, on the occasion of the incident, they established high-quality communication with the police, and especially with the State Prosecutor's Office. The appropriate prosecutor filed a bill of indictment to the Basic Court in Podgorica, and a judge ordered the accused to be remanded to custody, considering the seriousness of the threats received by the injured parties, which indicated that, if released, the accused would make his threats come true,

³⁸ The LGBT shelter hosted a lesbian couple with two children who got accepted in this service received by the recommendation of the police as a result of violence and death threats to one of the partners by her former husband.

although he denied that he threatened the injured N.Č. and grabbed her forearms and strongly pulled her, and he did not know that the ammunition was in the pocket of a jacket, as he does not wear the same very often. On the main trial, the court rejected a defence attorney's M.Č. solution to terminate custody because, in the view of the court, there are still reasons for the custody.

Comment on all the actions undertaken by the prosecution: The State Prosecutor's Office made a significant step forward by recognizing the elements of criminal responsibility in the present circumstance. The prosecution, through the indictment explicitly recognised the criminal responsibility of the perpetrator, burdening him with the criminal offense of endangering security from Article 168, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Montenegro. Also, the Basic State Prosecutor in Podgorica has charged him with the crime of illegal possession of weapons and explosive materials under Article 402 paragraph 1 of the Criminal Code of Montenegro. Based on the analysis of the essential details of this case, it can be concluded that, to the fore came the role of prosecutor as the holder of the investigation and that the authorized police officers have expressed themselves in operational work with the corresponding results, in terms of identifying and prosecuting perpetrator of this offense.

Conclusions and recommendations regarding this case: In the specific case the communication was professional and at the level of international standards. NGO who filed the complaint, said publicly that they are provided with information on qualifications of the case as well as the bill of indictment that are encouraging and historic. In the present case, the authors recorded an exceptional professionalism and sensibility state prosecutors, particularly the proposal that the accused be detained, given the serious possibility of threats sent to the injured parties, which are appreciated in the context of the objective behaviour of the defendant, which is reflected in the continuous breach of physical integrity of the victims, because of their sexual orientation, indicating that the release to freedom would make his threats come true. Object-experience is significantly advanced in relation to the experience with cases from previous years. Also, we note that the quality indictment was prepared and submitted in the short term, but that the main trial before the Basic Court in Podgorica was due in an also short deadline (20 February 2015) in relation to the filing date of the police and ODT in Podgorica (28 January 2015). This is the best state prosecutor handling the case of 2010, when the related subject area covers the work of public prosecutors.

**CASE:
SECURITY WORKER AT THE WELL KNOWN NIGHTCLUB
DISCRIMINATED AGAINST A GAY COUPLE (2015)**

A short description of the case: Gay couple was beaten and kicked out from the famous night club "Top Hill" in Budva on 16 August 2015. at about 4 o'clock in the morning. Same-sex couple, who were spending their vacation in Budva, had fun and enjoyed great night out at this famous club. At one point, openly, without concealment, they kissed a few times which caused revolt and homophobic violence by one of the security guards . He swore at them and insulted them and repeated that "gay people will not be tolerated in the club." During the violent ejection from the club German citizen was slapped and the Montenegrin citizen was kicked several times to the area of the back of the head. Security guard was subsequently approached the rest of the persons with whom the gay couple were spending the night. He turned to the only man among them, and asked him, "Are you a fagot." A young man, who was accompanied by his girlfriend, said he was not but the security guard grabbed his arms and kicked them both out of club. They offered no resistance but instead, they have called the Budva police, from the spot, at exactly 4:10 am. The police they said they were not able to come to the site, and that instead they should come to the police station and file a report. The couple had immediately informed the non-governmental Organization (NGO) "LGBT Forum Progress" about the attack, by one of the attacked young men, who is a member of the organization. Afterwards, the organization has notified Police, Ministry of Interior, heads of government about the incident.

A description of all actions taken by the police and prosecutors: Based on the report of this NGO the officials of the Security Centre (SC) Budva have notified the Prosecutor in charge about the event, who required an amendment to the data, and demanded that the interviews with the injured party and the witnesses are held in order to acquire the information about the incident. After taking statements from three citizens the public prosecutor's office ordered the organization of the face recognition process . After it was organized the injured party and the witnesses have successfully identified the suspect. CS Budva have notified about this the Prosecutor in charge, after which the State Prosecutor's Office qualified the offense and filed an indictment of the criminal offense 443. Paragraph 3 of the Criminal Code of Montenegro - Racial and Other Discrimination: Whoever spreads ideas of superiority of one race over another, or promotes hatred or intolerance based on race, gender, disability, sexual orientation, gender identity or other personal characteristics or incites to racist or other discrimination, shall be punished with imprisonment of three months to three years. The same NGO has

filed a complaint to the Director of the Police and the Council for Civil Control of Police against a police officer of CS Budva due to inadequate professional response to the report of homophobic violence, discrimination and unlawful conduct of the members of the security service in a disco club "Top Hill" in Budva. Council for civic control of the police estimated that a police officer of CS Budva, whose identity, in communication with the Police was not disclosed, did not have an adequate assessment which later reflected on the use of police powers.

The Council has reminded that in the conduct of police affairs police officer is obliged to protect the lives and dignity of citizens, and that in this case there was a failure to undertake certain official actions which led, among victims of discrimination to an increased fear and insecurity due to the lack of the required zaštite³⁹. On the basis of the available essential details of the case it can be concluded that during the research and qualification of this offense mutual cooperation between the state prosecutor and authorized police officers came to the focus as well as the prosecutor's role as a carrier of the investigation.

Comment of all actions undertaken by the prosecution: Higher Public Prosecution Office filed an indictment before the High Court in Podgorica against S.T. due to the criminal offense of racial and other discrimination. NGO "LGBT Forum Progress" welcomed and praised the activities of the state prosecutor's offices that have been taken regarding the prosecution of homophobic violence in Budva. Professional conduct which is particularly evident in late 2014 and in 2015. confirm the determination of the prosecution to ensure the rule of law and equal treatment for all građana.⁴⁰

39 Rating Council is available at this link:

<http://www.kontrolapolicije.me/images/biblioteka/dokumenti/Ocjene%20i%20preporuke/Dokument-December-2015-Ocjena%20Savjeta%20povodom%20homofobi%C4%8Dnog%20nasilja%20u%20disko%20klubu%20Top%20Hill%20Budva.pdf>

40 The case was processed and commented on by Saveljić Milica and Aleksandar Saša Zeković

**CASE:
GROUP OF YOUNG MEN ENDANGERED
THE SAFETY OF LGBT ACTIVIST (2015)**

A short description of the case: On 10 April 2015, in the early morning hours, in the center of Podgorica, at the local restaurant "Goodfellas", LGBT activists, S.M., was attacked while he was in the company of A.M., a student from Podgorica, and member of the European Parliament T.T.R., which is in Montenegro stayed within the delegation Parliamentary Committee of the European Union and Montenegro Stabilisation and Association Council. During late evening dinner, after a night out, they were harassed by a group of young men, with inappropriate behavior which, in all, provoked feelings of fear and discomfort. Young men have had offensive behavior but also unkind gestures - were hanging on the genitals, simulated masturbation, and were insolent towards S.M. and his friends. Since S.M. was sitting at a table in the window, and they were outside, they taped the dirty napkins smudged with ketchup to the glass, laughing, slamming into the glass and asked S.M. to leave the premises so they would attack him. All the time he was addressed as "Faggot" and they told him, "We are waiting for you", "Get out," and called for a physical confrontation. European parliament member T.T.R. made a few camera shots of attackers during their primitive behavior on the window bars. One of the young men entered the premises and asked why was he photographed. S.M. asked him to move away from their table and he asked the staff to keep the young man away because they are being abused. When they realized that young men do not give up, they contacted the police. Four police officers arrived very fast, within five minutes, went to the scene but the young men had left in the direction of the nearby park.

A description of all actions taken by the police and prosecutors: Without prejudice This is a positive example of successful and professional conduct of public prosecution. Thanks to the efforts undertaken quickly, the next day already, a face recognition process has been organized. The victim has successfully recognized the perpetrators. The State Prosecution filed a bill of indictment for endangering the safety of S.M., LGBT activist from Podgorica, Article 168, paragraph 2 of the Criminal Code of Montenegro, against three young men.

Comment of all actions undertaken by the prosecution: Efforts undertaken by the NGO "LGBT Forum Progress", through the registration and processing of violence and hate speech, despite criticism, represent the only possible way to improve the legal safety, to confirm the equality of LGBT people in practice and to actually test the capacities and practices of the judiciary and anti-discrimination

policies in general. We believe that these types of criminal reports, as well as judgments in this regard, contribute to the long-term safety of LGBT people and send a message that homophobic and other violence is not unpunishable.

Conclusions and recommendations regarding this case: High court in Podgorica confirmed the judgment of the Basic Court in which the S.M., B.V. and N.R., all from Podgorica, were condemned to the three and a half months in prison for endangering the security referred to in Article 168, paragraph 2 of the Criminal Code of Montenegro, of the executive director of the NGO "LGBT Forum Progress" S.M. The defense attorney has filed an appeal against the first instance decision of the Basic Court in Podgorica, after which the BSP Podgorica also appealed, seeking a harsher punishment. Both appeals were dismissed by the High Court in Podgorica, which confirmed the initial sentence. For the "LGBT Forum Progress" This court decision is a confirmation really of the enhanced judicial and legal protection of LGBT community in Montenegro. "The decision of the High Court in Podgorica, is highly welcomed and appreciated and we believe that now, the results of joint educational and professional activities to improve the judicial protection and the work of public prosecutors and the to European practices, are gradually showing" was stated from the NGO "LGBT Forum Progress".

CASE:

YOUNG GAY MAN BEATEN IN BERANE (2015)

A short description of the case: On 14 October 2015, some time after 11 PM a twenty year old gay man, R.Š. was brutally beaten by, for now, unknown persons in Berane. The young man was out with a friend when an unknown person, by the opinion of the victim, aged around 25 years, went past them in a car, opened the window and yelled derogatory and offensive words like these: "Faggot", "Who fucks who " in their direction. Gay young man briefly answered the insults and went on hoping that the homophobe will leave them alone and that there will be no physical contact. Only a few minutes later, the gay young man, noticed that he had lost a case of his phone phone, so he went back the same way, to find it. But once again he encountered the same unknown person, who started to follow him by the car, of the brand "Volkswagen - Passat", of dark blue colour, and who continued to yell abusive and offensive words on the account of his sexual orientation. Then an unknown young man turned on the long lights at his vehicle directly toward the gay young man. He got out of the car, approached the gay young man, with numerous insults and threats, gave him a three blows with a fist in the

head. While he was beaten, the gay young man begged him not to do that. After the third blow the young man, with loss of consciousness, fell to the ground. The attacker then got into his vehicle and left the scene. The young gay man knew the procedure that is promoted in the LGBT community. He immediately got in touch with local activists of the NGO "LGBT Forum Progress". Contact was established with the police and the boy was sent to the police station to make a statement and submit the report.

A description of all actions taken by the police and prosecution: Police officers in Berane received a report, but stated that with the existing information at the moment they can not identify the perpetrator and that if he again sees and recognizes perpetrators he should come to submit a report. The attacked young man told the NGO, he was not satisfied with the attitude and the relation of the police officers at the Police station, and that he has objections to their actions⁴¹. Due to this, a complaint has been filed to the Council for civic control of the work of police.⁴² LGBT Forum Progress, via press release, called upon and asked the citizens of Berane that if they help the identification of the perpetrator to contact this NGO⁴³. Exactly on this basis, and the assistance provided by the citizens, victims successfully identified the attacker who was quickly arrested and confessed to the commission of the crime. Police has, in a timely manner consulted Basic State Prosecutor's Office (BSP) in Berane. The competent prosecution, from Berane, has filed criminal charges on suspicion that, to the detriment of young gay men from Berane, the criminal offense of racial and other discrimination under Art. 443 st. 3 Criminal Code of Montenegro against M.Đ.

Comment all actions undertaken by the prosecution. The victim, the LGBT organization (which indicated the case, which had intensive communication,

41 He pointed out that he was discouraged by attitude of the police and that he had the impression that he himself, by appearing the police station, "made things worse" and that the "his problems have just begun," since it is not declared his sexual orientation in the environment in which he lives as well as in front of his family; A written statement by the victim R.Š. from 15.10.2015. LGBT FP Documentation

42 The Council immediately got involved in the case and recommended direct communication between the victim of homophobic attack, LGBT organizations and the respective leaders. Captain CS Berane has fully accepted the recommendation. Council has finally found that the police conduct was professional and in a timely manner and that the quality and direct communication of the police and the LGBT community has helped to successfully shed light on the case. It is recommended that the Team of trust between the police and the LGBT community, without further delay, should be put into full operation. The Council has, on this concrete occasion recognized and welcomed, constructive attitude on all sides, and pointed out, in its conclusion that constructive and direct communication between the Police and the LGBT community is an essential quality; Available at www.kontrolapolicije.me heading "Remarks, recommendations and reports."

43 <http://www.vijesti.me/vijesti/lgbt-forum-progres-gej-mladic-brutalno-pretucen-u-beranama-855968>

regarding the same, with the police, the Council for Civil Control of Police and BSP in Berane) and the authors of the analysis believe that the treatment of the prosecutor in charge was very professional and efficient⁴⁴. The authors welcome and praise, the qualification of this specific crime.

44 The case was processed and commented by Saveljić Milica and Aleksandar Saša Zeković.

SECTION 4



CONCLUSIONS AND RECCOMENDATIONS

CONCLUSIONS

1. Montenegro has in the context of its membership in the United Nations, Council of Europe and the Organisation for Security and Cooperation in Europe, as well as through the process of accession to the European Union and NATO, significantly improved the rule of law and protection of human rights and freedoms. It has significantly improved the legal framework for the rights and protection against discrimination for LGBT people. In addition to the Anti-Discrimination Law, the Criminal Code has integrated sexual orientation and gender identity as an object of protection, which have improved conditions for the protection of LGBT people.

2. In the period 2010 - 2013 numerous challenges in providing criminal protection of LGBT community have been registered. Prosecution of perpetrators of criminal and other offenses against LGBT people, despite a significant number of examples and reports, was not appropriate. Since 2014, there has been some progress, which is particularly visible in 2015. This is confirmed by the significant number of cases in which the indictments have been made and in which indictments for criminal offenses against LGBT people have been confirmed but also the remarks by very LGBT community as a whole, in that year (2015), which made very commendable and supportive appraisal of the State Prosecutor's Office in Montenegro.⁴⁵

3. Analysis, according to experts, has found the execution of these groups of offenses: crimes against life and body, crimes against freedom and human and civil rights, offenses against public order and peace, and crimes against humanity and other goods protected by the international law. We analyzed different situations and official actions that are related, on an indications minimum level, with the possible execution of these crimes: racial and other discrimination, endangering of the safety, light bodily injuries, violent behavior, illegal possession of weapons and explosives, the attack on official and obstruction of official persons in performing official duties, prevention of public gathering, violation of freedom of speech and public appearance, violation of equality, harassment, destruction or damage of other people's things and unprofessional provision of medical assistance.

45 The only exception is Basic Public Prosecution Office in Niksic.

4. The state prosecutors in charge have, out of the total 21 analyzed cases, with a total of seven (7) or 33.3% of the total number of analyzed cases, qualified these crimes: racial and other discrimination, threats, unprofessional provision of medical assistance, Illegal possession of weapons and explosives and violent behavior.

5. A total of 21 cases that were the subject of this analysis with the eight (8) or 38.1% of total analyzed, requests for misdemeanor proceedings have been submitted and t for these offenses under the law on public order and peace (JRM): insulting a person and disrespectful behavior (Article 7, paragraph 1), inducing a feeling of vulnerability with a threat to attack the life or body (Article 8), physical assault (Article 10, paragraph 2) and insulting the basis of personal characteristics (Article 19). From a total of eight (8) cases in which the proceedings were initiated in only two (2) cases, the applicant is competent BSP (25%) while in the six (6) cases, the applicant or the competent Security Center (which makes 75% of total submitted requests for the proceedings that have been analyzed in this study) ⁴⁶.

6. When we take into account all the analyzed cases (21) for a total of 15, or 71.4% of total analyzed, specific crime has been qualified (7 or 33.3%) or a misdemeanor (8 cases or 38.1 % of total cases analyzed). In six (6) cases, or 28.6% of the analyzed cases, there was no criminal protection any kind.

7. On the basis of the above a general remark may be imposed that in Montenegro, through the work of police and especially the state prosecution organization, a solid, satisfactory and fair, criminal protection of LGBT people is being provided with a strong emphasis, that we should take into account in future reproducing of these findings is that the key advances in the work of public prosecutors regarding the prosecution of the perpetrators of criminal acts against LGBT people have happened in 2015. In that year, five (5), or 71.4% of the cases analyzed a total of seven (7) cases in which, through analysis, have qualified the criminal offenses, have been processed. It is also a serious and reliable indicator of the improved communication and enhanced cooperation between the public prosecution authorities and LGBT zajednice.

8. Significant, and we would say crucial role in the prosecution of perpetrators of criminal acts against LGBT people, is held by the police and the State Prosecution. Good quality of communication between them as institutions or individually with the LGBT community is necessary to be at an appropriate level of quality and trust, because only in this way it can result in a successful resolvment of the crimes that are the result of attacks and threats to the LGBT

46 On the basis of Article 7 paragraph 1 of the Law on POP filed a total of three (3) requests for misdemeanor proceedings under Article 8 of the JRM total of two (2), based on Article 10, paragraph 2 of the Law on POP one (1) and under Article 19 of the JRM two (2) requests for misdemeanor proceedings.

people, because of their declaration of gender identity or sexual orientation. Unfortunately, the current practice is not proven to be successful and points to the many deficiencies that resulted most often in the threats crossing to a physical assault, when the competent authorities usually react. Dissatisfaction with such policies, in the past, was not hidden by the LGBT activists who publicly claimed that the law is not applied equally well towards members of the LGBT community as is done in the case of other citizens, particularly those who are politically exposed. Some LGBT activists have sought protection by requesting asylum in other countries, regarding the inadequate criminal justice⁴⁷.

9. The concept of the prosecutorial investigation is being used for more than four years, which is quite a short period in order for the relatively large systems, such as the police, prosecution and courts could to adapt to the changes that this concept brought. As stated in the publication "Cooperation between police and prosecutors - prosecutors, police inspectors and judges," State Prosecution had to suffer the most changes - by taking a large portion of work that it had not performed before. On the other hand, the police had to adapt to a new role and the loss of a certain degree of autonomy in the work at the expense of the prosecution, as the prosecutor, on the basis of the new LCP, represent the subjects of determining, managing and directing the investigation (by guiding the operative duties of the police). The new role of the police requires intensive communication with the prosecutors, as the central subjects of the investigation procedure, which is constantly improving. Of course, communication is a two-way process, and such an obligation is also mandatory for the prosecutors in relation to the police⁴⁸. All of these changes require the adjustment of the changed conditions in terms of human resource capacity (the number of staff and training), physical - technical capacity, as well as the organization of institutions. Obviously, the most is expected from the prosecution, for which it can be concluded that it is being accustomed to the new situation rather slowly it terms of the personnel, space - technically and organizational capabilities very slowly. Also, the police have certain problems related both to personnel and physical - technical capacity. This is the reason that points to the need for harmonization of the obligations of prosecution and the police with their capabilities.

10. The police has the duty of submitting the reports to the competent prosecutor. The role of police in cases of attacks on LGBT people came down to the fact that in the case of the report, it should consult the competent prosecutor

47 Canada has granted political asylum to then leading the LGBT activists Z.C., the first director of the NGO "the LGBT Forum Progress".

48 Marijana Lakovic-Draskovic (author), "Cooperation between the police and prosecutors - prosecutors, , police inspectors and judges," Stevo Muk (editor), published by the Institute alternative, with the support of the American people through the Bureau for Combating International Narcotics Law Enforcement Affairs (INL) State Deapartment, through the US Embassy in Podgorica; <http://media.institut-alternativa.org/2014/12/saradnja-policije-i-tuzilastva.pdf>

as in all these cases was the practice. It should be noted that the most important role is in the hands of the prosecutor in relation to whether it will be treated as a criminal offense or not but it is up to the police officers to secure quality and complete information for the qualification of the competent state prosecutor. After the competent prosecutor states the qualification of the offense officers of the Police, in all organizational units of the police, have submitted requests for filing of a misdemeanor procedures. The exceptions were, only CB Niksic especially CB Bar in whose work we have recorded a series of failures. Police Directorate, and authorized police officers may also file a criminal complaint (in the same way as the requests for misdemeanor proceedings), but in practice this does not happen. Also, in the past, efforts have been made to help the LGBT community to submit more quality-made, meaningful and detailed criminal reports (a practical guide for the LGBT community for filing criminal reports have been created) and communicate directly with the competent state prosecutor's offices (established by the Prosecutors LGBT contact network) which, in perspective, it should reduce the number of instances in which, due to the failures of the police officers, which we registered in the work on the case analysis, the relevant prosecutor stated that on the occasion of concrete reports there are no elements of a criminal offense prosecuted by official duty.⁴⁹

11. Good, substantial and meaningful communication between the public prosecution and the police is necessary because, as such, it can only lead to good results in the investigation of criminal offenses and the offender. The police have an obligation to report any step made to the competent public prosecutor, and the prosecutor has the duty to give instructions to the police as it deems appropriate in a certain case. As a prosecutor is limited by a timeframe, both in the preliminary and in the investigation, any carelessness, ignorance, lack of time and the lack of dedication of the police, and the prosecutor may lead to the fact that the criminal procedures are qualified in a wrong way and it can come to the obsolescence of the criminal prosecution and the like. In the cases of attacks on LGBT people, as observed in the past, such shortages in taking the necessary measures, which have in some cases resulted in wrong qualification report itself. The threats posted on social networks, as well as some direct threats are qualified as misdemeanors or were not even qualified, while on the other side there was no room for their qualification as criminal offenses. Certain cases show that from the moment of the criminal report to its qualification in certain cases has passed up to several

⁴⁹ Some cases from the past, when we talk about violence against the LGBT persons, like the first, publicly known, cases of assaults on the LGBT person, confirms that on the basis of telephone communications authorized police officer with the Deputy Basic Public Prosecution stated that it does not contain elements of the criminal offense prosecuted ex officio order and after a few weeks, by the same Prosecutors the report was qualified as a criminal offense which has been confirmed by final court decision (V.R. attack in Podgorica to the LGBT activist Z.C.).

months, which indicates that attacks on LGBT people, in that period, did not constitute a "priority" of the Montenegrin judiciary.

12. The state prosecutor to whom a criminal report against a specific person has been filed, acts on it in a certain way, i.e. is obliged to examine the allegations in the report, do the necessary actions, or to issue an order to conduct an investigation against a specific person, or to dismiss the criminal complaint. In order to verify the allegations contained in the criminal complaint, the competent prosecutor may invite the applicant, the reported person and other persons who may be deemed to provide the relevant information, which are relevant for taking the decision on the report. If even after actions taken in relation to the criminal report, in the opinion of the prosecutor in charge still exists some of the reasons for rejection of criminal charges, and if there is reasonable suspicion that a suspect has committed a criminal offense which is prosecuted *ex officio*, the authorized prosecutor will issue a decision on rejecting the criminal complaint, and the injured side is notified or the police, if it filed a criminal report or submitted items for the evaluation and decision-making. In practice, we have registered non-updated information, especially when submitting reports to the Police Directorate, on their final status.

13. We note that the work on cases of violence and hate speech against the LGBT community in the past, the Basic Public Prosecutor's Office (BSP) in Podgorica, in almost all cases, the same deputies, pleaded no elements of criminal activity prosecuted *ex officio*. This is contrary to the practice in other basic state prosecutor's offices and practice BSP in Podgorica from 2014. In relation to this issue and recommendation (see "References").

14. It is the obligation and responsibility of the State Prosecutor to fully investigate allegations of criminal charges before a decision on further engagement in this particular case.⁵⁰ It is necessary, and the law strictly requires that the decision of the State Prosecutor solely based on, primarily, allegations of the report, and gathered information and evidence, not on media or similar statements, made by the injured party, and others.

15. In a significant number of cases, beyond those presented in the present analysis omissions primarily by the police and state prosecutors were registered, who made the decision that there was no misdemeanor, or criminal offense because the statements of people reported "it was a joke" is not sufficient to qualify the work while on the other side of the LGBT persons was in constant fear of serious attacks, which is a fact that the state Prosecution has often, neglected in the past.

⁵⁰ The fact that, in case of publication or dissemination of obituaries for the Z.C., the injured party stated that "the death certificate is not a deterrent and for him it is not the reason to terminate his further public work", does not justify the decision on rejection of criminal prosecution of the application - the authors note.

16. The approach of the Basic State Prosecutor's Office in Bar is commended, which has in the case of M.P. from Bar, who has, via "Facebook" threatened Z.C., qualified the wrongdoing as a criminal offense, as an endangering the security referred to in Article 168, paragraph 1 of the Criminal Code, the Basic Court in Bar confirmed the verdict, by which M.P. was sentenced to a suspended sentence and found him a prison sentence of three months and at the same time determined that it will not be executed if he, in a period of two years does not commit another criminal offense. For this crime, it is essential that the threat to attack the life and body of the injured party is serious and objectively feasible that it caused fear with the injured party.⁵¹ On the other hand, the majority of reported cases of threats to attack the life and body is not treated in this way. Qualification, as already mentioned, was in the hands of competent prosecutors, who believed that there were no elements of the criminal offense. The reason for such treatment can be found in the fact that prosecutors in the past, did not realize the seriousness of the threats made via the social network "Facebook".

17. The threat of attack and the attack itself are legally treated differently, but both are punishable. Namely, that fact that the threat was sent to the person "online" does not diminish its seriousness because the law itself points out that the threat can be addressed in writing, which can be interpreted electronically. It is necessary that the person to whom it is addressed is made aware of the threat and to take seriously in order for the criminal offense of Endangering the Safety could exist. The attack is another crime and was treated and punished differently, depending on the attack and injury, made by physical, or mental which the person has suffered.

18. While the Law on Public Order and Peace in Article 10, paragraph 2 provides that whoever in a public place commits an assault against another or physically attacks, shall be punished for this misdemeanor. Criminal Code, on the other hand, does not define the attack, instead it divides the deed, inter alia, on light physical and grievous bodily harm, and violent behavior, abuse, etc. In which way the Prosecutor will qualify the deed from the report that is related to physical assault, should depend on the consequences of the deed, ie. whether there has been any physical harm and, which is determined by expert evidence. If the injuries are qualified as light, we emphasize this due to activists and the LGBT community structures, the deed can be treated as a misdemeanor baring in mind all of the other circumstances of the case.

19. Out of all that is contained in the text analysis of specific cases, one can conclude, as compared to the previous period, that the State Prosecutor's Office acted quite selective when it comes to the crime of "endangering security"

51 In the specific case the victim Z.C. felt endangerment for his life and body and was convinced that the accused will realize that threat because, first of all, he did not hide his identity, while also mentioned the parents of the victim. Given the above, the Basic State Prosecutor in Bar is acted properly

(Article 168), or the determination of any person to which there are grounds for suspicion that he committed the said offense. We registered in the previous period, that in the practice of the prosecutor's office is not determined for any person that there are reasonable grounds to believe that the person committed a criminal offense, "racial and other discrimination": "whoever on the basis of differences in race, skin color, nationality, ethnic origin or other personal characteristic, violates their basic human rights and freedoms guaranteed by the generally accepted rules of international law and international treaties ratified by Montenegro "shall be punished with imprisonment from 6 months to 5 years (Article 443, paragraph 1), or" the propagation of hatred or intolerance on the grounds of sexual orientation or gender identity ... incites racial or other discrimination "(paragraph 3), shall be punished with prison from 3 months to 3 years, as per the official, as well as the Criminal Code, which was valid until 21 August 2013, in which gender identity and sexual orientation was not explicitly mentioned. Changes in treatment only arose when a gay couple was thrown out of the disco club "Top Hill" in Budva (2015) when Higher state prosecution has qualified the deed as a criminal offense under this Article and thereby shown professionalism and full commitment to ensure quality criminal protection of LGBT people.

20. Through the subject analysis of presented and the other cases we found quite uneven practice in the work of basic public prosecutor's offices regarding the prosecution of perpetrators of misdemeanor and criminal offenses. It is especially noticeable uneven treatment of basic state prosecutor's offices for the offense of "endangering the safety" under Article 168 of the Criminal Code.

21. The Criminal Code of Montenegro has been innovated, in 2013, where, among other things, it included sexual orientation and gender identity as an aggravating circumstances in reaching a verdict. The Criminal Code before these amendments, in its expanded text as a basis for discrimination "and other personal properties". It is the different properties which, among other imply, sexual orientation and gender identity. In other words, the legislator recognized the "Hate crime", in the past and the crimes committed due to the motives relating to a person's sexual orientation were punished. Filed criminal reports in cases of attacks on the LGBT people have had their legal justification, bearing in mind that they are the result of verbal or physical attacks or threats of sexual orientation or gender identity of the applicants.

22. We note the fact that he filed no criminal reports have been filed and not one person was criminally prosecuted in connection with violence and manifested hatred towards people of different sexual orientation and gender identity during the Pride Parade in July 2013. Additionally important is the fact that the police officers were present in large numbers and were eyewitnesses of violence and hatred not only towards LGBT people, but also their supporters. Furthermore, citizens, the opponents of the Pride, have been interfering police

officials during Pride (police officers) in carrying out their work. So, BSP from Kotor has not stated in any case that there are elements of any criminal offense that is prosecuted ex officio, but, in a number of cases by the police, filed a request for initiating misdemeanor proceedings before the Regional Authority for violations. Police has, in organizing events such as Pride or similar event, a very important role because it is necessary to ensure safety, ie. to ensure that the event participants feel secure. They are still events of high-risk, especially in environments where previously they have not been organized, so the police should timely undertake extensive preventive measures, such as the detection of signals which carries information about the intentions of homophobic violence, and in the case of eventual homophobic violence to work on discovering the perpetrators. We believe that in this case the police have taken measures and actions within its legal powers, but that due to high level homo_bi_transphobia their safety and the safety of all participants in these manifestations had been compromised. In this case, according to the author, the state prosecution had to criminally prosecute all persons who have been omitted the holding of this parade. In this particular case, the opinion of the authors is such, that there have been features of several criminal offenses: jeopardizing safety, racial and other discrimination, assault on a public official in the performance of official duties, light bodily injuries, violent behavior, prevention of public gathering and others. In this regard, we believe that the prosecution had failed to take all actions and measures within its legal powers and that there was a lack of decisive message by state prosecution organization.

23. Presented practices of the non-governmental organization (NGO) "LGBT Forum Progress" as well as the research of the NGO "Institute Alternative"⁵² showed a series of indications of problems and challenges in the work of state prosecutors and the police, such as lack of skilled personnel in prosecution and police and personnel possessing adequate knowledge regarding the application of the legislation as well as international standards when it comes to crimes of hate in relation to people of different sexual orientation and gender identity; Prosecutors, in most cases, are not present in the work with the suspects, and generally do not go to the place of the investigation; communication between prosecutors and police officers is difficult and reduced the oral and / or phone calls and this can cause mutual misunderstanding; There is uneven practice of prosecutors in handling similar situations and not enough interest in the clarification of all circumstances of the case; it is evident that in the past, the lack of proactiveness and

52 Marijana LakovicDraskovic (author), "Cooperation between the police and prosecutors - prosecutors, police inspectors and judges," Stevo Muk (editor), published by the Institute alternative, with the support of the American people through the Bureau for Combating International Narcotics Law Enforcement Affairs (INL) State Department, through the US Embassy in Podgorica; <http://media.institut-alternativa.org/2014/12/saradnja-policije-i-tuzilastva.pdf>

independence in the work of public prosecutors and periodical statistical reports of the judicial authority does not include cases of discrimination.

24. Previous experience of Montenegro in the creation of anti-crime policy indicate that the criminal protection of LGBT people is underrepresented in statistical reports on the work of judicial authorities, which should not give rise to the conclusion that in society there is no discrimination in this regard. On the contrary, it must be the reason for the extra effort of society with the aim of improving the legislative framework and its proper implementation, in order to overcome obstacles and to create an efficient system of criminal - judicial protection of the rights of LGBT people to make an effective and real.

The Supreme State Prosecution of Montenegro in 2014 and 2015, unlike the previous period, showed determination and willingness to actively contribute to the prosecution of crimes and reduction of crimes based on homo_bi_trans-phobia. In this process it is necessary that the victims and the entire the LGBT community provide assistance and cooperation. It is particularly important to empower the LGBT community to contact with the state prosecutor's office and encourage reporting of crimes to the detriment of community members. Bringing to justice all perpetrators of crimes is a common interest and the priority of the LGBT community and the state prosecution organization.

RECOMMENDATIONS

Parliament of Montenegro

The Parliament of Montenegro should be able to consider the need to improve the text of the Constitution of Montenegro in terms of the above comments (see Section 2)

Government and Parliament of Montenegro

It is necessary to improve the regulations governing the work of the judicial authority and the police, so that the procedures in discrimination cases, because of their legal nature, could be treated as an emergency, as well as to improve the methodology of periodic statistical reports of the judicial authority when it comes to cases of discrimination. Also, it is necessary to consider the possibility to amend the Law on criminal proceedings (CPC) so that:

- that is the most important provisions of the Agreement of joint work of the State Prosecution and the Ministry of the Interior / the Police directorate, during the investigation and criminal proceedings are translated into provisions of the Law on criminal proceedings;
- to consider the possibility of improving the text of the Criminal Code of Montenegro, in the light of the above comments (see Section 2)

Supreme State Prosecutor of Montenegro

In an earlier work of individual basic state prosecutor's offices (BSP), almost the same deputies, declared that there were no elements of criminal acts prosecuted ex officio. We recommend the Supreme State Prosecutor's Office that these professionals, who worked on a number of cases in 2013, are referred to additional specialist training and sensitization to this issue and to improve their contacts with authorized police officers and the the LGBT community.

- that the state prosecutors, as the main, essential, link in solving crimes, continue its commitment to protect the the LGBT community and demonstrate

that LGBT persons are treated equally with other citizens, which will create the basis for better quality of life to these persons, and the society as a whole. It is especially important to improve commitment and sensitivity to the prosecution of violence against the LGBT

persons registered in the work of all the basic state prosecutor's offices, not only in Podgorici.

— pay special attention to developing and strengthening the capacities of dedication to the Basic State Prosecutor in Niksic, which showed a considerable lack of professional will and commitment, and quite different behavior in relation to all other state Prosecution in Montenegro, in the prosecution of perpetrators of criminal offenses and misdemeanors addressed towards LGBT people

— to ensure that the decisions of the public prosecutor regarding the reports are based on the primarily these allegations, on the gathered information and evidence and not on media statements of any sort.

— to ensure that the decisions of competent state prosecutors on the reports of the police or LGBT persons or LGBT group is not based solely on the evidence of the reported persons, that is when they make threats to LGBT people, they were "joking", but it is necessary to show sensitivity and identify the fear that exists for LGBT people for the specific threats addressed to them.

— ensure a uniform practice in all the basic state prosecutor's offices in the actions towards the notification from the police or by the report of LGBT persons or LGBT organization and qualification, in this connection, of the misdemeanor and criminal offenses.

— To keep working on improving the trust of the LGBT community, and its structures, to the state prosecutors' organization.

— Based on direct communication with LGBT activists and victims (injured parties) from the LGBT community, we recommend the state prosecutors that greater attention should be committed to the preparation and hearing the witnesses at trial, especially when it comes to the expiration of the extended period to call witnesses to court. Victims of the LGBT community usually do not have experience with the course of the trial and execution of actions before the Court is necessary to instruct witnesses in an appropriate manner and familiarize them with the flow and sequence of actions at the trial, the role of the parties to the proceedings and bar roughly familiar with matters which may be asked during the questioning. To help the victims to in the court feel as safe as possible and with as little discomfort because of the experiences and situations for which there are as a party to the proceedings.

Supreme State Prosecutor of Montenegro and the Police Directorate and the Ministry of Internal Affairs

To ensure:

– Regular availability and functioning of the established the LGBT contact network of in the police and state prosecution organization,

– To keep constant communication and consultation with the LGBT and other organizations that work with victims and participate in providing support services and legal protection,

– maintain periodic case conferences, separately and together, on which there would be a professional and constructive discussion with representatives the LGBT community and civil society on the implementation of the authority and taking appropriate measures and actions.⁵³

– constant contact, communication and exchange of experiences in the work of all the basic state prosecutor's offices and within established contact Prosecutorial LGBT contact network

– sufficient number of police officers and public prosecutors, in order to provide a specialization in organizational units of the Police (CS / OB) or in the basic state prosecutor's offices (BSP)

– Continuous, separate and shared, training for police officers and public prosecutors to strengthen the capacities for dealing with cases in which victims or the injured party has been LGBT people

– periodic mutual consultations of state prosecutors and police about cases of treatment and protection of the rights of LGBT people

– Efficient, prompt, impartial investigation and to provide the necessary assistance and support to victims and witnesses of crimes that are motivated by hate towards people of different sexual orientation and gender identity, in order to encourage these people to report such cases. This shall not be achieved without strengthening the administrative capacity in terms of the dissemination of knowledge and skills on hate crimes of all entities that should participate in the implementation of legislation (the courts, the prosecution and the police) and ensuring better cooperation between these authorities. The training program and cooperation with the LGBT community with the police, state prosecution and courts, which since 2013, the NGO "LGBT Forum Progress", develops, is a quality

53 This approach has been , through the Council for civil control of the police, already established at the level of the Security Centre Podgorica in the field of protection against domestic violence (Conference instances of protection from domestic violence), and proved to be a good mechanism to improve the transparency of the police organization, its accessibility community to which serve and protect you, to build confidence and improved use of police powers.

model , with constant innovation and additions based on practical experiences, and continue to implement it in the future.⁵⁴

— It Is necessary to strengthen the professional commitment and implement the necessary education of police officers in order to during use acting upon a specific report to come to a concrete, established, knowledge of the crime committed and to work on deepening the initial findings in order to the competent prosecutor in the case during the assessment and decision-making could point to the existence of grounds for suspicion and the necessary data for the decision.

⁵⁴ Training programs and capacity building of the police, prosecutors and judges to work with the LGBT community, implemented from 2013, 2014 and 2015 are supported by the Royal Netherlands Embassy and the Embassy of the United States.

