

## I. Introduction

1. While in some areas the Hungarian authorities have made notable progress in responding to hate crimes and protecting the rights of vulnerable groups, due to several long-standing institutional obstacles, the lack of systematic data collection coupled with the Hungarian Government's stigmatising rhetoric about several vulnerable groups - most significantly LGBTQ people, Romani people, asylum-seekers, refugees and migrants - has led to serious consequences and hindered the authorities' effort to effectively tackle hate crimes.
2. During the Second Cycle of the UPR of Hungary in 2016 seven recommendations were made by the Member States relating to combating hate crimes, out of them four were supported and three noted by Hungary (see Annex 1). The Submission focuses on the implementation of those recommendations.

## II. Implementation of the legal framework

3. The legal framework would make it possible for the authorities to effectively tackle hate crimes. However, failures can be detected when it comes to the implementation and application of the law in case of hate crimes against members of vulnerable groups. These systemic failures are under-classification of hate crimes, over-classification of crimes committed by vulnerable group members, failures by the police to undertake law-enforcement measures and to take investigative steps.
4. Under-classification means 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 Criminal Code are applied. As a result, in case of a conviction, the sentencing is not in line with the sanctions prescribed by law. In a significant amount of cases, the exhaustion of legal remedies of the criminal procedure proves to be sufficient for the correction of the wrong classification 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 only a minor ratio of victims have access to legal representation.
5. Although the Supreme Court delivered a decision in 2011<sup>1</sup> 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 constitutional values may not be entitled to enhanced criminal law protection, the Hungarian prosecutors and courts have applied the hate crime provision against vulnerable group members in favour of racist, extremist groups in a few emblematic cases between 2009-2013. But even in 2016, in a final decision<sup>2</sup> Roma persons were found guilty of a hate crime for harassing extremist group members in relation to an anti-Gypsy demonstration that was organized by them before the incident.
6. Police often fail to take the necessary measures at far-right, extremist assemblies directed against vulnerable groups, even if there is sufficient evidence that an infringement of law took place, in particular cases based on the direct perception of police officers. According to the Act on Public Assembly<sup>3</sup>, if an assembly commits a crime or violates the rights or freedoms of others, then police shall disperse the assembly. However, this usually does not happen (see Para 8).
7. Additionally police often fail to act even when the police action is ordered by the Act on the Police<sup>4</sup> on the basis of well-founded suspicion of a hate crime against a specific offender. The extremely slow nature of the complaint procedures renders the legal remedy ineffective.

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<sup>1</sup> Bfv.III.87/2011/5

<sup>2</sup> Fővárosi Ítéltábla 5.Bhar.268/2015/5

<sup>3</sup> Act LV of 2018 on Public Assembly

<sup>4</sup> Act XXXIV of 1994 on the Police

These failures also jeopardize the success of the criminal procedures against the perpetrators.

8. In 2019 and 2020 several hate crime attacks were committed against LGBTQ events in Budapest - most prominently during the Budapest Pride Month - and in some cases the police was reluctant to take effective measures to respond to such incidents and secure the victims. In July 2019, a group of extremists entered the building hosting the offices of an LGBTQI organizing by forcefully pushing aside a staff member of the organization standing at the door of the building, harassed the participants arriving to the event, and shouted homophobic and other slur for an hour and the half, yet the police did not remove the extremists staying without permission in private property. A criminal investigation was opened, but the police closed the investigation 2.5 years later arguing that the group's behaviour was not violent or threatening. The decision was challenged, but the prosecution also agreed with the police.<sup>5</sup> In September 2019, far-right extremists managed to put off a closed LGBTQ event in Central Budapest by occupying the community centre that hosted the event and harassing the participants. The police was reluctant to take any action - the responding officers were waiting at least 20 minutes outside of the centre before entering - and while eventually they managed to enter the building, they were not willing to take any concrete measures against the extremist group despite the repeated calls from the organisers and the hosts and the sufficient evidence of criminal wrongdoing. In November 2020, the Metropolitan Court of Budapest deciding on the complaint brought against the police ruled that police violated their legal duty not responding immediately and not taking the necessary measures against the extremist group.<sup>6</sup>
9. It still appears to be a general problem that the investigative authorities fail to question (all) the witnesses, collect the CCTV footages before their deletion, to conduct searches or background investigations during the investigation into the motives to learn of the lifestyle of the offenders 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.
10. There is a systemic issue with the implementation of 'incitement against a community'. This provision was modified in 2016, since then, the crime is deemed to be committed not only if the danger created by an expression involves a direct possibility of a violent act but also if it instigates hatred. The legal practice of courts and the prosecution however still 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 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.
11. The practice of the authorities is highly questionable as it renders the crime practically dormant and even extremely hostile expressions cannot be punished. This is supported by a resolution of the Deputy Commissioner for Fundamental Rights<sup>7</sup>. The Working Group's expert opinion is that the 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.

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<sup>5</sup> B.V-XIII.5762/2019/34.

<sup>6</sup> 11.K.704.923/2020/15.

<sup>7</sup> Resolution no. 6/2020. of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities

**Recommendation:** Take effective measures for the police and prosecution to ensure prevention of hate crimes, effective police action at the scene and full implementation of hate crime legislation.

**Recommendation:** Issue instructions for the authorities and courts that members of groups opposing constitutional values are not entitled to enhanced criminal law protection; that hate crimes might be committed against property belonging or symbolizing a protected group; and provide training for stakeholders.

**Recommendation:** 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.

### III. A hate crime protocol was adopted

12. Arguably the biggest achievement in the field of hate crimes was the adoption of a police and a prosecution protocol on hate crimes in 2019 in line with Recommendation 128.107 from the Second Cycle of the UPR of Hungary (see Annex). The Directive of the Chief of the Hungarian Police<sup>8</sup> entered into force on 1 August 2019 and serves a general manual for police officers on dealing with bias motivated incidents and crimes. We have to note however that the adoption was not preceded by formal consultations with experts, including the Working Group Against Hate Crimes.
13. The Directive expands the institutional framework of the Hate Crime Special Network (established in 2012) by ordering that a ‘mentor’ shall be appointed at every police headquarter who is the local expert on hate crimes. This third tier complements the earlier structure consisting the national coordinator of the Special Network and the county coordinators.
14. The Directive also contains a list of hate crime indicators to help police recognize hate incidents (developed by the Working Group in 2016) and guidance for the police how to treat victims and witnesses of hate crimes and how to conduct their questioning - also developed by the Working Group.
15. Overall, the adoption of the Directive is a huge step in the positive direction even though the Working Group’s impression is that many police officers are not fully aware of its content.
16. Despite Hungary has supported Recommendation 128.77 (see Annex) and pledged to allocate sufficient resources to the Hate Crime Special Network, the effective functioning of the Network is still hindered by the fact 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. Additionally, the preparedness and competence of the Network members vary from county to county due to the lack of specialised and regular training.
17. While some specialized training courses on hate crimes were organized in recent years targeting police officers, prosecutors and judges, no transparent information is available on the training and its structure. Also NGOs held training for hate crime police officers reached only a low number of professionals, and were often organized by NGOs and without any public funding. The experience of NGOs show that those participating in their training handle

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<sup>8</sup> ORFK 30/2019. (VII. 18.) utasítása a gyűlölet-bűncselekmények kezelésével összefüggő rendőrségi feladatok végrehajtásáról

the investigation significantly more professionally, however, cases often get stuck at the local level, and never get to the specialized investigators.

18. State organs do not systematically cooperate with specialized NGOs in the field. If ad hoc cooperation is achieved, NGOs initiate these and often encounter serious obstacles. Prosecutors, judges and police officers are not entitled to initiate cooperation without the approval of the central command and they are jeopardized to establish cooperation on the individual level. There is a widespread fear among state professionals to formally connect with certain NGO members protecting vulnerable groups targeted and harassed by the Government propaganda.

**Recommendation:** Ensure that police officers and prosecutors are fully aware of the Directive of the Chief of the Hungarian Police (protocol on hate crimes) by conducting regular training for them.

**Recommendation:** Ensure that all police officers and prosecutors receive training on the nature of hate crimes and the role of the police in combating them. Additionally, make sure that the training agenda is accessible for the professionals working on the field.

**Recommendation:** Involve NGOs in the training of state actors, organize common discussions and meetings and foster cooperation with them on other fields of hate crime prevention.

**Recommendation:** Provide adequate financial compensation and extra time for the members of the police Hate Crime Special Network to carry out their duties.

#### **IV. Comprehensive and timely data collection is still missing**

19. Data collection on hate crimes was significantly improved in July 2018, however it still suffers from serious deficiencies that do not allow for the comprehensive and timely compilation of statistics. 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 (ENYÜBS).
20. In July 2018 two new fields were introduced in the statistical form: a yes-no question on whether the crime is a hate crime, and if it is, a question on the protected characteristic (race, nationality, ethnicity, religion, sexual orientation, gender identity, disability, other). This is a significant improvement to the previous system but it is still, however, problematic that the categorization of the crime as hate crime is based solely on the decision of the authorities, thus in case the authorities do not recognize the bias motivation, the crime will not show up in the relevant category. Furthermore, recording only protected characteristics, but not the group targeted lumps together highly different forms of hate crimes (such as anti-semitic, anti-muslim and anti-christian crimes under 'religion') making it difficult to have a real understanding of the problem.
21. There are also three general problems with ENYÜBS that significantly undermine its usability altogether. First, data on registered crimes is recorded in the statistical system upon the decision of prosecutors to prosecute or suspend investigation in the case; therefore, in case of a long investigation 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 significantly less detailed and does not allow the tracking of a case 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.

22. While there is a public interface making ENYÜBS data available on the internet, the questions on hate crimes mentioned in Para 20 are not included in the data tables published, so hate crime data is only available if a freedom of information request is submitted.
23. There are no regular victimization surveys that would allow measuring underreporting of hate crimes. The European Union Agency for Fundamental Rights (FRA) conducted a representative victimization survey in 2019 covering Hungary as well, but this was a one-off initiative that does not allow longitudinal analysis. Furthermore, while the survey did ask questions about becoming a victim of physical violence or harassment, it did not include questions on whether the violence or harassment was bias motivated. FRA also conducted surveys among Roma, Jewish and LGBTI people about their experience of violence that show high levels of victimization and underreporting, but the Hungarian government questions the validity of these studies due to methodological considerations.
24. In the Working Group's view, based on the current method of data collection and in lack of regular victimization surveys, it is impossible to understand the real number of bias motivated crimes which, in effect, leads to the distortion and bagatellisation of the scale of the problem.

**Recommendation:** After a meaningful consultation with civil society organisations, researchers, experts and other stakeholders ensure that the methodology and timeliness of the data collection is improved to provide an accurate representation of the situation.

**Recommendation:** Conduct and publish a yearly representative victimization survey that allows measuring underreporting and longitudinal analysis of the situation.

#### **V. Victim support system needs to be strengthened**

25. Despite the severe and traumatic nature of hate crimes, no specialized support programs exist for victims of hate crimes. Victim support in general is offered by the public Victim Support Service (VSS), the Victim Support Centers (VSC) and some NGOs. The available services range from financial aid to legal aid and emotional support. Since 2016, these victim support services are also available for those not reporting a crime to the police, and public legal aid has been extended to the investigation phase as well, however police often fail to inform the victims about the support services as a consequence of the fact that they do not consider the services important from the point of view of their own work.
26. Free legal aid, however, is only offered for indigent victims, and the application procedure is so bureaucratic that most of the victims do not apply even if they would be entitled to it. There is also a shortage of lawyers contracted, so even if a victim is entitled to free legal aid, it is likely that they will not be able to find competent lawyers to take their case. Free psychological support is only provided in a few counties.
27. The institutional structure of public victim support services has been reorganized several times in recent years (moving victim support to the district level (járási szint) in 2017, then back to the county level (megyei szint) in 2020), which created a lot of confusion among both victims and law enforcement bodies, resulting in only a very low proportion of victims accessing those services. The Ministry of Justice reported that between January 1, 2014 and December 31, 2019 only two victims of hate crimes accessed the public victim support service.<sup>9</sup> Since January 2021, the public victim support service is available on an opt-out basis (the victim's data is shared by the police with the VSS, who will proactively reach out to the victim), but the change is too recent to evaluate its impact.

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<sup>9</sup> Response no. V/46/3/2020 of the Ministry of Justice to a freedom of information request by the Working Group Against Hate Crimes

28. The VSS and VSC are not prepared to offer services tailored to the needs of hate crime victims. The Ministry of Justice informed the Working Group<sup>10</sup> that in 2014-2019 VSS and VSC participated in no projects, campaigns or initiatives focusing specifically on hate crimes, and that the staff of VSS and VSC did not participate in any training covering specifically hate crimes. In 2018, Háttér Society, one of the member organizations of the Working Group offered free training on hate crimes to the staff of VSS and VSC, but the Ministry of Justice rejected the participation.

**Recommendation:** Ensure that victim support officers are aware of the nature and consequences of hate crimes by organizing training for them with the participation of specialized NGOs.

**Recommendation:** Ensure that police investigators know and understand the nature and importance of victim support services by organizing training for them together with the participation of victim support officers and with the involvement of specialized NGOs.

**Recommendation:** Ensure that victims have access and receive adequate high level legal counselling and representation in criminal cases by dismantling bureaucratic burdens and by adequately funding the legal aid system.

**Recommendation:** Ensure that victims have access and receive adequate high level psychological treatment in relation to criminal cases by providing the necessary number of professionals and funding of the system.

## VI. Government's intolerant approach towards vulnerable groups

29. Since 2016, various groups of vulnerable people have come under attack by state officials and leading political figures. The government's anti-immigration campaign has further continued promoting intolerance towards asylum-seekers, refugees and migrants<sup>11</sup>.
30. After a group of Roma students were finally rewarded with financial compensation after being segregated in their school, Prime Minister Viktor Orban portrayed them and their families as people who are "getting money without working for it" and stated that "it is unacceptable for a majority to feel ill at ease in their own towns, or country, and it won't happen while I am the Prime Minister," and added that "This is a country of natives, after all, this is our country."<sup>12</sup>
31. Most recently LGBTQ people have come under attack, several governmental figures - including the Speaker of the House - were using derogatory language directly or less directly implicating that LGBTQ people are pedophiles<sup>13</sup>. Prime Minister Orban reacting to an outcry from the far-right concerning a children book showcasing various figures with disadvantaged backgrounds, said in an interview "Hungary has laws on homosexuality, which are based on an exceptionally tolerant and patient approach," "But there is a red line not to cross," he continued, castigating an "act of provocation". "To sum up my opinion: leave our children alone," he added.<sup>14</sup>
32. NGOs and activists working towards equality and providing inter alia legal aid and support to vulnerable groups also have become the target of the government. Since 2014, politics

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<sup>10</sup> *ibid.*

<sup>11</sup> <https://www.reuters.com/article/us-hungary-rights-idUSKCN1HC1AJ>

<sup>12</sup> <https://www.reuters.com/article/us-hungary-roma-segregation-ruling-idUSKBN22R1D5>

<sup>13</sup> [https://index.hu/english/2019/05/17/speaker\\_of\\_hungarian\\_parliament\\_a\\_normal\\_homosexual\\_does\\_not\\_regard\\_himself\\_as\\_equal/](https://index.hu/english/2019/05/17/speaker_of_hungarian_parliament_a_normal_homosexual_does_not_regard_himself_as_equal/)

<sup>14</sup> <https://www.euronews.com/2020/10/05/leave-our-children-alone-hungarian-pm-tells-publisher-of-lgbt-bok>

against NGOs critical towards government policies and protecting the rights of vulnerable people have become one of the main target of the Hungarian government which has adopted laws to stigmatise and silence them and very often featured in the pro-government media as “anti-Hungarian traitors who serve foreign interest”.<sup>15</sup>

**Recommendation:** Immediately halt smear campaigns against vulnerable groups, including refugees, migrants and Roma and LGBTQ people and ensure that racist, homophobic, transphobic, xenophobic and misogynistic comments are not tolerated by state officials.

**Recommendation:** Actively support public campaigns and discourses that promote equality and inclusion of vulnerable groups and people.

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<sup>15</sup> <https://freedomhouse.org/article/hungary-government-intensifies-smear-campaign-against-civil-society>