



## Hungary

### Amnesty International submission to the UN Universal Periodic Review 11<sup>th</sup> session of the UPR Working Group, May 2011

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.<sup>1</sup> The submission focuses on the Hungarian authorities' responses to hate crimes against Roma. Since 2008, Amnesty International has received reports of a number of violent attacks against Roma and their properties in Hungary. These included a series of attacks that occurred across Hungary in 2008 and 2009 and claimed six lives. Amnesty International's research into these incidents indicates that the Hungarian authorities failed to identify and respond effectively to violence against Roma in Hungary, including by not investigating possible racial motivation.

#### **B. Normative and institutional framework of the State**

##### **The Criminal Code**

Hungary's Criminal Code criminalizes incitement to hatred against any national, ethnic, racial group or certain groups of population (Article 269), which is punishable with imprisonment up to three years. The use of "symbols of despotism" including a swastika, an arrow-cross, and hammer and sickle<sup>2</sup>, are punishable with a fine (Article 269/B).

Article 174/B of the Criminal Code criminalizes assaults committed because of a victim's actual or perceived belonging to a national, racial, ethnic or religious group: "Any person who assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial, [or] religious group, or certain groups of the population, or compels him by applying coercion or duress to do, not to do, or to endure something, is guilty of a felony punishable by imprisonment for up to five years."<sup>3</sup> While under article 174/B (1) such assaults are punishable by up to five years' imprisonment, under 174/B (2) such crimes are punishable by up to eight years if the crime is committed: a) by force of arms; b) with a deadly weapon; c) causing a substantial injury; d) with cruelty towards the injured party; e) in groups; f) in a criminal conspiracy.

Some articles of the Criminal Code, including those covering murder or grievous bodily harm, expressly grant judges discretion to take into account the offender's "base motivations", where these are alleged, when sentencing offenders. The sentence for homicide<sup>4</sup> and bodily harm<sup>5</sup> with a "base" motivation is

<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, Annex, section I, adopted 27 September 2007.

<sup>2</sup> Arrow-cross was a symbol of Hungarian national-socialist party from the World War II period; hammer and sickle is a symbol of communism.

<sup>3</sup> Article 174/B of the Criminal Code: Violence Against a Member of community.

<sup>4</sup> If a person commits a homicide, he shall be punished with imprisonment of 5 to 15 years, but if the homicide is committed for a base reason or purpose, it is punishable with imprisonment from 10 to 20 years, or life imprisonment. (Article 166, Section 1 and 2c of the Criminal Code).

higher than for homicide and bodily harm without such motivation. While a judge may consider racist motivation as a “base motivation” which constitutes an aggravating circumstance, the European Commission against Racism and Intolerance (ECRI) has expressed concern that racial motivation is not specifically mentioned in the law as a form of “base” motivation and that Hungarian law does not include general provisions under which, for all ordinary criminal offences, racist motivation constitutes an express aggravating circumstance. ECRI has noted that: “as a result, it is practically impossible to monitor the situation with respect to racially motivated offences in Hungary.”<sup>6</sup>

### **Lack of training of law enforcement agents on racially motivated hate crimes**

The Hungarian authorities have been recommended to continue and further develop police training in order to combat prejudice, raise awareness and to ensure equal treatment of groups in society.<sup>7</sup> According to the 2005 report by the European Monitoring Centre for Racism and Xenophobia (EUMC) on Policing Racist Crime and Violence, police training in Hungary on hate crimes focused on Roma cultural characteristics and “Roma criminality” rather than specifically on racist crime and violence against Roma.<sup>8</sup> The curricula at the Police Academy and medium-level in-service police training currently include subjects related to human rights and tolerance. However, according to the Hungarian Helsinki Committee (HHC), as of August 2010 there was no specific training for the police on hate crimes.

In October 2010, the Human Rights Committee raised concerns about "the virulent and widespread anti-Roma statements by public figures, media, and members of the disbanded Magyar Garda" and about discrimination against Roma in education, housing, health and political participation. The Committee recommended the adoption of measures to "ensure that judges, magistrates, prosecutors and all law-enforcement officials are trained to be able to detect hate and racially motivated crime".<sup>9</sup>

The lack of guidelines and training on hate crimes has been raised consistently by Hungarian NGOs and reiterated in the aftermath of the series of violent attacks against the Romani community. In an effort to receive an authoritative interpretation of the legal provisions on hate crimes, the Hungarian Civil Liberties Union (TASZ) requested in February 2010 that the Prosecutor General provide an interpretation of Article 174/B of the Criminal Code which deals with violence against a certain group. In response the Office of the Prosecutor General stated that in their view there was no need for issuing a general guideline on the implementation of Article 174/B as current legislative provisions adequately covered this.<sup>10</sup> However, TASZ had documented cases in which police and prosecutors failed to take into account racist, anti-Semitic, homophobic or other motivations fuelled by hatred and had failed to apply the relevant law (Article 174/B on the crimes against a community and Article 269 incitement against a member of a community).

The cases documented by NGOs illustrate that officials often fail to recognize racial motivation in crimes, despite it being highly likely that the perpetrators attacked the victims because of their ethnicity, religion

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<sup>5</sup> If someone causes bodily harm that heals within eight days, he shall be punished with imprisonment up to two years, public labour, or a fine, but if the offence is committed for a base reason or purpose, it is punishable with imprisonment up to 3 years. (Article 170, Section 1 and 3 of the Criminal Code). Similarly, if a person causes grievous bodily harm, he shall be punished with imprisonment up to 3 years, but if the offence is committed for base reason or purpose, it is punishable with imprisonment of 1 to 5 years. (Article 170, Section 2 of the Criminal Code).

<sup>6</sup> ECRI 2009 Report on Hungary, Fourth monitoring cycle, 24 February 2009, p. 14.

<sup>7</sup> ECRI, Second Report on Hungary, p.8

<sup>8</sup> Oakley, R. “Policing Racist Crime and Violence: A comparative study”. EUMC, 2005, p.27

<sup>9</sup> Concluding Observations of the Human Rights Committee: Hungary, [Advanced unedited version], CCPR/C/HUN/CO/5, para 18.

<sup>10</sup> Letter of the Head Prosecutor to Balazs Denes, the Chari of Hungarian Civil Liberties Union, 2 April 2010.

or sexual orientation, or that the police would not initially characterize the crimes as motivated by hatred and would only investigate a possible hate motivation after being pressured to do so by human rights NGOs.

### **Lack of data on hate crimes**

In line with international standards on the protection of personal data, the police in Hungary are obliged to refrain from “any kind of involuntary official classification of ethnicity” of individual victims and perpetrators of crime.<sup>11</sup> Under the Hungarian Data Protection Act, “sensitive data” are understood as “personal data revealing racial, national or ethnic origin”. However, standards intended to protect personal privacy should not be read to prevent authorities from collecting data that are disaggregated by ethnicity and gender. For example, the European data protection laws distinguish between the collection of individual personal data and anonymous aggregate data.<sup>12</sup> Moreover, the Council of Europe's Convention on Data Protection explicitly provides that the collection of personal data on racial origin and the like may be routinely collected and processed when necessary for the protection of public safety or the suppression of crime.<sup>13</sup> As a state party to the International Convention on Elimination of All Forms of Racial Discrimination, Hungary has undertaken to prevent all forms of racial or ethnic discrimination and to address incidents of discrimination when they do occur. To do so effectively, it must collect data in a form that enables it to identify and address discrimination. To that end, the Committee on the Elimination of Racial Discrimination asks states to report “relevant information on the demographic composition of the population.”<sup>14</sup> These international and regional obligations are not contradictory. As a European Commission report on data collection in the context of implementing the EU equality law stated: “[c]ontrary to widespread belief, the international, European and national rules on the protection of privacy data do not categorically prevent the collection of data in relation to discrimination.”<sup>15</sup> And under customary international principles governing the interpretation of treaties, binding international instruments should be read in harmony whenever possible.<sup>16</sup> In short, European privacy standards do not prevent Hungary from collecting disaggregated data on racial and ethnic discrimination, and Hungary's international obligations require the collection of these data.

## **C. Promotion and protection of human rights on the ground**

### **No specific procedures for hate crime investigation**

The Hungarian police do not use special procedures for cases in which there is an indication that the crime under investigation is motivated by hatred. This raises concerns in particular about the capacities and ability of the police to thoroughly investigate racially induced violence and not to overlook possible racial motivation. The explanatory memorandum to ECRI's General Policy Recommendation no. 11 outlines that such investigation would require among other things a specific approach to identification and questioning of witnesses, identification of possible links with organized racists groups, and sensitivity

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<sup>11</sup> Papp, A. “Human Rights and Ethnic Data Collection in Hungary””, in: Human Rights Review (2008)

<sup>12</sup> Gray, Z., “The importance of ethnic data for promoting the right to education”, in: Minority Rights Group, State of the World's Minorities and Indigenous Peoples

<sup>13</sup> Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Art. 9(2a)

<sup>14</sup> CERD, General Recommendation No. 4, Demographic composition of the population, 25/08/1973

<sup>15</sup> Timo Makkonen, Measuring Discrimination. Data Collection and the EU Equality Law, European Commission, 2007, p. 72

<sup>16</sup> See: Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, generally understood as reflective of customary international law.

towards the victim.<sup>17</sup> Despite this recommendation, according to an interview with a representative of Pest County Police, an investigation into possible hate crimes does not involve any specific approach and does not differ from investigation of any other crime.<sup>18</sup>

According to Amnesty International's research, an incident is only considered a crime of violence against a community (punishable under Section 174B of the Criminal Code), or a crime aggravated by a "base reason" (such as racial motivation), if evidence that the crime was motivated by the belief that the victim belonged to an ethnic, racial, national or religious group or other community was raised during the investigation. In an interview with Amnesty International, representatives of the Office of the Prosecutor General considered that this evidence would require either the victim to state that he or she has been attacked because of their ethnicity, or the perpetrator to give this as a reason for the attack.<sup>19</sup> However, the police operate in a legal framework that can be interpreted restrictively when it comes to the identification of ethnicity of the victim – whether real or perceived – which might affect the readiness of the police officers to focus on possible racial motivation during the investigation. Moreover, reliance on the victim or perpetrator only is not consistent with international standards under which a racially-motivated incident is one perceived to be racist by the victim or any other person.<sup>20</sup>

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government of Hungary:**

#### *On non-discrimination measures*

- To develop an action plan and take urgent measures to combat and prevent racist incidents and hate crimes;
- To ensure that members of Romani community, as well as members of other vulnerable groups are protected from violence and attacks;
- To ensure the message is clear: racist comments by public officials, including law enforcement and administrative officials, are not tolerated in Hungary;
- To ratify and implement Protocol No. 12 to the European Convention on Human Rights, which sets out a general prohibition of discrimination.

#### *On implementation of hate crime legislation*

- To ensure that racially motivated violence and other hate crimes are fully and effectively investigated and that those reasonably suspected of responsibility are prosecuted under laws providing for sanctions which reflect the gravity of the human rights abuses;
- To establish and operate a system across the country for recording and monitoring racist incidents and hate crimes;
- To develop and disseminate guidelines for police officers and prosecutors on recording the crimes against community under Article 174/B;

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<sup>17</sup> Explanatory Report to ECRI General Policy Recommendation No 11, paragraph 66.

<sup>18</sup> Amnesty International interview with the Pest County Police., Budapest 26 March, 2010.

<sup>19</sup> Amnesty International interview with the Deputy Prosecutor General of the Republic of Hungary, Budapest, 3 February 2010.

<sup>20</sup> ECRI: General Policy Recommendation No 11 on combating racism and racial discrimination in policing, paragraph 14; EUMC: "Policing Racist Crime and Violence", recommendation 8.1 (f).

- In co-operation with NGOs, community-based organizations and representatives of the minorities to introduce and implement measures that would encourage reporting of racist and other hate-related incidents, such as establishing specialized agencies with trained personnel to which the hate crimes can be reported;
- To develop and implement guidelines for police officers on investigation of crimes against community under Article 174/B of the criminal code and other hate crime offences;
- To introduce a system of comprehensive monitoring of all incidents that may constitute hate crimes, in particular racist offences. The monitoring should cover all stages of proceedings, including complaints lodged, charges brought and convictions recorded;
- To take measures to ensure that independent and impartial investigations are initiated promptly and are carried out thoroughly without undue delay;
- To ensure that all police officers receive in-service training on the nature of hate crimes and the role of the police in combating them;
- To work with Roma self-governments, NGOs and human rights organizations to implement measures to encourage Roma and other victims to report hate crimes and to ensure their protection from reprisal when they do.

*On recording crimes committed against members of community*

- To strengthen the data collection on hate crimes, in a manner that ensures respect for human rights including the prohibition of discrimination, so that it can be used to identify trends;
- To publish the data collected;
- To ensure that the data collected on the application of provisions of the Criminal Code, including provisions expressly criminalising hate-based violence such as Article 174/B of the Criminal Code, are disaggregated by the different groups to which the victim may belong, while ensuring that any collection of such data is in line with the international standards on the protection of personal data;
- To establish specialized units or designated police officers at the county and local police with specialized training to identify and investigate hate crimes.

*On victim support*

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