



GYŰLÖLET-BŰNCSELEKMÉNYEK
ELLENI MUNKACSOPORT

WORKING GROUP AGAINST HATE CRIMES (GYEM): SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW OF HUNGARY, 5 SEPTEMBER 2015

1. INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Hungary in April 2016, Working Group Against Hate Crimes (GYEM, <http://gyuloletellen.hu/about-us>) focuses on the Hungarian authorities' responses to hate crimes against vulnerable groups. Member
10 organisations of GYEM have a long standing history in rights protection, monitoring, research and legal representation. We base our observations on our individual and joint efforts of the past 5 years including our previous submission to the UPR as well as midterm review.

15 GYEM was established in January 2012, by [Amnesty International Hungary](#), [Háttér Society](#), [Hungarian Helsinki Committee](#), [Legal Defense Bureau for National and Ethnic Minorities](#) and the [Hungarian Civil Liberties Union](#) to join forces for a more effective state response against hate crimes in Hungary. Besides the representatives of the founding organizations, individual
20 experts also take part in the work of the working group.

The principal objective of the working group is to fight hate crimes through the following goals:

1. establishing a more effective legal and institutional framework for state responses to hate crimes;
- 25 2. encouraging victims to initiate legal proceedings;
3. creating a social environment rejecting hate crimes.

The working group regularly delivers its opinion on draft laws and makes proposals to
30 strengthen state responses to hate crimes. It conducts researches to better understand the phenomenon of hate crimes and to identify new tools in the fight against hate incidents. It develops curricula and conducts training programs for professionals dealing with hate crimes. NGOs participating in the working group also provide legal advice and representation in front of authorities and courts for victims of hate crimes. Finally the working

35 group fosters good professional relations with national and international NGOs, the police,
the public prosecutor's office, other authorities and the judiciary.

Information presented here are coming from first hand information from the victims
represented by the organisations, from the lawyers acting as legal representatives of the
victims, from correspondence and meeting with authorities, close monitoring of cases, data
40 collection.

From 2012 to 2014 the [Legal Defense Bureau for National and Ethnic Minorities](#)
implemented a project in partnership with the Hungarian Helsinki Committee and [Háttér](#)
[Society](#) titled “*Creating a National Hate Crimes Strategy and Action Plan*”. During the project
45 the organizations held open forums for members of vulnerable groups (Roma, LGBT,
migrants) in order to receive up to date and genuine information from those who are the
most frequent victims of hate crime in Hungary. Personal interviews were conducted with
stakeholders (police officers, prosecutors, judges, victim support officials, representatives of
ministries) to gain information relating to hate crimes. Working group meetings were also set
50 up with participants from NGOs and government agencies to discuss a national strategy and
action plan combating hate crimes.

The Working Group gained information also through needs assessment interviews
conducted by the Hungarian Helsinki Committee between February-April 2015 in the
55 framework of the EU funded project titled „*Increasing the Capacity of Law Enforcement
Authorities to Tackle Racist Crime, Hate Crime and Homophobic Crime through Experiential
Learning – EXPERIENCE CRIME*”. The interviews provided information from the target
groups of judges, prosecutors, police officers and legal professionals.

60 **2. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE**

2a. The legal framework

A new Hungarian Criminal Code, Act C of 2012, entered into force on 1 July 2013. As
compared to Article 174/B of the old Criminal Code, the relevant hate crime provision
(‘violence against a member of a community’) of the new Criminal Code introduced disability,
65 sexual orientation and gender identity among the characteristics of the potential victim
groups. The relevant provision, Article 216 reads, as follows: “(1) *If someone shows such
provocatively anti-social behaviour towards another person because of his or her
membership or perceived membership in a national, ethnic, racial or religious group, or in
other social groups, particularly because of his or her disability, gender identity or sexual
70 orientation, which is capable of inciting alarm in the member of the given group, he or she
shall be punished with a maximum of three years of imprisonment for committing a felony.
(2) If someone ill-treats another person or constrains another person with force or threat to
do, not to do, or to endure something because of his or her membership or perceived
membership in a national, ethnic, racial or religious group, or in other social groups,
75 particularly because of his or her disability, gender identity or sexual orientation, he or she
shall be punished with one to five years of imprisonment.*”

Due to the open-ended list of protected groups practically any kind of a group is considered
to be a possible victim for hate crimes. (Even for instance members of a radical right-wing
80 organization may qualify as victims. However, the Supreme Court delivered a decision

(Bfv.III.87/2011/5) in 2011 which set out that members of an organisation which was established against a national, ethnic, racial, religious or other social group and which openly opposed legal rules may not be entitled to enhanced criminal law protection.)

- 85 Article 216 (3) provides for a higher sentence (2 to 8 years of imprisonment) if the acts above are committed in a group, armed, etc. According to Article 216 (4), preparation for the criminal offence “violence against a member of a community” may be punished with a maximum of 2 years of imprisonment.
- 90 The legal provisions do not consider bias motivation in case of offences committed against property as a qualifying circumstance. However, judicial practice has demonstrated that offences committed against property can be covered by Article 216 (1) on bias motivated rowdyism.
- 95 Provisions of the Criminal Code on manslaughter (Art 160), physical assault (Art 164), violation of personal liberty (Art 194), defamation (Art 226), unlawful detention (Art 304) indicate “contemptible” motives as aggravating circumstances. This might include also bias motivation.
- 100 A new provision was introduced in 2011 in the old Criminal Code as a consequence of the far-right, anti-Roma vigilante patrolling in Gyöngyöspata. This provision, which was adopted in Article 352 of the new Criminal Code, aims at sanctioning illegal performance of activities maintaining or protecting public order. This provision does not include bias motivation, but it clearly aims to roll back the activities of extremist, paramilitary groups.
- 105 In the new Criminal Code, still only the most extreme form of hate speech is outlawed, namely “incitement against a community”, i.e. incitement liable to provoke violent acts.

2b. Institutional framework

Special hate crime network

- 110 On 1 January 2012 a special hate crime network at the National Police was established to effectively tackle hate crimes in Hungary. Police officer in every county were appointed to coordinate the hate crime related investigations, but none of them operate in full time, this sort of work is an additional task for them without any further resources allocated.
- 115 Appointment to a hate crime officer does not depend on special hate crime related expertise, the conditions are solely high level education, sufficient practical experiences and good communication skills. There are 21 such hate crime officers in Hungary, No liaison officers are employed by the police who would focus on hate crime issues and who could facilitate communication between the vulnerable groups and the police.

3. PRACTICE

120 3a. Implementation of the law

The legal framework would make it possible for the authorities to effectively tackle hate crimes. However, systemic failures can be detected when it comes to the implementation and application of the law in case of hate crimes against vulnerable group members. These systemic failures are:

- 125
- regular under-classification of hate crimes,

- regular failures on the part of the police to undertake law-enforcement measures
- failures of the authorities to take investigative steps.

130 **Under-classification**

By under-classification we mean that the hate motivation is disregarded during the procedure and so, even if due to the well-founded suspicion of a crime a criminal procedure is initiated, the incorrect, more lenient provisions of the Hungarian Penal Code are used. As a result, in case of a conviction, the sentencing is in disharmony with the sanctions prescribed by the legislature. In a significant amount of cases, the exhaustion of legal remedies of the criminal procedure proves to be sufficient for the correction of the decisions made by the authorities. The problem is that this correction mechanism should be a secondary redress, and the classification of the police should be correct on a general basis, since not all victims have access to high quality, specialized representation. For this reason improving the technique and work of the investigative authorities is immensely important.

Failure to undertake law enforcement measures

Police often fail to take the necessary measures at far-right, extremist assemblies directed against vulnerable groups, even if there is sufficient amount of evidence that an infringement of law took place, in particular cases based on the direct perception of police officers. According to paragraph 14 (1) of the III Act of 1989 on Public Assembly (PA Act), if an assembly commits a crime or violates the rights or freedoms of others, then police shall disperse the assembly without hesitation. However, this usually does not happen, not even at such recent events where the steps to be taken were obvious.

150 Additionally police often fails to act even when the police action is be ordered not by the PA Act, but the Act on the Police, on the basis of not simple, but well-founded suspicion of a hate crime, against a specific offender. The extremely slow nature of the complaint procedures (caused partially by the refusal of the police to sustain complaints, which in many parts of Europe would result in the prompt dismissal of the police chiefs) renders the legal remedy ineffective. These failures jeopardize the success of the criminal procedures.

160 Even though police often fail to undertake proper and effective law enforcement measures, we have to notice that in the recent months they managed to prevent from the escalation of events that were organised by far-right, xenophobic groups against refugees and volunteers. In those cases they acted properly and took all the necessary measures described by the law.

Failure to undertake investigative steps

165 It appears to be a general problem that the investigative authorities fail to question the witnesses, collect the CCTV recordings before their deletion, to conduct searches or background investigations during the investigation into the motives to learn of the lifestyle of the offenders (whether they have extremist symbols on their walls, what type of comments they make in public forum), and to pose questions pertaining to motivation during the questioning and to properly investigate the social networks. The failure to collect everything that may serve as evidence could result in a situation where during the indictment or the trial the prosecutor's office and the court are not in possession of the information and evidence needed to establish the correct classification suiting the hate element.

175 It is important to note, that in parallel with the above presented systemic omissions on the part of the authorities, among those hate crime cases that reach the court phase (known from media reports and from the officially published highest court decisions), hate crimes against Hungarians, committed by Roma are over represented. Roma were even sentenced

180 to prison for hate crime against Hungarians in cases in which they had previously been
threatened in their own living area by far-right groups and therefore attacked the cars of the
presumed members of these groups.

185 The legal provisions do not consider bias motivation in case of offences committed
against property as a qualifying circumstance. Judicial practice has demonstrated that
offences committed against property can be covered by Article 216 (1) on bias motivated
rowdyism. However, application of the law in this regard is not consistent.

Failure to apply the crime of “incitement against a community”

190 Article 332 of the Criminal Code on the crime of “incitement against a community” reads as
follows:

If someone incites in public against

a) the Hungarian nation

b) a national, ethnic, racial religious group or

195 *c) certain social groups - especially with regard to disability, gender identity, sexual
orientation,*

*he or she shall be punished with a maximum of three years of imprisonment for committing a
felony.*

200 The crime is deemed to be committed only if the danger created by an expression is not
merely a hypothetical one but involves a direct possibility of a violent act. The legal practice
of courts and the prosecution however apply a restrictive approach relating to this direct
threat of danger. As a result nearly none of the reported expressions fall under the scope of
this crime. Courts and the prosecution always refer to Constitutional Court criteria expressed
in decisions dealing with this topic. Consequently, in the last years criminal proceedings
205 were terminated already at the investigative phase or the prosecution refused to charge the
perpetrator. The reasoning of these decisions was that the reported expressions did not
constitute a call for a violent act and did not create a direct threat of danger. Hence, inciting
expressions have not even reached courts.

210 The practice of the authorities is highly questionable as it renders the crime practically
dormant and even extremely hostile expressions cannot be punished. According to NGOs,
authorities misunderstand the criteria set by the Constitutional Court as it could be possible
to sanction inciting expressions should the relevant Constitutional Court decisions be
interpreted correctly.

215 3b. Special Network

The establishment of a Hungarian Hate Crime Special Network is a huge step into the right
direction however there are problems with its operation. We consider it as a positive practice
that in every six months the representatives of the Working Group Against Hate Crimes and
the police meet to discuss a disputed hate crime related case or issue and draw the
220 conclusions from it for the future. It has become easier for the members of the Working
Group to approach the Special Network throughout an informal communication channel and
it is also a great development that Special Network members are occasionally participating in
trainings organised by the Working Group Against Hate Crimes.

225 On the other hand there is massive fluctuation within the Special Network, the members are
rapidly changing. Another major problem is that being a member of the Network is not a full
time position, it is an additional task for them without any financial compensation or extra
time allocated. The preparedness and competence of the Network members vary from
county to county due to the lack of specialised and regular trainings. The Network operates

230 in a non-transparent manner: the contact details of the police officers assigned to the
Network are not publicly available and there is uncertainty about their actual duties and
operation. Additionally the police did not manage to publish their annual report from 2014 on
hate crimes in Hungary until July 2015.

3c. Lack of special trainings

235 The topic of hate crimes does not feature prominently in the basic training of police officers,
judges, prosecutors and lawyers. While some introductory courses on social sciences
include information on prejudices and how they can lead to violence, the discussion often
remains on a very abstract level not connected to the work of professionals. Provisions of
240 the Criminal Code on hate crimes are part of the Criminal Law courses, but receive minimal
attention compared to other crimes affecting vulnerable groups such as partnership violence
of human trafficking.

While some specialized training courses on hate crimes were organized in recent years
targeting police officers, prosecutors and judges, these reached only a low number of
245 professionals, and were often organized by NGOs and without any public funding. Members
of the police hate crime network do not have to undergo any induction training, and while all
members participated in a two-day training organized in 2013 by Háttér Society, by 2015,
over half of the members were replaced leaving the new members without such opportunity.
The experience of NGOs show that those participating in such trainings handle the
250 investigation significantly more professionally, however, cases often get stuck at the local
level, and never get to the specialized investigators, thus broader training efforts are needed.

3d. Lack of protocol

There is no investigative police protocol specially for hate crimes in Hungary, and
unfortunately the National Police is not open to adopt such a protocol. Our Working Group
255 learnt by accident that the Prosecutor's Office keeps count of a prosecution protocol for hate
crimes, which is word by word adoption of the OSCE/ODIHR protocol for prosecutors. It is
not adjusted to the Hungarian criminal procedure and it is probably not known and not
applied by prosecutors.

3e. Lack of consistent data collection

260 There is no specialized data collection by public authorities on hate crimes. Data on crimes
reported to the authorities are collected in the Unified System of Criminal Statistics of the
Investigative Authorities and of Public Prosecution (*Egységes Nyomozóhatósági és
Ügyészségi Bűnügyi Statisztika, ENYÜBS*), however, it suffers from several deficiencies.
First, the categorizations of crimes is based solely on the decision of the authorities, thus in
265 case the authorities do not recognize the bias motivation, the crime will not show up in the
relevant category. Second, while for Articles 216 and 332 disaggregation by protected
ground is possible, categorizing the crime according to race, ethnicity, religion and nationality
is compulsory; for disability, sexual orientation and gender identity, it is only optional. Third,
for cases that do not fall within Article 216 (typically, homicide and stalking), such
270 categorization is not available: for genocide, homicide, bodily harm and partnership violence
a special label ('racism, racial prejudice') can be applied, but all other protected grounds are
left unrecorded.

There are three general problems with ENYÜBS that significantly undermine its usability
altogether. First, data on registered crimes is entered into the system upon closing or
275 suspending the investigation; therefore, a long investigation means that the crime appears in

the system only months or years after its occurrence. Second, the system only contains data on investigation and prosecution, but not on sentencing, for which a separate statistical system is in place, that is lot less detailed and does not allow the tracing of a crime from reporting to sentencing. Finally, researchers claim that the accuracy of the system is very low: there are many statistical forms which are not fully completed or contain mistakes.

There are no regular victimization surveys that would allow measuring underreporting as well. The National Institute of Criminology (Országos Kriminológiai Intézet, OKRI) conducted victimization surveys in 1996, 2000 and 2003, but none of them covered the topic of hate crimes.

285 **3f. Lack of victim support**

Victim support is offered in Hungary by the public Victim Support Service (VSS) and NGOs, however, no specialized support programs exist for victims of hate crimes. The services available range from financial aid (instant monetary aid, state compensation), to legal aid and psychological support. State-sponsored legal aid is not available at all during the investigation phase, which is often decisive for the final legal qualification of the crime. The legislation does not prescribe psychological help to be offered by the public Victim Support Service, which is organized on the county level. Some VSS have recognized the need for such form of support and invested in employing or contracting psychologists, but there are several counties where psychological services are still not available at all as part of the victim support package, and where they actually are, often only in very limited hours. Neither staff members of the VSS, nor affiliated psychologists receive targeted training on how to deal with victims of hate crimes.

3g. Prosecutor

There is an 2012 OECD -ODIHR guideline translation, but its is not adapted to the Hungarian circumstances. There is also a lack of awareness of the protocol and there is no proof or reference of it been used. No special training exists in the official curricula of prosecutors. Regular annual trainings touch upon the issue of the prosecution of hate crimes solely through a 2 hour long lecture per training. The prosecutor is also responsible for the under classification of cases and it also fails to instruct police to take investigative steps

305 **3h. Lack of promoting tolerance by government**

Lack of action plan to promote tolerance towards vulnerable groups particularly Roma and LGBTI. There is a lack of governmental strategy and protocol on the investigation of hate crimes. On 18 September 2013, the Government adopted the new National Crime Prevention Strategy for the next 10 years, as well as an Action Plan for 2013-2015, but the document does not include any specific measure aimed at combating crimes motivated by bias or hatred.

There is no action plan to promote tolerance towards vulnerable groups, particularly Roma and LGBTI. There is no national hate crimes strategy and action plan, the strategy for prosecution does not cover hate crimes.

315 Furthermore, political analysts, human rights NGO's and international organisations have repeatedly emphasized the government's responsibility in generating intolerance, in particular in its anti-immigration campaign initiated in 2015 against asylum seekers. The European Parliament pointed out in a Resolutionⁱⁱ that the launch of a national consultation

320 on immigration and terrorism (sic!) 'spread a rhetoric of hatred and prejudice, relying on xenophobic misconceptions' by stigmatising asylum-seekers as welfare migrants and a national security threat.

325 The Under-secretary of EU affairs in the Ministry of Human Resources indirectly admitted that the billboard campaign, featuring anti-refugee and immigrant slogans, ordered by the government to discourage asylum-seekers from coming into the country was aimed at generating intolerance towards themⁱⁱⁱ. The government's spokesman commented the human smuggling operation leading to the suffocation of 71 asylum-seekers in a truck, as 'a tragedy involving exploited and self-victimizing people'^{iv}. The government rhetoric of portraying
330 asylum-seekers as illegal economic migrants also goes in hand with criminalising illegal migration. Parliament passed bill instituting new criminal offences and simplified criminal procedures, including mandatory expulsion for crossing or damaging a border blockade, i.e. the newly erected razor-wire fences on the Hungary's southern border. The new law also permits the armed forces to take part in guarding the border and keeping public order.

335

RECOMMENDATIONS

GYEM calls on the government of Hungary:

- 340 • Take effective measures for the police and prosecution to ensure prevention of hate crimes and full implementation of hate crime legislation. Adopt a hate crime investigative protocol (in collaboration with NGOs) and assure law enforcement officers are made aware of its guidelines during their trainings;

On implementation of hate crime legislation:

- 345 • Take effective measures to reconsider the legal practice relating to the crime of "incitement against a community" in order to ensure that the crime fulfills its role in punishing inciting expressions against social groups;

On the special network:

- 350 • Take effective measures to ensure the effective operation of the Hate Crime Special Network by providing the members specialised and regular trainings. Adopt a transparent operational manner to ensure that their contact details and duties are available for the public and prevent massive fluctuation by providing compensation and extra time for them to carry out their duties;

355

On special trainings:

- To ensure that all police officers receive training on the nature of hate crimes and the role of the police in combating them;

360

On lack of protocol:

- Adopt a hate crime investigative protocol (in collaboration with NGOs) and assure law enforcement officers are made aware of its guidelines during their trainings.

365 *On recording crimes committed against members of community*

- To strengthen the data collection on hate crimes in a manner that ensures respect for human rights, including the prohibition of discrimination, so that it can be used to identify trends;
- To publish the data collected;

- 370
- To ensure that the data collected on the application of provisions of the Criminal Code, including provisions expressly criminalising hate-based violence such as Article 174/B of the Criminal Code, are disaggregated by the different groups to which the victim may belong, while ensuring that any collection of such data is in line with the international standards on the protection of personal data;

375

On victim support

- To ensure that victims of hate crimes have effective access to mechanisms of justice and to redress, including by ensuring their access to appropriate support and assistance at each stage of the criminal justice process and, where appropriate, after its completion. The support and assistance should also be provided in cases in which the perpetrators are not identified, prosecuted or convicted;
- To provide training for the police to ensure that the needs of victims of hate crimes are met, including their rights to dignity and privacy;
- To ensure that victims of hate crimes, and where appropriate their families, are informed about, offered and have effective access to support, assistance and protection, including counselling and legal assistance throughout any investigation and criminal proceedings, continuing after the case has been closed;

385

On promoting tolerance by government and public officials

390

- To ensure the message is clear: racist comments by public officials, including law enforcement and administrative officials, are not tolerated in Hungary;
- Discontinue with the anti- immigration campaign and take measures to promote tolerance for asylum seekers.

395

400

WORKING GROUP AGAINST HATE CRIMES

Amnesty International Hungary □ Háttér Society, Hungarian Helsinki Committee □ Legal Defense Bureau for National and Ethnic Minorities □ Hungarian Civil Liberties Union □ Ebony African Association
www.gyuloletellen.hu □ info@gyuloletellen.hu

i

<http://www.gcr.gr/index.php/en/action/gcr-projects/2015/item/450-increasing-the-capacity-of-law-enforcement-authorities-to-tackle-racist-crime-hate-crime-and-homophobic-crime-through-experiential-learning-experience-crime>

ii European Parliament resolution on the situation in Hungary (2015/2700(RSP)),
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-0536+0+DOC+XML+V0//EN&language=en>

iii <http://www.euractiv.com/sections/justice-home-affairs/hungarian-official-admits-campaign-generate-hate-against-migrants>

iv http://index.hu/belfold/2015/08/28/kovacs_zoltan_a_menekulteket_hibaztatja/