

Law enforcement problems in hate crime procedures

The experiences of the Working Group Against Hate Crimes in Hungary



WORKING GROUP AGAINST
HATE CRIMES IN HUNGARY



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A detailed Hungarian language description of the cases analyzed can be found at:
<http://www.gyuloletellen.hu/esetek>

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Summary

During the meeting of the Human Rights Working Group's Thematic Workgroup Responsible for the Protection of Other Civil and Political Rights founded by the government, on 15 November 2013, members of the Working Group Against Hate Crimes (GYEM) have undertaken the responsibility to shed light on the most critical issues of law enforcement through specific cases, used in anonymized form, to which lawyers of the partner organizations have contributed (typically as representatives of the victim). The following brief description is intended to accomplish this goal. The cases processed with a standardized method will be published in anonymized form on the website of GYEM (www.gyuloletellen.hu/esetek). The present paper includes short summaries of the facts of the specific cases, the more detailed case summaries to be published on the website will provide the reader with additional information. Based on the analysis of the cases, the following typical issues were identified:

- I. Under-classification***
- II. Failure to take police action**
- III. Failure to take investigative steps**
- IV. Restricted access to a legal remedy**

Certain cases can be classified in multiple categories. In these cases, the facts are presented upon the first mention of the case. Subsequently, the number of the relevant case summary is indicated in brackets. It must be noted that the focus of GYEM is limited to violent hate crimes (particularly crimes that can be classified as violence committed against a member of a community). As such, the present study is not concerned with the issues of law enforcement problems arising in the context of other crimes dealt with by GYEM's partner organizations, such as hate crime committed through hate speech capable of incitement against a group.

* By under-classification we mean that the bias motivation is disregarded during the procedure hence 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 applied. As a result, in case of a conviction, the sentencing is not in compliance with the sanctions prescribed by the legislature.

I. Under-classification

I/1. During the investigative phase

1. KLUB64, BUDAPEST (13 JUNE 2010): The victim was heading home from a well-known gay bar, passing a club called Klub64. The venue, which is advertised as a “national club”, is managed by László Toroczkai, head of the extreme-right wing Hatvannégy Vármegye Ifjúsági Mozgalom (Sixty-four Counties Youth Movement). When the victim wanted to pass three men standing in front of Klub64, one of them punched the victim repeatedly without forewarning, while shouting “*filthy faggot*”. The victim lost his consciousness, suffered serious injuries (requiring more than 8 days to heal) and had to undergo months’ long dental treatment.

The victim reported the case at the Police Station of the 7th district, where he was told that if his injuries were minor requiring less than 8 days to heal, an investigation would only be commenced if he pressed charges, and that an investigation would only be commenced *ex officio* if his injuries required more than 8 days to heal. The victim was asked to report back to the police once the severity of his injuries became known. However, the police failed to inform the victim that in so far as the crime in question was a hate crime, the procedure should have been initiated *ex officio* irrespectively of the severity of the crime. Following a medical examination, the victim called the police to inform them that his injuries were found to require more than 8 days to heal but he was never contacted by the police again. According to the press release issued by the police, an investigation was not commenced because the victim had failed to press charges. Obviously, the investigation should have been triggered *ex officio*, at least for disorderly conduct.

2. GYÖNGYÖSPATA (4 MARCH 2011): The Roma victim, 35 weeks pregnant at the time, went to do some shopping in a nearby grocery store during the “patrol” of the extremist, anti-Roma Szébb Jövőért Polgárőr Egyesület (Civil Guard Association for a Better Future). On her way home to the Roma quarter, she noticed two masked men following her, dressed in black, carrying whips. Once they reached her, they started wheezing in her neck and spitting on her.

Initially, the police ignored the obvious anti-Roma motivation and classified the case as defamation, deferring it to the court. The police then dismissed this decree on the basis of the conclusion that the case was only a defamation misdemeanor, which came under the jurisdiction of the local notary at the time. Although following a complaint from the representative of the victim, the prosecution correctly reclassified the case as violence against a member of the community and ordered the police to conduct the investigation accordingly, the case was dismissed on the grounds that the acts of the offenders could not be proven to have been directed at the victim.

3. GYÖNGYÖSPATA (10 MARCH 2011): The victim, a young woman, was in the courtyard of another house inhabited by Romas, along with her two-year-old daughter and 5-6 other women. One off the three men and one woman – wearing the uniform of the extremist group called Betyársereg (Outlaw Army) – passing the house, began shouting at them without any warning, saying they should keep quiet, he called them rats, and demanded that they went inside the house. The victim asked what was wrong with sitting in the courtyard. The man approached the fence and – around two steps from the fence– drew a hatchet and a whip and began to shout once again: “*You*

dirty, filthy gypsy, you son of a bitch! I am going to kill you!" The woman accompanying him restrained him and carried him away but the man repeatedly ran back, shouting *"Dirty gypsies, I will build my new house from your blood, right here, in the gypsy district!"* *"I will paint my new house with your blood!"* The altercation continued and the man eventually swung his hatchet in the direction of the victim. The man later boasted on the internet about having brought order to Gyöngyöspata with his whip.

Regardless of the charges filed for violence against a member of the community (attempted assault and coercion), the police commenced an investigation for harassment, even though the suspicion of racist motivation can be clearly inferred from the facts of the case. The prosecution responded to the submission of the victim's representative that although the suspicion of racist motivation existed, the crime could have only been classified as form of disorderly conduct of the crime against a member of the community, but the relevant provision of the Criminal Code was not in force at the time when the acts were committed. The investigation was later closed on the grounds that it was impossible to prove that a crime had been committed. As for why the prosecution did not press at least the charge of disorderly conduct is beyond comprehension.

4. GYÖNGYÖSPATA (16 APRIL 2011): The parents of a Roma family living in the Roma district returned home for dinner, while they left their children at another house. They returned home only for food, as they were scared of the extremists' presence. Five people dressed in black began cursing at them in front of their gate. Later, someone, presumably of the same group, broke their window with a rock while they were inside. Meanwhile, the men were shouting *"You will die, filthy gypsies, if you don't move from Pata!"*

In the report filed at the police, the representative of the victim claimed that attempted violence against a member of the community could have been committed as there were clear indicators of a possible racial motivation. Instead, the police investigated the case as disorderly conduct, and failed to collect evidence for identifying the perpetrators (see: part III.). Therefore, the victim refrained from submitting a complaint against the reclassification to disorderly conduct or the eventual deferral of the investigation, having lost trust in the authorities, and believing it to be useless.

5. PRIDE 2011 BANNERS (18 JUNE 2011): During the 2011 Budapest Pride, extremists carried banners calling for the extermination of homosexuals (the banners depicted a rope, the pink triangle associated with Nazi Germany's treatment of homosexuals, and the text *"A new treatment for homosexuals"*). The counter-protesters continuously shouted *"filthy faggots, filthy faggots!"* The former captain of Magyar Gárda (Hungarian Guard) was seen by many, giving orders to a uniformed group. When a journalist asked them what they were doing, they succinctly replied: *"We're going to get them!"* Multiple attendants of the parade were harassed and assaulted upon leaving the secured area, resulting in a number of criminal investigations.

According to the authorities, the display of the banners did not amount to the commission of violence against a member of the community in the form of disorderly conduct (174/B. § (1a)) because *"it refers to the opinion on the treatment of homosexuals [i. e. extermination] (...) not openly but subtly, by using figures and a symbol" which cannot be considered "the willful, open violation of the rules of social coexistence"*. In our view, bias motivation and grossly anti-social behaviour can be demonstrated even by subtle references. The section of 174/B. § (1a) was introduced by the legislator, following the patrolling of the extremists in Gyöngyöspata, with the explicit intent of punishing non-violent

acts which are committed in the presence of members of a protected group, and which constitute grossly anti-social racist acts, capable of causing distress. The relevant provision, in contrast with the offence of disorderly conduct, does not refer to violence hence it can be applied in cases of hate and symbolic speech.

6. LÖVÖLDE SQUARE, BUDAPEST (22 MARCH 2012): The victim was heading home on a trolley bus when two inebriated young men accosted him, using abusive language (“faggot”, “little cocksucker”). According to the victim, the perpetrators could have inferred his homosexuality from his clothing (pink shirt, silky sweater, tight pants), that is underpinned by the ferocity of the attack. The victim got off the trolley bus at Lövölde Square and quietly muttered “Come here!”. The two men also got off the bus and started following him. They tried to kick the victim, but accidentally spilled their beers on themselves. One of the men then started assaulting the victim and threatened to kill him. The victim fell down and was beaten.

The victim reported the incident to the police providing a detailed description of the offensive remarks made in reference to his sexual orientation, as well as the other facts of the case suggesting the bias motivation. The police did not record the victim’s comments relating to the bias motivation. The victim later supplemented the report in the presence of a legal representative. The police commenced an investigation for physical assault against persons unknown. The investigation was eventually suspended. The victim filed a complaint regarding the classification of the crime, which was dismissed by the prosecution on the grounds that *“The vulgar expressions used by the perpetrators have unfortunately become commonplace in the context of disorderly attacks committed by inebriated individuals and are being used indiscriminately by aggressive perpetrators.”*

7. BUDAGYÖNGYE, BUDAPEST (9 MAY 2012): Two old ladies, one of Jewish and the other of Roma origin, were verbally abused in public based on their descent. The act was classified as defamation by the police. Following multiple legal redresses, the case was transferred to BRFK (Budapest Police Headquarters), where the complaint of the victim’s representative was initially dismissed on the grounds that the acts in question did not amount to incitement. The decision was later rectified and BRFK commenced an investigation in the spring of 2013 for the well-founded suspicion of 174/B. § (1a). The victim’s representative has not received an update on the case ever since.

8. DEVECSEER (5 AUGUST 2012): In August 2012, Jobbik organized a demonstration in Devecser under the name *“To live and let live: demonstration for the Hungarian right to legitimate self-defense”*. The demonstration was attended by numerous extremist organizations, many of them armed (with metal pipes, whips, whips with rocks attached, and sticks) and marching in formation, following commands. Internet sources defined the aim of the demonstration as taking action against *“gypsies of Devecser who lynch Hungarians”* and *“the gypsy-criminals incapable of abiding by the norms of coexistence”*. A number of speeches capable of incitement were delivered by the speakers. Zsolt Tyirityán, the leader of Betyársereg, talked about signs of a race war and ethnic conflicts. He explained that *“the genetic waste must be annihilated from the public”*, then added that *“we shall stamp out this phenomenon that must be eliminated from our living space”*. After the speeches, the demonstrators marched to the Roma part of the township, where they started shouting racist, discriminatory comments (e.g. *“filthy gypsies!”*) and proceeded to throw water bottles, pieces of concrete and rocks at the houses of Roma people. Several people were injured by the rocks thrown at a house’s courtyard.

In our view, the racist chanting already constituted violence against members of the community in the form of disorderly conduct committed in a group (174/B. § (1a)), and the throwing of bottles, rocks and pieces of concrete constituted a violent hate crime – attempted assault and in those cases where victims were hit by the rocks, assault (174/B. § (1)). Nevertheless, the police classified the case as violence against members of a community only eight months later in April 2013. Due to the failure of the police to take the necessary measures, only one perpetrator was identified and charged.

9. FERENCIEK SQUARE, BUDAPEST (16 DECEMBER 2012): The victim was heading to a party with his gay friends on the night bus, when two men in their twenties started making comments about gay people (*“faggots”, “wow, it’s getting quite hot – gay in Hungarian - in here”*). When they got off the bus, the two men stood right behind the victim and shouted *“move it, you stupid faggot”*. The victim turned around and was punched in the face. The victim started cursing, after which the two men pushed him to the ground and repeatedly punched him.

The police initially classified the case as a physical assault and refused to record the victim’s requests to reclassify the case correctly. The request was only recorded during the filing of the report at the police, following the explicit demands of the victim’s representative. Two months later, the investigation for the correctly reclassified case was closed because the perpetrators could not have been identified.

10. MISKOLC (14 JANUARY 2013): According to the victims and a witness, the offender openly expressed his anti-Roma feelings in general as well as deliberately against the Roma victims (*“all gypsies must die”, “they should all rot”, “stinking gypsies”*) and threw a punch in the direction of the victims, partially hitting them. The girls could only avoid further physical confrontation thanks to a non-Roma bystander who came to their rescue. Despite the expressions used during the attack, the case was classified as a simple disorderly conduct. The representative of the victims presented a motion for establishing that violence against members of the community had occurred, however the motion was rejected.

11. DERESTV EUROGAMES CASE (24 JUNE 2013): Between 27 June and 1 July 2013 Budapest hosted the Eurogames LGBT sports event, attended by thousands of LGBT competitors from a number of European countries. On 24 June 2013, deres.tv, a far-right news site published an article titled *“It’s hunting season! The list of names of the organizers of the faggot Olympics in one place, soon to be updated with the addresses of accommodation of the faggots”*. The article contained 31 names, along with pictures downloaded from Facebook of people who were said to have organized the event. According to the article, *“we must do everything and use everything at our disposal to show resistance of the highest degree”*. By the article’s admission, their goal was to help the *“fag-hunters”*.

The police closed the investigation for preparation to commit violence against members of the community for the absence of a crime. Following a complaint, the prosecutor’s office ordered the investigative authority to continue the investigation.

12. PRIDE CITY PARK, BUDAPEST (6 JULY 2013): The victims were heading to the starting point of the Budapest Pride in 2013, holding a large, rolled up flag. Some hundred meters from the rallying point, three men in their twenties stopped them and asked whether they were heading to the Pride Parade. One of the offenders assumed an attacking position and kicked one of the gay men, who fell to the ground. A young couple witnessed the attack and called for the police, which prompted

the attackers to flee the scene. The victims found a police patrol nearby, and the policemen offered to drive the kicked man around the park so that he could try to identify the offenders. One of the offenders was found and taken into custody.

The crime was treated as disorderly conduct despite an explicit motion which aimed for the correct classification of the incident. The police station of the district conducted the investigation which was concluded with a proposal for indictment for the crime of disorderly conduct. The prosecutor's office, in the light of the repeated motions submitted by the representative of the victim, did not press charges and instead ordered the police to continue the investigation in the question of motivation. The case was referred to BRFK (Budapest Police Headquarters), which now had authority over it. During the procedure, the offender confessed to the crime including his motivation.

13. BICSKE (27 OCTOBER 2013): The victim, living in the refugee camp at Bicske, was heading to the train station when he was accosted by two men, unknown to the victim, sitting on a bench in the park. One of the men said to him in English: *"Black man, go back to Africa, here is Hungary, it's not Africa"*. One of the men then stood up from the bench and slapped the victim. When the victim raised his arm to defend himself, the attacker began hitting his forearm. The victim fled and picked up a stick, in case the men were to reappear but he ended up not using it. The two attackers later appeared again and as they approached him, the victim noticed that one of them was carrying a knife, so he started running. Later, a car appeared with several people inside, including the attackers. The two offenders got out of the car, caught the victim and started beating him with a stick-like object. Afterwards the victim ran to the train station, but was once again caught by the attackers who continued to beat him with the stick. The men then placed him on the train tracks where they continued to punch his head. After a while, the men picked him up from the train tracks and placed him onto the platform.

Despite the clear indicators of the racist motivation, both the police and the prosecutor's office failed to classify the case as violence against a member of the community. After months of negotiations, with the interference of NGOs, ORFK (the National Police Headquarters) ordered the reclassification of the case. (For further problems, see part III).

1/2. Under-classification during later stages

1. TOROCZKAI KURUC.INFO (14 JUNE 2009): The subject of the case is the legal classification of the call made against Pride in 2009. The article published by the perpetrator on kuruc.info said: *"We must show our force once again", "We must reveal our fighter side once again and give an effective response to the anti-national provocation", "Last year the Hungarian resistance performed honorably"*. The article further said that *"Like last year, we have made arrangements with the movement and the political wing of the national resistance, as well as the [soccer] fans"* aiming for precluding the Pride.

At the beginning of the procedure the case was classified as preparation to commit violence against a member of the community and preparation to violate the right to assembly. However, charges were filed only for the latter and this is what Toroczkaï was eventually convicted of. It is unclear why the preparation to commit violence against a member of the community was not realized, if the preparation to violate the right to assembly was. Since the sentence for the latter is more severe, in case of an apparent concurrence, it should have served as the basis for the conviction.

2. PRIDE MŰVÉSZ MOZI (ART CINEMA), BUDAPEST (4 JULY 2010): The 15th Budapest Pride LGBT Festival was opened on 4 July 2010 at Művész Mozi. As a protest against the event, a number of people, wearing clothes associated with the far-right movement, appeared at the cinema. The police was present, as they anticipated conflict. The victim was heading towards the event when a larger group started verbally harassing him in a nearby street. Two young boys from the group stepped forward and one of them punched the victim, whose glasses fell on the ground.

The police asked the victim at the scene whether he wanted to report the incident, which he declined due to the shock of the attack and the following police action. The police failed to inform the victim that, as the case was violence against a member of the community, the procedure will be triggered *ex officio*. Later a procedure for violence against a member of the community was initiated but the case was downgraded by the prosecutor's office to disorderly conduct. The prosecutor's office rejected the complaint against the reclassification. In the dismissal of the complaint, the prosecutor's office claimed that although the witnesses unanimously agreed that they heard the offensive remark "faggot" being used, the victim did not remember clearly whether he had heard the word "faggot" or "homo" and the offenders denied using such words, making it impossible to prove the use of abusive language. The prosecutor's office added that "faggot" is used generally as an insult and does not necessarily prove intent to offend the sexual identity of the victim. The prosecution ignored the facts that the case occurred in the vicinity of and during a Pride event, that background investigation revealed that one of the offenders had explicitly homophobic views, which were suggested by his clothes and look as well, and, in addition, that given the circumstances, namely that the offenders waited in the area, shows that the group was there specifically because of the Pride event.

General assessment

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 legal representation. Among the above case studies there are examples of the correct classification being determined not as a result of formal legal remedies but due to negotiations between NGOs and the authorities, or thanks to the pressure of publicity. For this reason improving the technique and work of the investigative authorities is immensely important. The investigative authorities should be made aware of the fact that if the suspicion of bias motivation comes up, the procedure must be initiated *ex officio*, regardless of the severity of the injuries.

It is extremely important for the success of the procedure (that is, the appropriate classification and the adequate sentence) that the investigative authorities take into consideration the hate motivation from the beginning of the procedure. If the aggravating circumstances are not being taken into consideration, they may fail to take the investigative measures required for the exposition of the motive, which cannot possibly be done later on.

Finally, it is questionable why the investigative authorities do not consider the cases mentioned above to be grossly unsocial, violent acts despite them having been committed in public places (thus being able to cause distress and fear), since, for this reason, several closed proceedings should have been investigated more thoroughly.

II. Failure to take police action

1. PRIDE MŰVÉSZ MOZI (ART CINEMA), BUDAPEST (4 JULY 2010) (For the case history, see I/2/2): Even though the perpetrators were at the scene during the police action, the police did not arrest them, but checked the ID of the victim and interviewed him. Had it not been for LGBT activists present, who followed the offenders, the police would have never caught them. The victim was asked by the police whether he wanted to report the incident, which he refused to do, due to the shock caused by the attack and the following police action. He acted thus, although, considering the fact that there was reasonable suspicion that violence against a member of the community took place, the procedure should have been commenced *ex officio*.

2. DEVECSER (5 AUGUST 2012) (For the case history, see I/1/8): ID checks, arrests and the procuring of the records of surveillance cameras did not take place. As a result, the identification of the offenders failed, so the criminal procedure against persons unknown was suspended. The complaint procedures on the failure of the police to check the IDs and to disperse the crowd are still ongoing – the length of these procedures in itself is a sign of the ineffectiveness of the legal remedies provided by the Police Act.

3. MILLA DEMONSTRATION, BUDAPEST (23 OCTOBER 2012): Besides the protest and commemoration of national holiday (23 October), organized by the opposition group *Egymillióan a Magyar Sajtószabadságért* (One million people for the freedom of press in Hungary), a radical right-wing gathering of approximately 100 people organized a counter protest called “*Cutting of the Regime*”. Domonkos Barna Szász, correspondent of the news site Index was filming, standing among the counter protesters, along with his colleague. Approximately 10 participants of the counter protest surrounded them, started pushing them and demanded them more and more vehemently to stop the filming and “*go back to the circumcised dicks*”. The victim told them that he was only doing his job but after a couple minutes he lowered his camera when the danger became apparent. Shortly after that a protester, along with his companion approached the victim and punched him in the nose. The nose of the victim was broken. The injured party and his co-correspondent fled the area of the counter protest.

The line of riot police guaranteeing the safety of the protests was only a couple meters away from the incident but did not intervene into the pushing, which was easy to notice, and, although the victim informed them of the event, and two witnesses told them that the attacker was just a few meters away, and was putting a chain over his fist, the police failed to take the necessary action and disperse the unlawful demonstration. This failure to act was confirmed by the decision of the Budapest Administrative and Labor Court delivered on 17 December 2013 based on the lawsuit filed against the decision of the ORFK (National Police Headquarters). According to the 2 April 2014 decision of the Curia (Supreme Court), the failure to disperse the aggressive crowd cannot be investigated due to the absence of an explicit complaint thereof: in contrast, however, the complaint referred to the lack of police action in general. Consequently, the ORFK only investigates the failure to act upon the attack against the complainant. As regards the attack against the victim, charges for violence against a member of the community have been filed.

4. CEGLÉD (18 AUGUST 2012): A racist march of some 20-30 people took place in the streets inhabited by Roma people, in the course of which shots were fired from a gas pistol. The police did

not disperse the crowd, check IDs or arrested anyone, despite the request for assistance from the citizens. Proceedings were commenced against both the Roma people and the extremists later on, both of which are currently in the trial stage. The charge against the Roma people is disorderly conduct, whereas against the extremists it is violence against a member of the community.

5. PRIDE, MALE BIKER, BUDAPEST (6 JULY 2013): The victim attended the Budapest Pride parade and was heading home with a female friend. He was pushing a bicycle with a small rainbow flag attached to it. The two of them encountered a larger group of right-wing extremists, who screamed *"Filthy faggots, filthy faggots!"* at them. When the victim passed them, a man from the group snatched the rainbow flag off the bicycle, while a woman from the group tore off his rainbow cockade asking *"Aren't you ashamed of yourself?"*. When the victim replied *"No!"*, the woman hit his neck from the back. A police officer intervened and separated the two of them. The whole attack was recorded by the crew of a daily newspaper and was widely publicized on their website.

The intervening police officer did not arrest the attacker, nor did he examine her papers. An investigation was later commenced on the basis of the article published on the aforementioned website, while the victim also reported the incident, naming the offender. The offender was indicted for violence against a member of the community.

6. PRIDE BIHARI STREET, BUDAPEST (6 JULY 2013): The 2013 case in which a larger group assaulted three gay men has been widely publicized. The police officers arriving at the scene failed to take action despite the explicit requests of the victims. The attackers were not arrested, their identities were not checked; the police checked the victims' identities instead. According to the Police Act, the ID checks as well as the arrests should have been done. After the attack the police published a misleading statement saying that the victims themselves claimed that they could not identify their attackers and, that they refused to undergo medical examinations. Two days later, the victims were questioned as witnesses and an investigation for violence against a member of the community was commenced.

7. PRIDE, KICK IN THE STOMACH, BUDAPEST (6 JULY 2013): The victim was on his way to the closing ceremony of the Budapest Pride parade with a friend and his girlfriend. A few blocks away from the event, they passed a group of 5-6 men dressed in clothes typical of far-right extremists. One of the men kicked the victim in his groin, shouting *"What now, you faggot?"* The victim fell to the ground and suffered severe injuries, including internal bleeding, and required hospitalization. The victim left the hospital after two days, at his own risk.

The friend of the victim ran to a police officer standing nearby to request assistance but the officer refused to act, saying *"if you do not protest, this sort of thing does not happen"*. After having spent two days in the hospital, the victim went to the local police station to report the incident but his request to record the report was denied and he was told to submit his request via email. After submitting his report, the victim was summoned to the police station of the 5th district as a witness. The investigation was launched for disorderly conduct and was later reclassified as violence against a member of the community upon a complaint. Since the offenders could not have been identified, the investigation was suspended, of which the injured party was not informed.

8. BASEBALL BAT, BUDAPEST (14 AUGUST 2013): The victims were on their way home from a party at 3 AM, when one of them went to a tobacco shop to buy cigarettes. The two other victims

started kissing in front of the shop, when two men from a nearby 24/7 store approached them and started harassing them, saying: *"Faggots! Don't do this faggotry here! Piss off!"* When the boys refused to stop kissing, one of the men went back to the store and returned with a baseball bat, making menacing gestures.

The victims called the police, which arrived more than half an hour later. The boys demanded a procedure to be initiated but were told by the police to remain calm, as they could also have been arrested for public lewdness. The police informed them that in case they wished to report the incident, they could do so at the police station. The offenders were not arrested. Although the police officers did enter the store, they had not properly searched it for the bat. The case has been widely publicized. An investigation was eventually commenced but the crime scene investigators, arriving days after the incident, could not find the baseball bat.

General assessment

The cases clearly demonstrate that the police often fail to take the necessary measures at assemblies, 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 Act No III 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 did not happen, not even at such recent events as the Devecser case or the 2012 Milla-protest, where the steps to be taken were obvious.

The cases shed light also on the fact that the police often fails to act even if the police action is required not by the PA Act, but the Police Act, on the basis of not simple, but well-founded suspicion of a crime, against a specific offender. The extreme length 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: stating the unlawfulness of the failure to act three years after the incident is certainly not an effective legal remedy.

This criticism is supported by the fact that following the submission of a report at the police, investigations were commenced in the cases mentioned above, suggesting that the justifications for taking police action were stronger than what is required by the Police Act. Additional significant factors underpinning criticism is provided by the fact that the failure to act at the scene often resulted in the inability to identify the suspect(s), which led to the suspension of the criminal procedure or a failure to collect evidence. These failures jeopardize the success of the criminal procedures.

III. Failure to take investigative steps

1. GYÖNGYÖSPATA (10 MARCH 2011) (For the case history, see I/1/2): The investigative authorities failed to interrogate numerous witnesses and the justification of the decision on the termination of investigation was insufficient, contradictory and unprofessional. The complaint against the decision was rejected by the municipal prosecutor's office of Gyöngyös.

2. GYÖNGYÖSPATA (16 APRIL 2011) (For the case history, see I/1/4): The police officer investigating the crime scene failed to confiscate the instrument of commission, a mistake admitted by the county police headquarters later on. A few days later, one of the victims recognized the offenders in the street but the police officer present did not take any action.

3. PRIDE, SZENT KORONA (SACRED CROWN) RADIO CASE (18 JUNE 2011): As the victim and his friend left the Pride parade through a side street, they were surrounded by 15-20 counter protestors. They asked one of the victims whether he was *"a fag"* and an *"anti-fascist"*. One of the victims was wearing a t-shirt with Turkish writing on it, so he was asked whether he was Turkish. The victim asked them why they were doing this and was in response promptly assaulted. They punched him in the face, his sunglasses fell off, then they punched him in the stomach and kicked him several times. In the course of the attack, the offenders called him a *"filthy Turkish faggot"*. The same day, a recording of the incident was uploaded to the far-right news portal Szent Korona Rádió (Radio Sacred Crown) with the title *"Patriots beat a faggot"*.

The investigation was suspended prematurely: once it was revealed that the portal was administered from abroad, the police did not try to find the owner. The victim filed a complaint to the police, which was rejected by the prosecutor's office.

4. PUB ON MARGIT BOULEVARD, BUDAPEST (DECEMBER 2011): In December 2011 in a pub on Margit Avenue, two bald men wearing bomber jackets assaulted and verbally abused the victim because of his alleged Jewish origin. The victim suffered serious injuries requiring more than 8 days to heal. Of the twelve motions to question witnesses none were sustained and the decision on the suspension of the investigation was not sent to the victim, nor to his legal representative. Following a complaint filed against the suspension of the investigation, the investigation was reinitiated in the spring of 2013 by the county police headquarters (Budapest Police Headquarters, BRFK) who had authority. Since then BRFK has carried out numerous investigative measures but without success, as they could not identify the offenders. The passing of time and the failure to take investigative measures initially contributed to the suspension of the procedure.

5. LÖVÖLDE SQUARE, BUDAPEST (22 MARCH 2012) (For the case history, see I/1/6): The victim explicitly informed the police at the scene that the offenders dropped a beer can which may have had their fingerprints but the police failed to collect it.

6. FERENCIEK SQUARE, BUDAPEST (16 DECEMBER 2012) (For the case history, see I/1/9): It was revealed at the disclosure of the investigation files that despite the explicit requests of the victim to collect the CCTV recordings, the police only attempted to do so months later, when the recordings had already been deleted. The failure to collect the CCTV recordings may have played a major role in the inability to identify the offenders in the course of the investigation. The police formally acknowledged the mistake.

7. PRIDE 2012, BUDAPEST (7 JULY 2012): the presentation for identification was handled unprofessionally (using only photographs), and the CCTV recordings were not collected.

8. DERESTTV EUROGAMES CASE (24 JUNE 2013) (For the case history, see I/1/11): When the investigation revealed that the website was operated from abroad, the police suspended the investigation and did not attempt to acquire information through international legal assistance. The legal representative of the victim filed a complaint against the decision on dismissal and the prosecution ordered the continuation of the investigation. The police attempted to interrogate a few other witnesses but still did not attempt to utilize means of international legal assistance, leading to the subsequent suspension of the investigation.

9. PRIDE, MALE BIKER, BUDAPEST (6 JULY 2013) (For the case history, see II/5): Although the presenter of the case created a public announcement containing stills from the video recording for the identification of the other persons seen in the company of the woman, and this announcement was forwarded to the Communication Services of ORFK (National Police Headquarters) for publication, the announcement was never published, for reasons yet unknown.

10. BICSKE (27 OCTOBER 2013) (For the case history, see I/1/13): The fact that police failed to arrest the perpetrators in a case of this gravity would be difficult to justify on the basis of the relevant laws and practices – if classified correctly, the offenders could be punished with up to 12 years in prison (violence against a member of the community and , in accordance with points a) and e) of Article 216 (3) of the Penal Code and qualified case of attempt to cause grievous bodily harm – Article 164 (6) point e) of the Penal Code). The presentation for identification based on photographs, even though according to Article 122 (1) of the Act on Criminal Procedures., this should only happen if there are no other possibilities.

General assessment

It appears to be a general problem that the investigative authorities fail to interrogate the witnesses, collect the CCTV recordings before their deletion (it is not irrelevant at all how the offenders behaved 100 meters away from the scene of the act, e.g. if they were hostile to those attending a Pride parade but only assaulted other attendants later, the prior behavior is highly relevant to their motivation), 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 bias motivation.

IV. Restricted access to a legal remedy

In practice, the right to legal remedy against incorrect classification is recognized incidentally. In the Bicske case (I/1/13), the prosecution assumed a dismissive view *expressis verbis*. According to the dismissive view, the legal classification cannot be considered a measure directly affecting the victim's rights or legitimate interests, and therefore cannot be subject to complaint by the victim or the representative of the victim in case of a disagreement. However, during one of the Gyöngyöspata cases (I/1/2), the Lövölde Square (I/1/6) and Pride Art Cinema (I/2/2) cases, complaints were adjudicated upon their merits.

In our view, the victim has a clear and legitimate interest in having the offender convicted for the crime he or she had committed. First of all, the state monopoly on criminal law presupposes that since the victim cannot arbitrarily bring the offender to justice, the state shall prescribe sanctions that are applicable in case of correct classification. Otherwise, the crime committed will remain unpunished. Secondly, whether someone had been victim of, for example, harassment or a violent racist attack is not insignificant with regards to the civil lawsuit brought by the victim for compensation, as the level of compensation awarded will obviously be affected by the severity of the crime suffered by the victim. Last but not least, the victim's right to human dignity is the preferential subject for protection of the category of violence against a member of the community (which is why it was placed in the chapter of the Penal Code on "Human dignity and other fundamental rights"), making the correct classification of acts committed with bias motivation a fundamental right of the victim.

Consequently, in our view it would be necessary to publish a circular for the prosecutor's office for the purpose of unifying legal practice. If the prosecutor's office holds the view that in the case discussed there would be no right to file a complaint, an amendment of the law is necessary. In this case, the recommended statutory text is the following:

Article 195 of the XIX law of 1998 on Criminal Procedure is supplemented with the following (2b) paragraph:

"Until the disclosure of investigation files the victim can file a complaint against the unlawful classification of the crime at any time."

Simultaneously, Article 169. (1) of the Act on Criminal Procedures should establish that the prosecution or the investigative authorities shall issue a separate decision on the classification of the act, therefore, the provision in question must be supplemented. The separate decision on classification would have advantages reaching beyond the right to complaint: the procedure would become much more transparent for the victim and there would be no reason to wait for the end of the investigation to fill out the ENYÜBS (Criminal Statistics of the Investigative Authorities and of Public Prosecution) form. Filling out the statistical form after the termination of the procedure currently results in the fact that the cases do not appear in the statistics for months or even years, thus making the monitoring of criminal processes and that of the law enforcement impossible.



WORKING GROUP AGAINST HATE CRIMES IN HUNGARY

The Working Group Against Hate Crimes (Gyűlölet-bűncselekmények Elleni Munkacsoport) was established by Amnesty International Hungary, Háttér Society, the Hungarian Helsinki Committee, the Legal Defense Bureau for National and Ethnic Minorities and the Hungarian Civil Liberties Union in January 2012 to bring together civil society organizations working on hate crimes. Besides the representatives of the organizations, individual experts also take part in the work of the working group.

The principal objective of the working group is to fight hate crimes. To achieve this, we work for the following goals:

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

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