

Working Group Against Hate Crimes (GYEM):
Shadow report to the sixth periodic report of Hungary
to the International Covenant On Civil and Political Rights to the United
Nations Human Rights Committee

February, 2018

1. ABOUT THE WORKING GROUP

This is a submission commenting on the Hungarian Government's written replies to the list of issues received by the Human Rights Committee on 16 January 2017 and being under consideration as the State party's sixth periodic report under article 40 of the Covenant.

The Working Group Against Hate Crimes (GYEM, <http://gyuloletellen.hu/about-us>) focuses on the Hungarian authorities' responses to hate crimes against vulnerable groups. Member organisations of GYEM have a long standing history in rights protection, monitoring, research and legal representation.

GYEM was established in January 2012 and now composes of four human rights NGOs: Amnesty International Hungary, Háttér Society, Hungarian Helsinki Committee 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 organizations, individual experts also take part in the activities of the Working Group.

The principal objective of the working group is to fight hate crimes, especially physical or anti-social attacks against vulnerable groups and their belongings (violence against a member of the community – közösség tagja elleni erőszak) through establishing a more effective legal and institutional framework for state responses to hate crimes and encouraging victims to initiate legal proceedings.

The Working Group regularly delivers its opinion on draft laws and makes proposals to 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 group fosters good professional relations with national and international NGOs, the police, the public prosecutor's office, other authorities and the judiciary.

First of all it has to be strongly underlined that the Working Group is an informal civil group composed exclusively of civil society organizations and individual academics, functioning completely autonomously from the State or any authorities thereof. The Working Group however endeavours establishing cooperation with the state agencies and organizes professional training, conferences, feeds the authorities with research results and also advocates for a more effective implementation of the law. Notwithstanding all these activities the Working Group is not a part of the State or its authorities, therefore the Hungarian government's written replies (State report 80., 88.) might be misleading because the distinction between their own agencies and the Working Group is not precisely detailed, furthermore the wording may raise difficulties to clearly distinguish the activities and accomplishments of the two different actors.

2. ABOUT THE SHADOW REPORT

Information presented comes from first hand information from victims represented by the organisations, from lawyers acting as legal representatives of the victims, from correspondence and meetings with authorities and experts of the field, and monitoring cases and data collection.

The shadow report reflects on the State written replies to questions no. 5. and 6. submitted to the Human Rights Committee and exclusively deals with the paragraphs 73., 75., 80., 81., 82., 86-90. because these are the issues the Working Group directly addresses.

The shadow report also draws attention to problems not touched upon in the State report but which are of significant importance in the field of hate crimes. The shadow report also relies on the List of Issues submitted by the Hungarian Helsinki Committee –a member organization of the Working Group – to the Human Rights Committee in the respective part on hate crimes.¹

3. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

3a. The legal framework

A new Hungarian Criminal Code, Act C of 2012, entered into force on 1 July 2013. As compared to the old Criminal Code, the relevant hate crime provision ('violence against a member of a community') of the new Criminal Code introduced disability, sexual orientation and gender identity among the characteristics of the potential victim groups.

Due to the open-ended list of protected groups practically a member of any kind of a group can be considered as a possible victim of hate crimes. Based on a purely grammatical interpretation of the text of the law, even members of a radical right-wing organizations may qualify as victims. However, the Supreme Court (Curia) 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 opposes legal rules may not be entitled to enhanced criminal law protection. Nevertheless, the practical application of the law shows a diverse practice, where, contrary to the Supreme Court's position, and in certain cases the hate crime clause has been used in reference to protecting members of far-right radical

organisations.

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List of Issues p. 8., available at:
http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HUN/INT_CCPR_ICS_HUN_21527_E.pdf

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The legal provisions do not consider bias motivation in case of offences committed against property as a qualifying circumstance.

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. In the case of other offenses bias motivation might be taken into consideration as an aggravating circumstance by the judge based on his/her discretion.

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. The criminal statistics of the past seven years since the adoption of the amendment of the Criminal Code in 2011 however show that the legislation itself is insufficient to address the deficiencies as the new regulations are barely implemented in practice.

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.

3b. Institutional framework

On 1 January 2012 a special hate crime network at the National Police was established to effectively tackle hate crimes in Hungary. One police officers in every county was appointed to coordinate hate crime related investigations, but none of them operates in full time, this sort of work is an additional task without further resources allocated. Appointment to a hate crime officer does not require specialized hate crime related expertise. There are 21 such hate crime officers in Hungary, but no liaison officers are employed by the police who would focus on hate crime issues and facilitate communication between vulnerable groups and the police.

4. PRACTICE

4a. 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 members of vulnerable groups. The most typical systemic failures are:

- 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.

The deficiencies of the implementation is evidenced by the fact that the European Court of Human Rights (ECtHR) has already ruled in four hate crime cases represented by the Working Group members against Hungary and in all cases established the violation of the European Convention of Human Rights.

In all four cases the ECtHR found violations of the Roma applicants' fundamental rights in consequence of the omissions of law-enforcement authorities in proceedings related to bias motivated crimes. In the Balázs v. Hungary case² the ECtHR found that the failure of the

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Balázs v. Hungary (Application No. 15529/12), judgement of 20 October 2015

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Hungarian authorities to investigate the hate motivation behind violence against a member of the Roma community which amounted to a violation of Article 14 in conjunction with Article 3 of the ECHR. In the case of *R.B. v. Hungary*,³ the applicant claimed that the authorities failed to investigate her case and protect her from harassment motivated by racism, including verbal assaults and physical threats at an openly anti-Roma rally in her neighbourhood. The ECtHR found a violation of Article 8 of the ECHR concluding that the State failed to adequately protect her due to faulty implementation of the criminal law mechanisms. Similarly, in the *Király and Dömötör v. Hungary* case⁴ the ECtHR concluded that because of the numerous shortcomings in the implementation of the criminal law mechanisms, the applicants suffered an attack on their physical and psychological integrity, which constituted a violation of Article 8 of the ECHR. In the *M.F. v. Hungary* case⁵ the ECtHR found that the failure of the state authorities to examine the question of possible racial motives behind a violent crime committed by police officers in duty against a Hungarian national of Roma origin amounted to the violation of Article 14 in conjunction with Article 3 of the ECHR. The latter judgment is not yet final at the time of the submission of the present report.

- **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 and more lenient provisions of the Hungarian Penal Code are applied. As a result, in case of a conviction, the sentencing is not in harmony with sanctions prescribed by the legislature. In a certain 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.

- **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. According to the Act on Public Assembly, if an assembly itself constitutes as a crime or violates the rights or freedoms of others, then the police should disperse the assembly without delay. However, this usually does not happen, not even at events where the steps to be taken were obvious. In a recent judgment of the Supreme Court (Curia)⁶ (in a case initiated by the Working Group member organisation, HCLU) it found that the police failed to protect the Roma inhabitants of the settlement, Gyöngyöspata during extremist rallies in 2011, amongst other by failing to disperse the openly anti-Roma demonstration in the Roma neighbourhood of the city.

Additionally the police often fail to act even when police action is ordered by the Act on the Police on the basis of a 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) renders the legal remedy ineffective. These failures jeopardize the success of the criminal procedures.

Even though police often fail to undertake proper and effective law enforcement measures, we have to note that lately they managed to prevent the escalation of events organised by far-right,

xenophobic groups. In certain recent cases they acted properly and took all the necessary measures described by the law.

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R.B. v. Hungary (Application No. 64602/12), judgement of 12 April 2016 4

Király and Dömötör v. Hungary (Application No. 10851/13), judgement of 17 January 2017 5

M.F. v. Hungary (Application no. 45855/12), judgment of 31 October 2017 6

Judgement of the Kuria of 8 February 2017, Pfv.IV.21.274/2016/4.

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● Failure to undertake investigative steps It appears to be a general problem that the investigative authorities fail to question the witnesses, collect the CCTV recordings before the deletion, to conduct searches or background investigations during the investigation into the motives to learn of the lifestyle of the offenders (whether they might have extremist symbols on their walls, what type of comments they make in public, etc.), and to pose questions pertaining to motivation and to properly investigate the social networks of the defendants. 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.

● Hate crime clause applied in the favour of far-right groups It is important to note, that in parallel with the above presented systemic omissions on behalf 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 overrepresented. Roma were even sentenced 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. In these cases hate crime provisions have been misinterpreted and implemented in favour of racist groups.

● Bias motivated attacks against property often not considered Another problem is that 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 rowdiness. However, application of the law in this regard is not consistent.

Consequence: low unproportionate number of procedures

As a result of the above mentioned systemic shortcomings of law-enforcement, the number of registered hate crimes (violence against a member of a community – Art 216 of the Criminal Code) is extremely low: only 194 offenses were registered between 2012 and 2016 according to the official statistics of the Ministry of Interior. 7

However, as it is stated in the State report (§ 86.) Art 352 of the Criminal Code criminalizing unlawful activities concerning the pursuit of public security is in force, but it is hardly enforced by law-enforcement authorities. According to the criminal statistics of the Ministry of the Interior, between 2012 and 2016 only three such crimes were registered. Moreover, in relation to the illegal patrolling of extremist groups in the surroundings of Hungary's southern border during the refugee crisis in 2015, only one investigation was launched based on this criminal provision.

As regards to incitement against a community, according to judicial practice, the offense is committed only if the danger created by a speech or expression is not merely hypothetical but involves the direct possibility of a violent act. The practice of the police and the prosecution however applies a very restrictive approach to what constitutes a direct threat of danger and disregards the case-law of the ECtHR⁸. As a result, nearly none of the reported expressions, not even those inciting hatred, fall under the scope of this clause. Consequently, most criminal proceedings are either terminated at the investigative phase or

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<https://bsr.bm.hu/SitePages/ExcelMegtekinto.aspx?ExcelName=https%3a%2f%2fbsr.bm.hu%2fBuncselekmenyiAdatok%2fRegisztr%C3%A1lt+b%C5%B1ncselekm%C3%A9nyek+sz%C3%A1ma+az+elk%C3%B6vet%C3%A9s+helye+szerint.xlsx>

Seurot v. France decision on the admissibility of 18 May 2004, Pavel Ivanov v. Russia decision on the admissibility of 20 February 2007, Norwood v. United Kingdom decision on the admissibility of 16 November 2004, Belkacem v. Belgium decision on the admissibility of 27 June 2017

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the prosecution refuses to press charges. This practice is highly questionable as it renders the provision practically non-applied and even extremely hostile expressions remain unpunished. In the case of Király and Dömötör vs Hungary, the authorities even rejected to carrying out the investigations, despite the fact that the incitement amounted actual violence against the Roma community.

In relation to the above the Working Group sharply criticizes the statement of the government (State report § 80.) that the State cannot take efforts to increase the number of investigations and criminal procedures. The Working Group itself has already proposed a number of measures which the international practices proof effective in order to decrease latency of hate crimes.

The police:

- might encourage the victims to report offenses committed against them,
- the Victim Support Service may be strengthened and offer wide range of services for (traumatized) victims,
- the Specialized Network may make the contact details of its members public in order people can contact them directly,
- the police might restructure their website and provide more user- (victim-) friendly information,
- the procedures might be refashioned and shortened to be more victim friendly and accessible,
- the police might take professionally and seriously hate crime investigations and communicate about their achievements underlying their intention to protect vulnerable groups, etc.

If some of these suggestions would have been taken into practice the number of reported hate crimes may have been increased.

4b. Special Network

The establishment of a Hungarian Hate Crime Special Network within the police is a significant step in the right direction, although there are problems with the operation of the Network.

We consider it a good practice that representatives of the Working Group and the police regularly meet to discuss a disputed hate crime related case or issue and draw the 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 significant development that Special Network members are occasionally participating in trainings organised by the Working Group (as referred to under § 80. of the State report).

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

4c. Lack of systemic trainings

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.

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 professionals, and were often organized by the Working Group members and without any public funding. Members of the police hate crime Special Network do not have to undergo any induction training. The experience of NGOs show that those participating in such trainings handle the 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.

4d. Lack of protocol

As the State report indicates under § 88. the police have only adopted a protocol for police measures in case of bias motivated incidents (assemblies, rallies), but the protocol only extends to the duties of a police patrol in case of these specific events and does not include guidelines of investigative steps to be undertaken. The police have also agreed to apply a practical bias indicator list compiled by the Working Group⁹. However, there is no police protocol specifically for the investigation of hate crimes in Hungary.

We can conclude that there is no investigative police protocol specially for hate crimes in Hungary, however after a number of refusals from the police, in 2017 – thanks to the Universal Periodic Review’s recommendations – the police seem to be open to adopting a protocol in the future.

The Prosecutor’s Office keeps count of a prosecution protocol for hate crimes, which is a word by word adoption of the OSCE/ODIHR protocol. It is not adjusted to the Hungarian criminal procedure and presumably there is also a lack of awareness of the protocol and there is no proof or reference of it having 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 prosecutors are also responsible for the under-classification of cases and they also often fail to instruct police to take investigative steps.

4e. Lack of consistent data collection

As regards §§ 73. and 81. of the State report it has to be noted that 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 case the authorities do not recognize the bias motivation, the crime will not show up in the relevant category. Therefore § 81. of the State report might be misleading since it suggests that the victims’ or witnesses’ standpoint about the possible bias motivation may be registered in the statistics, however the fact is exclusively the authorities’ determination is included. Second, while for Article 216, 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 (as also mentioned under § 90 of the State report). Third, for cases that do not fall within Art 216 (typically, homicide and stalking), such 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.

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http://gyuloletellen.hu/sites/default/files/gyem_indikatorlista_haromolszopos_vegleges.pdf

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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 suspending the investigation; therefore, in case of 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 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.

There are no regular victimization surveys that would allow measuring underreporting. The National Institute of Criminology (Országos Kriminológiai Intézet, OKRI, a subunit of the Prosecutor General's Office) conducted victimization surveys in 1996, 2000 and 2003, but none covered the topic of hate crimes and there is no latter research known.

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 underestimation of the scale of the problem.

4f. 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. Services available range from financial aid (instant monetary aid, state compensation) to legal aid and psychological support. State-sponsored legal aid has been recently made available during the investigation phase. The legislation does not prescribe psychological help to be offered by the public VSS, which is organized on the county level. Some VSSs 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. Researchers suggest that the effectiveness of VSS is relatively low compared to other EU countries.

4g. Promoting intolerance by government

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 biannual action plans, but the documents do 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.

Furthermore, political analysts, human rights NGOs 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 Resolution¹⁰ that the launch of a national consultation 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.

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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>

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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 them¹¹. Parliament passed a Bill instituting new criminal offences and simplified criminal procedures, including mandatory expulsion for crossing or damaging a border blockade, i.e. the erected razor-wire fences on the Hungary's southern border. The recent law also permits the armed forces to take part in guarding the border and keeping public order.

Furthermore, it is important to note that the Hungarian government launched in 2017 another campaign targeting George Soros having an obviously anti-Semitic overtone which is capable of generating intolerance against Jewish people.

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

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