

National Hate Crime Report: Hungary

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Chapter 1: Analysis of Legislation Concerning Hate Crime Crime and Hate Speech

The legal concept of hate speech in Hungary

In Hungary the term “hate speech” is not included in legislative measures, but a number of conceptual elements of these legislative measures have a direct relevance to the concept of hate speech:

- The latest version of the **Criminal Code** (Act C of 2012 on the Criminal Code), includes a number of criminal offenses related to hate speech: *Violation of the Freedom of Conscience and Religion* (Section 215), *Incitement Against a Community* (Section 332), *Open Denial of Nazi Crimes and Communist Crimes* (Section 333), *Blasphemy of National Symbol* (Section 334), *Use of Symbols of Totalitarianism* (Section 335)
- Criminal offences in the Criminal Code with **malice aforethought** or with **malicious motive**, as an aggravating circumstance, such as *Defamation* (Section 226), can also have a bias motive
- The **Code of Administrative Offences** (Act II of 2012 on offences, the procedure in relation to offences and the offence record system) also includes a small number of offences that can have a direct relevance to hate crime. For example, *Participating in the Activity of a Dissolved Association* (Section 174) has been mostly used against the activities of previously banned hate groups.
- The **Civil Code** (Act V of 2013 on the Civil Code) provides protection for the individual against verbal abuse on the basis of belonging to a group that defines an essential part of her/his identity. In such a case, any member of the community or a public prosecutor is entitled to start a litigation (Section 2:54, Subsections [4] and [5]).
- The fourth amendment, of 25 March 2013, of the **Constitution** (Fundamental Law) provided a constitutional guarantee that the freedom of speech can be curbed if its practice violates the dignity of a community.
- One of the two **Media Laws** of Hungary (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content) prohibits media contents inciting hatred against or excluding any group, while the other (Act CLXXXV of 2010 on Media Services and Mass Communication) obliges media service providers to warn viewers or listeners of media contents that may hurt their religious or other convictions.

Table 1 sums up the offenses in the Hungarian legal system that are directly or indirectly related to the concept of hate speech, tentatively paired with the working terminology of this national hate crime report.

Table 1: Legislation Relevant to the Concept of Hate Speech				
Terminology Used in the National Hate Crime Report	Relevant Concept in Hungarian Legislation	Type of Relevance to the Concept of Hate Crime	Name of Legislation and Section	Name of Chapter within the Legislation
Threat of attack	Violation of the Freedom of	Possibility of direct relevance (Note:	Act C of 2012 on the Criminal Code	Crimes Against Human Dignity

	Conscience and Religion	This criminal offence includes using force or threat of force.)	(Section 215)	and Fundamental Rights
Defamation of race, nation, religion	Blasphemy of National Symbol	Direct relevance	Act C of 2012 on the Criminal Code (Section 334)	Criminal Offenses Against Public Peace
	Breaching the right to religious practice	Direct relevance	Act II of 2012 on offences, the procedure in relation to offences and the offence record system (Section 188)	Offences Against Human Dignity, Personal Freedom and Public Order
	N/A	Direct relevance	Act V of 2013 on the Civil Code (Section 2:54)	Sanctions for Violations of Rights Relating to Personality
	Defamation	Indirect relevance (Note: “ <i>With malice aforethought or malicious motive</i> ”, as an aggravating circumstance, can include bias motive)	Act C of 2012 on the Criminal Code (Section 226)	Crimes Against Human Dignity and Fundamental Rights
Incitement to hatred, call to violence	Incitement Against a Community	Direct relevance	Act C of 2012 on the Criminal Code (Section 332)	Criminal Offenses Against Public Peace
	N/A	Direct relevance	Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content (Section 17)	Obligations of the Press
Holocaust or crimes against humanity denial	Open Denial of Nazi Crimes and Communist Crimes	Direct relevance	Act C of 2012 on the Criminal Code (Section 333)	Criminal Code, Criminal Offenses Against Public Peace
Hate materials	Offence Against Regulation of the	Possibility of direct relevance (The	Act II of 2012 on offences, the	Offences Against Human Dignity,

	Press	earlier version of the section, still as a misdemeanor in the Criminal Code, has been used against the distribution of hate publications)	procedure in relation to offences and the offence record system (Section 208/A)	Personal Freedom and Public Order
Approval of totalitarian regimes	Use of Symbols of Totalitarianism	Direct relevance	Act C of 2012 on the Criminal Code (Section 335)	Criminal Offences Against Public Peace
Setting up, supporting the hate groups	Participating in the Activity of a Dissolved Association	Possibility of direct relevance (Note: The section has been mostly used against the activities of previously banned hate groups)	Act II of 2012 on offences, the procedure in relation to offences and the offence record system (Section 174)	Offences Punishable with Imprisonment for Offences
Other	N/A	Direct relevance	Act CLXXXV of 2010 on Media Services and Mass Communication	Warning about Offensive Content

The English translation of legal measures related to hate speech

Act C of 2012 on the Criminal Code

Section 215: Violation of the Freedom of Conscience and Religion

Any person who:

- a) restricts another person in his freedom of conscience by force or by threat of force;*
 - b) prevents another person from freely exercising his religion by force or by threat of force;*
- is guilty of a felony punishable by imprisonment not exceeding three years.¹*

Section 226: Defamation

(1) Any person who engages in the written or oral publication of anything that is injurious to the good name or reputation of another person, or uses an expression directly referring to such a fact, is guilty of a misdemeanor punishable by imprisonment not exceeding one year.

(2) The penalty shall be imprisonment not exceeding two years, if the defamation is committed:

- a) with malice aforethought or with malicious motive;*
- b) libelously, before the public at large; or*
- c) causing a significant injury of interest.²*

¹ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 61
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

² "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 65
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

Section 332: Incitement Against a Community

Any person who before the public at large incites hatred against:

- a) the Hungarian nation;*
- b) any national, ethnic, racial or religious group; or*
- c) certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation; is guilty of a felony punishable by imprisonment not exceeding three years.³*

Section 333: Open Denial of Nazi Crimes and Communist Crimes

Any person who denies before the public large the crime of genocide and other crimes committed against humanity by nazi and communist regimes, or expresses any doubt or implies that it is insignificant, or attempts to justify them is guilty of felony punishable by imprisonment not exceeding three years.⁴

Section 334: Blasphemy of National Symbol

Any person who - before the public at large - uses an expression to dishonor or degrade the national anthem, the flag or the coat of arms, or the Holy Crown of Hungary, or commits any other similarly slanderous act is guilty of a misdemeanor punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offense.⁵

Section 335: Use of Symbols of Totalitarianism

Any person who:

- a) distributes,*
 - b) uses before the public at large, or*
 - c) publicly exhibits,*
- the swastika, the insignia of the SS, the arrow cross, the sickle and hammer, the five-pointed red star or any symbol depicting the above so as to breach public peace - specifically in a way to offend the dignity of victims of totalitarian regimes and their right to sanctity - is guilty of a misdemeanor punishable by custodial arrest, insofar as the did not result in a more serious criminal offense.⁶*

Act II of 2012 on offences, the procedure in relation to offences and the offence record system

Section 174: Participating in the Activity of a Dissolved Association

Any person who

- a) undertakes activity declared to be illegal in a court order regarding the dissolution of an association,*
- b) continues to participate in the activity of an association that has been ordered to be dissolved following the issue of the order,*
- c) wears the uniform or formal garment of the dissolved association at a public event, furthermore; those who wear such a uniform or formal garment at a public event that may be recognized as the uniform or formal garment of the dissolved association due to its unique characteristics, commits an offence against the law.⁷*

³ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 97
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

⁴ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 97
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

⁵ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 97
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

⁶ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 97
http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

⁷ "2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási

Section 188: Breaching the Right to Religious Practice

Any person who causes public outrage in a church or in any other place assigned for religious activity, or else desecrates objects of religious veneration or objects used for performing religious rituals on or outside of the premises of a place assigned to religious rituals commits an offence against the law.⁸

Section 208/A: Offence Against Regulation of the Press

Any person who shares such press products that have been ordered to be seized or confiscated, commits an offence against the law.⁹

Act V of 2013 on the Civil Code

Section 2:54 - Subsections (4) and (5)

(4) If the violation of personality rights infringes upon the public interest, the public prosecutor shall be entitled to bring action upon the victim's consent, and to invoke the sanctions independent of attributability. Pursuant to the public prosecutor's action the financial advantage achieved shall be relinquished for public purposes. This Subsection shall apply to the infringement referred to in Subsection (5) with the exception that the public prosecutor shall be entitled to bring action without the victim's consent within the applicable limitation period.

(5) Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.¹⁰

The Fundamental Law of Hungary (25 April 2011)

Article IX - Paragraphs (4) and (5)

(4) The right to freedom of speech may not be exercised with the aim of violating the human dignity of others.

(5) The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Members of such communities

rendszeréről." ["Act II of 2012 on offences, the procedure in relation to offences and the offence record system." Nemzeti Jogszabálytár. [National Law Database.]

http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.294595

⁸ "2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszeréről." ["Act II of 2012 on offences, the procedure in relation to offences and the offence record system." Nemzeti Jogszabálytár. [National Law Database.]

http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.294595

⁹ "2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszeréről." ["Act II of 2012 on offences, the procedure in relation to offences and the offence record system." Nemzeti Jogszabálytár. [National Law Database.]

http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.294595

¹⁰ qtd. in: Gárdos-Orosz, Fruzsina. "The Regulation of Offensive Speech in the New Hungarian Civil Code." ELTE Law Journal, vol. 3, no. 1, 2015, pp 103-123. (p. 103, 117)

http://eltelawjournal.hu/wp-content/uploads/2016/03/2015_1_08_Fruzsina_Gardos_Orosz.pdf

shall be entitled to enforce their claims in court against the expression of an opinion which violates the community, invoking the violation of their human dignity, as provided for by an Act.¹¹

Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content

Article 17

(1) The media content may not incite hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group.

(2) The media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group.¹²

Act CLXXXV of 2010 on Media Services and Mass Communication

Article 14

The viewers or listeners shall be given a forewarning prior to the broadcasting of any image or sound effects in media services that may hurt a person's religious, faith-related or other ideological convictions or which are violent or otherwise disturbing.¹³

The legal concept of hate crime in Hungary

In Hungary the term "hate crime" is not included in legislative measures, but a number of conceptual elements of these legislative measures have have a direct relevance to the concept of hate crime:

- The latest version of the **Criminal Code** (Act C of 2012 on the Criminal Code), includes a number of criminal offenses related to hate speech: *Genocide* (Section 142), *Crimes Against Humanity*¹⁴ (Section 143), *Apartheid* (Section 144), *Violation of the Freedom of Conscience and Religion* (Section 215), *Violence Against a Member of the Community* (Section 216)
- Criminal offences in the Criminal Code with **malice aforethought** or with **malicious motive**, as an aggravating circumstance, can also have a bias motive, such as in the case of *Homicide* (Section 160), *Personal Freedom* (Section 194), *Unlawful Detention* (Section 304)

Table 2 sums up the offenses in the Hungarian legal system that are directly or indirectly related to the concept of hate speech, tentatively paired with the working terminology of this national hate crime report.

¹¹ "The Fundamental Law of Hungary." Office of the President of the Republic. http://www.keh.hu/the_fundamental_law/1536-The_fundamental_law_of_Hungary*&pnr=5

¹² Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content. National Media and Communications Authority. p. 5 http://english.nmhh.hu/document/162262/smtv_110803_en_final.pdf

¹³ "Act CLXXXV of 2010 on Media Services and Mass Communication." Media Council of the National Media and Infocommunications Authority. p. 5 http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf

¹⁴ A note on translation: We used the official translation provided by the Ministry of Interior. However, it must be noted that the verbatim English translation of this criminal offence (Section 143), as well as the same named chapter (Chapter XIII), in the Act C of 2012 on the Criminal Code is Crimes Against Humanity, while the pre-2012 Criminal Code still used the term Crimes Against Humanity. We don't have information on the reason of either the change in the terminology or of the difference in the official English translation.

Table 2: Legislation Relevant to the Concept of Hate Crime

Terminology Used in the National Hate Crime Report	Relevant Concept in Hungarian Legislation	Type of Relevance to the Concept of Hate Crime	Name of Legislation and Section	Name of Chapter within the Legislation
Violence and physical attack	Genocide	Direct relevance	Act C of 2012 on the Criminal Code (Section 142)	Crimes Against Humanity
	Crimes Against Humanity	Possibility of direct relevance (Note: Subsection 1.h. makes this criminal offence relevant to deprivation of basic rights on grounds of group affiliation.)	Act C of 2012 on the Criminal Code (Section 143)	Crimes Against Humanity
	Apartheid	Direct relevance	Act C of 2012 on the Criminal Code (Section 144)	Crimes Against Humanity
	Violation of the Freedom of Conscience and Religion	Possibility of direct relevance (Note: This criminal offence includes using force or threat of force.)	Act C of 2012 on the Criminal Code (Section 215)	Crimes Against Human Dignity and Fundamental Rights
	Violence Against a Member of the Community	Direct relevance	Act C of 2012 on the Criminal Code (Section 216)	Crimes Against Human Dignity and Fundamental Rights
	Homicide	Indirect relevance (Note: “ <i>With malice aforethought or malicious motive</i> ”, as an aggravating circumstance, can include bias motive)	Act C of 2012 on the Criminal Code (Section 160)	Crimes Against Life, Limb and Health
Attack against property	Violence Against a Member of the Community	Direct relevance (Note: “conspicuously anti-social conduct” can include attack against property,	Act C of 2012 on the Criminal Code (Section 216)	Crimes Against Human Dignity and Fundamental Rights

		according to the ministerial justification of the law ¹⁵⁾		
Any crime with bias motive (aggravating circumstance)	Examples: Violation of Personal Freedom (Section 194), Unlawful Detention (Section 304)	Indirect relevance (Note: " <i>With malice aforethought or malicious motive</i> ", as an aggravating circumstance, can include bias motive)	Act C of 2012 on the Criminal Code	

The English translation of legal measures related to hate crime

Act C of 2012 on the Criminal Code

Section 142: Genocide

(1) Any person who - with the ultimate aim of the destruction, in whole or in part, of a national, ethnic, racial or religious group:

- a) murders the members of the group;
- b) causes serious bodily or mental injury to the members of the group;
- c) constrains the group into living conditions threatening the demise of the group on the whole or certain members thereof;
- d) takes any action aimed to prevent reproduction within the group;
- e) abducts the children of the group and installs them into another group; is guilty of a felony punishable by imprisonment between ten to twenty years or with life imprisonment.

(2) Any person who engages in preparations for genocide shall be punishable by imprisonment between two to eight years.¹⁶

Section 143: Crimes Against Humanity

(1) Any persons who - being part of a widespread or systematic practice:

- a) commits murder;
- b) forces the civilian population, in part or in whole, to live under conditions threatening the demise of that population or certain members thereof;
- c) orders the displacement of the civilian population, in part or in whole, from their rightful place of residence;
- d) engages in the trafficking in human beings or in exploitation in the form of forced labor;
- e) deprives another person of his personal freedom, or unlawfully maintains his abduction;
- f) forces another person to commit or tolerate sexual violence, forces others into prostitution or to bear a child, or into illegal abortion;
- g) causes serious bodily or mental injury to others;
- h) deprives other persons of their basic rights for reasons of their affiliation with a group on the grounds of

¹⁵ Átol, Dorottya et. al. "Közösség tagja elleni erőszak. Alternatív kommentár." Fundamentum, vol. 17, no. 3, 2013, pp 79-92 (p. 87) <http://fundamentum.hu/sites/default/files/fundamentum-13-4-10.pdf>

¹⁶ "Act C of 2012 on the Criminal Code." Ministry of Interior. pp 36-37 http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

political opinion, nationality, ethnic origin, culture, religion, sex or any other reason; is guilty of a felony punishable by imprisonment between ten to twenty years or with life imprisonment.

(2) Any person who engages in preparations for crimes against humanity is guilty of a felony punishable by imprisonment between two to eight years.

(3) In the application of this Section widespread or systematic assault on the civilian population shall include all conduct which covers the acts defined under Subsection (1) committed systematically against the civilian population aiming to implement or facilitate the policies of a State or organization.¹⁷

Section 144: Apartheid

(1) Any person who - with the aim to establish dominion and maintain rule of a racial group of people over another racial group of people and/or with the aim of the systematic oppression of the other racial group:

a) murders the members of a racial group or groups;

b) forces a racial group or groups to live under conditions threatening the physical annihilation of the group or groups on the whole or to any extent; is guilty of a felony punishable by imprisonment between ten to twenty years or with life imprisonment.

(2) Any person who commits another crime of apartheid is punishable by imprisonment between five to fifteen years.

(3) The penalty shall be imprisonment between ten to twenty years, or life imprisonment, if the other crime of apartheid leads to particularly grave consequences.

(4) Any person who engages in preparations for apartheid is punishable:

a) by imprisonment between five to ten years in the cases defined in Subsection (1);

b) by imprisonment between two to eight years in the case defined in Subsection (2).

(5) For the purposes of Subsections (2)-(3), 'other apartheid crime' shall mean the crimes of apartheid defined in Article II a)/(ii), a)/(iii), c), d), e), and f) of the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted on 30 November 1973 by the General Assembly of the United Nations Organization in New York, promulgated by Law-Decree No. 27 of 1976.¹⁸

Section 215: Violation of the Freedom of Conscience and Religion

Any person who:

a) restricts another person in his freedom of conscience by force or by threat of force;

b) prevents another person from freely exercising his religion by force or by threat of force;

is guilty of a felony punishable by imprisonment not exceeding three years.¹⁹

Section 216: Violence Against a Member of the Community

(1) Any person who displays an apparently anti-social behavior against others for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, of aiming to cause panic or to frighten others, is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any person who assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, or compels him by force or by threat of force to do, not to do, or to endure something, is punishable by imprisonment between one to five years.

(3) The penalty shall be imprisonment between two to eight years if violence against a member of the community

¹⁷ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 37

http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

¹⁸ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 37

http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

¹⁹ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 61

http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

is committed:

- a) by displaying a deadly weapon;
- b) by carrying a deadly weapon;
- c) by causing a significant injury of interest;
- d) by tormenting the aggrieved party;
- e) in a gang; or
- f) in criminal association with accomplices.

(4) Any person who engages in the preparation for the use of force against any member of the community is guilty of a misdemeanor punishable by imprisonment not exceeding two years.²⁰

Section 160: Homicide

(1) Any person who kills another human being is guilty of a felony punishable by imprisonment between five to fifteen years.

(2) The penalty shall be imprisonment between ten to twenty years, or life imprisonment, if the homicide is committed:

- a) deliberately with premeditation;
- b) for financial gain;
- c) with malice aforethought or with malicious motive;
- d) with particular cruelty;
- e) against a public official or a foreign public official during or because of his official proceedings, against a person performing public duties when carrying out such duties, or against a person providing assistance to or acting in defense of such persons performing official or public duties;
- f) against more than one person;
- g) endangering the life of a number of persons;
- h) by a habitual recidivist;
- i) against a person under the age of fourteen years;
- j) against a person incapable of self-defense; or
- k) against a person whose ability to defend himself is diminished due to his old age or disability.

(3) Any person who engages in preparations to commit homicide is punishable by imprisonment between one to five years.

(4) Any person who commits negligent homicide is guilty of a misdemeanor punishable by imprisonment between one to five years.

(5) Any person who persuades another to commit suicide shall be punishable in accordance with Subsection (1) if such person is under the age of fourteen years or is unable to express his will, and if the suicide is in fact committed.

(6) In the application of Paragraph h) of Subsection (2), the following shall be construed as crimes of similar nature within the meaning of habitual recidivism:

- a) genocide [Paragraph a) of Subsection (1) of Section 142], voluntary manslaughter (Section 161);
- b) aggravated cases of kidnapping and assault on a superior officer or representative of public authority [Subsection (4) of Section 190, Paragraph a) of Subsection (5) of Section 445];
- c) acts of terrorism, unlawful seizure of a vehicle, and aggravated cases of mutiny, if causing death and the act is committed intentionally [Subsection (1) of Section 314, Subsection (2) of Section 320, Subsection (4) of Section 442].²¹

Protected groups covered by national hate speech and hate crime legislation

In Hungary, the list of groups protected by legislative measures against hate crime and hate speech is open.

²⁰ "Act C of 2012 on the Criminal Code." Ministry of Interior. pp 61-62

http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

²¹ "Act C of 2012 on the Criminal Code." Ministry of Interior. p. 42

http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf

However, a number of groups are named in the relevant acts, to exemplify the groups in need of protection (usually including majority society and occasionally omitting a vulnerable minority).

Table 3: Protected Groups in Hate Speech and Hate Crime Legislation In Hungary		
Legislative Measure	Section	The Objects of Protection
Act C of 2012 on the Criminal Code	Incitement Against a Community	the Hungarian nation; any national, ethnic, racial or religious group; or certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation
	Violence Against a Member of the Community	a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation
	Homicide	[Not specified]
	Genocide	a national, ethnic, racial or religious group
	Crimes Against Humanity	affiliation with a group on the grounds of political opinion, nationality, ethnic origin, culture, religion, sex or any other reason
	Apartheid	racial group or groups
	Blasphemy of National Symbol	the national anthem, the flag or the coat of arms, or the Holy Crown of Hungary [Note: Because the Fundamental Law excludes minorities from the concept of the nation ²² , this measure protects only members of the majority society.]
	Violation of the Freedom of Conscience and Religion	[Religious groups, although not named as such in the text.]
	Open Denial of Nazi Crimes and Communist Crimes	[Not specified]
	Use of Symbols of	[Not specified]

²² "We proclaim that the nationalities living with us form part of the Hungarian political community and are constituent parts of the State." Source: The Fundamental Law of Hungary. The Government of Hungary, 25 April 2011. p. 2

<http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

	Totalitarianism	
Act II of 2012 on offences, the procedure in relation to offences and the offence record system	Breaching the Right to Religious Practice	[Religious groups, although not named as such in the text.]
	Participating in the Activity of a Dissolved Association	[Not specified]
	Offence Against Regulation of the Press	[Not specified]
Act V of 2013 on the Civil Code	Section 2:54 [Enforcement of rights relating to personality]	being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality
The Fundamental Law of Hungary	Paragraph (5) of Article IX	the dignity of the Hungarian nation or of any national, ethnic, racial or religious community
Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content	Article 17	any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group
Act CLXXXV of 2010 on Media Services and Mass Communication	Article 14	a person's religious, faith-related or other ideological convictions

Policies concerning hate crimes (and/or racism, xenophobia, extremism)

The six interviewees asked had no knowledge about a specific policy regarding hate speech or hate crime.

The prosecutor's office has a protocol on hate crime that provides guidelines for criminal proceedings related to hate crime. Amnesty International Hungary now works with the Hungarian police in a joint development for such a protocol for the police, too. Previously, Amnesty International Hungary worked out a set of indicators for the police that the police has to examine during an investigation related to hate crime.

The national criminal procedure in relation to hate speech and hate crime

In case an act of incitement or violence is committed against a member of a community, it has to be reported to the police, or if the authority observes such an incident, it can initiate investigation. The participants of the investigation are the police, the plaintiff and the witnesses, who are questioned. If the perpetrators are known, they are also questioned as suspects. At the end of the investigation the authority recommends charge or terminates the investigation. The investigation can also be suspended in case the perpetrators are unknown. Based on the recommendation of the police, the prosecutor's office decides on whether to bring a charge against the suspect(s). In case a charge is made, the case is passed to the court. The court can bring a judgement on the case, there are two rounds of appeal, in case of third instance

proceeding the Supreme Court brings decision.²³ In case of speech that offends the dignity of a community, it is possible start a civil procedure within 30 days of the incident (that is, until 30 days after being informed of the speech). Civil procedures are started at the court, there is one round of appeal, followed by judicial review by the Supreme Court.²⁴

During the interviews we made as part of this report, a number of interviewees emphasized that most often it is at the beginning of the investigation that the bias motive goes unnoticed and an instance of hate crime becomes underclassified, that is, it is described as an incident of Public Nuisance (Section 339, Act C of 2012 on the Criminal Code) instead of Violence Against a Member of the Community (Section 216). Therefore, we consider important to have a closer look at this early stage and identify the main players. After an incident is reported, a patrol collects data at the crime scene. Based on this information, the head of the criminal investigation department passes the case to the proper organizational unit. In the case of hate crimes, it is called police hate crime network (*gyűlölet-bűncselekmény szakvonal*), which “consists of individual investigators who specialise in hate crime at each county police and a co-ordinator at the National Police Headquarters.”²⁵

Chapter 2: Description and Analysis of Actual Situation

A. Quantitative Overview of Hate Crimes and Hate Speech Cases

Official Data

The number of hate crime cases are officially registered in Hungary during the reported period

The Department of Coordination and Statistics of the Ministry of Interior has published statistical data on “registered crimes” in the category *Violence Against a Member of a Community* for the years 2014, 2015 and 2016, as summed up below in Table 4. Although the statistical data published by the Ministry of Interior also includes data on *Crime Against Humanity*²⁶, we did not include these data in the table below, because we do not have information on whether the targets of these cases of Crime Against Humanity were victimized on grounds of group affiliation or not. We also do not have statistical data on criminal offences (e.g. *Homicide*) with the aggravating circumstance “with malice aforethought or malicious motive” (and, within that, bias motive), as well as on a number of criminal offences with a direct relevance to the concept of hate crime (e.g. *Genocide, Apartheid*).

Table 4: Registered Cases of Hate Crime (2014-2016)
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²³ The account is based on the summary provided to us by the Hungarian Civil Liberties Union. For more detailed information on criminal procedures, see the description of the Supreme Court of Hungary:

<http://birosag.hu/en/information/criminal-procedure>

²⁴ The account is based on the summary provided to us by the Hungarian Civil Liberties Union. For more detailed information on civil procedures, see the description of the Supreme Court of Hungary:

<http://birosag.hu/en/information/civil-procedure>

²⁵ "Ensuring justice for hate crime victims: professional perspectives." European Union Agency for Fundamental Rights, April 2016. p. 48

http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf

²⁶ 2014: 1, 2015: 0, 2016: 4

Terminology used in the national hate crime report	Terminology used in Hungarian legislation	2014	2015	2016
Violence and physical attack	Violence Against a Member of the Community	48	32	33
Attack against property				
Any crime with bias motive (aggravating circumstance)		No data on any other crime with a bias motivation	No data on any other crime with a bias motivation	No data on any other crime with a bias motivation
	Source of Data: Ministry of Interior, Department of Coordination and Statistics (https://bsr.bm.hu)			

Table 5: Number of Registered Hate Crime Offenses (2014-2016)			
According to Act C of 2012 on the Criminal Code	Number of registered offenses		
	2014	2015	2016
Section 215: Violation of the Freedom of Conscience and Religion	0	0	0
Section 216: Violence Against a Member of the Community	33	30	30
According to Act IV of 1978 on the Criminal Code (old Criminal Code)	Number of registered offenses		
	2014	2015	2016
Section 174A: Violation of the Freedom of Conscience and Religion	0	0	0
Section 174B: Violence Against a Member of the Community	15	2	3
Source of Data: The Office of the Prosecutor General of Hungary, Department for Data Protection and Security			

Note: Tables 5, 8 and 11 reflect the definitions of hate speech and hate crime used by The Office of the Prosecutor General of Hungary, which differs from the working definition of the same concept used in this project. For example, according to our working definitions, it is possible to classify the offence "Violation of the Freedom of Conscience and Religion" (Act C of 2012 on the Criminal Code, Section 215) as both hate speech (subcategory: *threat of attack*) and hate crime, because this criminal offence includes using force or threat of force. As shown in Tables 1 and 2, it is possible to add more criminal offences of the Criminal Code to the concepts of hate speech and hate crime than the ones in the model used by the The Office of the Prosecutor General of Hungary. Moreover, we also added administrative offences to the list of offences related to hate speech, as the only units with a possible direct relevance to the proposed subcategories of *hate materials* ("Offence Against Regulation of the Press") and *setting up, supporting the hate groups* ("Participating in the Activity of a Dissolved Association").

Vulnerable groups targeted and crime motivations

Table 6: Violence Against a Member of the Community

Number of registered offences by method of perpetration (2014-2016)			
According to Act C of 2012 on the Criminal Code	Number of registered offenses		
	2014	2015	2016
Section 216: Violence Against a Member of the Community (total)	33	30	30
Method of Perpetration			
Causing panic	15	15	16
Assault	16	15	9
Compelling not to do something	0	0	0
Compelling to do something	2	0	5
Compelling to endure something	0	0	0
For being part, whether in fact or under presumption of an ethnic group	20	12	9
For being part, whether in fact or under presumption of a racial group	3	4	7
For being part, whether in fact or under presumption of a societal group	4	5	3
For being part, whether in fact or under presumption of a national group	2	6	10
For being part, whether in fact or under presumption of a religious group	4	3	1
By threat of force	4	0	5
By force	14	15	9
On the grounds of other	13	13	15
On the grounds of disability	0	0	0
On the grounds of gender identity	2	1	0
On the grounds of sexual orientation	0	3	1
According to Act IV of 1978 on the Criminal Code (old Criminal Code)	Number of registered offenses		
	2014	2015	2016
Section 174B: Violence Against a Member of the Community (total)	15	2	3
Method of Perpetration			
Assault	10	1	2
Compelling by force	1		
For being part, whether in fact or under presumption of an ethnic group	3	1	1
For being part, whether in fact or under presumption of a religious group	1		
Source of Data: The Office of the Prosecutor General of Hungary, Department for Data Protection and Security			

The 2015 country report of the European Commission against Racism and Intolerance (ECRI) on Hungary notes that bias motivation is not included in official data on hate-motivated offences in the country. To make up for this lack of data, ECRI consulted Hungarian authorities, which reported that

- “62% of [the 201 possible incitements to hatred against a community recorded by the police between 2009 and 2013] involved alleged hate speech against Roma, 20% against Jews, 7% against LGBT persons and the remainder concerned ethnic origin and skin colour.”²⁷
- “54% of the victims of [the 191 reported cases of alleged hate motivated violence between 2009 and 2013] were Roma, 8.5% were Jews and 17% involved violence against the Hungarian majority. No data was provided as to any LGBT victims.”²⁸

²⁷ "ECRI Report on Hungary." European Commission against Racism and Intolerance, 2015. p. 15
<http://www.coe.int/t/DGHL/MONITORING/ECRI/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf>

²⁸ "ECRI Report on Hungary." European Commission against Racism and Intolerance, 2015. p. 20

The number of hate speech cases are officially registered in Hungary during the reported period

The Department of Coordination and Statistics of the Ministry of Interior has published statistical data on “registered crimes” in the category *Incitement Against a Community, Open Denial of Nazi Crimes and Communist Crimes, Use of Symbols of Totalitarianism and Blasphemy of National Symbol* for the years 2014, 2015 and 2016, as summed up below in Table 7. It did not publish statistical data on a number of administrative and criminal offences that have a possibly direct relevance to the concept of hate speech (*Genocide, Apartheid, Violation of the Freedom of Conscience and Religion, Violation of Personal Freedom, Unlawful Detention, Offence Against Regulation of the Press, Participating in the Activity of a Dissolved Association*) and on the criminal offence *Defamation* with the aggravating circumstance “with malice aforethought or malicious motive” (and, within that, bias motive).

Table 7: Registered Cases of Hate Speech (2014-2016)				
Terminology used in the national hate crime report	Terminology used in Hungarian legislation	2014	2015	2016
Threat of attack		No data	No data	No data
Defamation of race, nation, religion	Blasphemy of National Symbol	0	2	0
Incitement to hatred, call to violence	Incitement Against a Community	4	4	5
Holocaust or crimes against humanity denial	Open Denial of Nazi Crimes and Communist Crimes	19	13	10
Hate materials		No data	No data	No data
Approval of totalitarian regimes	Use of Symbols of Totalitarianism	44	23	23
Setting up, supporting the hate groups	Offence Against Regulation of the Press	No data	No data	No data
Total		67	42	38
	Source of Data: Ministry of Interior, Department of Coordination and Statistics (https://bsr.bm.hu)			

Table 8: The Number of Registered Hate Speech Offenses (2014-2016)	
According to Act C of 2012 on the Criminal Code	The number of registered offenses

	2014	2015	2016
Section 332: Incitement Against a Community	3	3	5
Section 333: Open Denial of Nazi Crimes or Communist Crimes	17	12	9
According to Act IV of 1978 on the Criminal Code (old Criminal Code)	The number of registered offenses		
	2014	2015	2016
Section 296: Agitation Against a Community	1	1	0
Section 269C: Open Denial of Nazi Crimes and Communist Crimes	2	1	1
Source of Data: The Office of the Prosecutor General of Hungary, Department for Data Protection and Security			

Table 9 provides a summary on **administrative proceedings** that can have a relevance to hate speech or hate crime.

Table 9: Started Proceedings Administrative Offences Related to Hate Speech and Hate Crime (2014-2016)				
Administrative Offence		2014	2015	2016
Participating in the Activity of a Dissolved Association	Section 174 (a)	4	1	4
	Section 174 (b)	0	2	0
Breaching the Right to Religious Practice	Section 188 (first alternative)	1	2	1
	Section 188 (second alternative)	1	0	1
Offence Against Regulation of the Press		4	4	24
Source of Data: Ministry of Interior, Department of Coordination and Statistics (https://bsr.bm.hu)				

The number of accused (by prosecutors office)

Table 10 provides a summary on **criminal proceedings** that can have a relevance to hate speech or hate crime.

Table 10: Number of Charges Related to Hate Speech and Hate Crime			
Criminal Offence	2014	2015	2016
Open Denial of Nazi Crimes and Communist Crimes	8	4	4

Incitement Against a Community	3	2	2
Violence Against a Member of the Community	31	21	21
Use of Symbols of Totalitarianism	3	4	3
Source of Data: Ministry of Interior, Department of Coordination and Statistics (https://bsr.bm.hu)			

Table 11: Number of Charges Related to Hate Speech and Hate Crime A Comparison of The Old and New Criminal Codes						
Hate Crime						
According to Act C of 2012 on the Criminal Code	Number of criminal offenses with charges (Source: Page B)			Number of persons accused (Source: Page T)		
	2014	2015	2016	2014	2015	2016
Section 215: Violation of the Freedom of Conscience and Religion	0	0	0	0	0	0
Section 216: Violence Against a Member of the Community	18	21	20	21	29	23
According to Act IV of 1978 on the Criminal Code (old Criminal Code)						
Section 174A: Violation of the Freedom of Conscience and Religion	0	0	0	0	0	0
Section 174B: Violence Against a Member of the Community	13	0	1	15	0	0
Hate Speech						
According to Act C of 2012 on the Criminal Code	Number of criminal offenses with charges (Source: Page B)			Number of persons accused (Source: Page T)		
	2014	2015	2016	2014	2015	2016
Section 332: Incitement Against a Community	2	2	2	4	2	2
Section 333: Open Denial of Nazi Crimes or Communist Crimes	8	3	4	7	3	3
According to act IV. of 1978 on the Criminal Code (old criminal code)						
Section 296: Agitation Against a Community	1	0	0	1	0	0
Section 269C: Open Denial of Nazi Crimes and Communist Crimes	0	1	0	0	1	0
Source of Data: The Office of the Prosecutor General of Hungary, Department for Data Protection and Security						

What is the number of convicted?
Quantify how many cases ended up in court

What type of penalties were awarded?

On the website of the Department of Coordination and Statistics of the Ministry of Interior, no statistical data related to the above three questions can be found and by 7 July 2017 we have not received relevant data from the public authorities and administrative bodies that we contacted.

NGO Data

In May and June 2017, we interviewed 5 Budapest-based NGOs. Table 12 provides an overview on how their work is related to hate speech and hate crime.

Table 12: NGOs Interviewed							
Name of NGO Represented group/issue	Type of hate crime related activities						Legal Aid to Hate Crime Victims
	Monitoring	Legal Assistance	Victim Support	Education/Training	Advocacy	Other	
Háttér Society (Háttér Társaság) LGBTI community	X	X	X	X	X	-	X
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért) General human rights focus	-	X	-	-	X	-	X
Hungarian Helsinki Committee (Magyar Helsinki Bizottság) Refugees, asylum seekers, detainees	X	X	X	X	X	-	X
Action and Defense Foundation (Tett és Védelem Alapítvány) Jewish community	X	X	X	X	X	-	X
Amnesty International Hungary General human rights focus	X			X	X	Campaigning	-

Numbers of hate crime and hate speech estimated by NGOs

Table 8 sums up the estimates of the interviewed NGOs on the number of hate crime and hate speech incidents, as compared to official statistical data. Their unanimous opinion is that the magnitude of such incidents in real life far exceed official data.

Table 13: Number of Hate Crime and Hate Speech Incidents Estimated by NGOs		
Name of NGO interviewed	Estimate of the Number of Hate	Estimate of the Number of Hate

	Speech Cases	Crime Cases
Háttér Society (Háttér Társaság)	Official statistics don't reflect real numbers. Hate speech incidents are registered only in extremely rare cases.	Only 10-15% of hate crime victims report hate crime incidents.
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért)	(no estimate)	Hundreds or thousands of incidents instead per year.
Hungarian Helsinki Committee (Magyar Helsinki Bizottság)	The number of incidents is by orders of magnitudes larger than registered by authorities.	The number of incidents is by orders of magnitudes larger than registered by authorities. / 80-800 (hate crime) 8000 (hate speech, including online hate speech)
Action and Defense Foundation (Tett és Védelem Alapítvány)	Official data show only 10-13% of the real number of incidents.	Official data show only 10-13% of the real number of incidents.
Amnesty International Hungary (Amnesty International Magyarország)	(no estimate)	Over 100.

The country profile of Hungary at the website of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) contains no official country data on hate crime in Hungary for 2015 and 2016.²⁹ For 2014, it indicates that the police recorded 79 cases of hate crime in Hungary, but it is not specified which criminal offences ODIHR included in the concept of hate crime besides *Violence Against a Member of the Community*.

Number of cases NGOs deal with

Table 14: Number of Hate Crime and Hate Speech Incidents Met by NGOs		
Name of NGO interviewed	Hate Speech	Hate Crime
Háttér Society (Háttér Társaság)	-	5-10
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért)	2-3	4-5
Hungarian Helsinki Committee (Magyar Helsinki Bizottság)	-	8
Action and Defense Foundation (Tett és Védelem Alapítvány)	90% of 47 incidents (42.3)	10% of 47 incidents (4.7)
Amnesty International Hungary (Amnesty International Magyarország)	-	4-5

²⁹ "Hungary." OSCE Office for Democratic Institutions and Human Rights (ODIHR). <http://www.osce.org/resources/csce-osce-key-documents>

Types of Crimes

Table 11 sums up the types of hate speech and hate crime and the types of bias motive behind them the interviewed NGOs

Table 15: Types Hate Crime and Hate Speech Met by NGOs		
Name of NGO interviewed	Bias Motive	Type of Hate Speech/Hate Crime
Háttér Society (Háttér Társaság)	Homophobic/transphobic motive	Threatening, A Moderate Level of Physical Abuse
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért)	Antigypsism	Hate Speech and hate crime. (The most common are incidents of hate speech not qualifying criminal offences.)
Hungarian Helsinki Committee (Magyar Helsinki Bizottság)	Due to the propaganda of the Hungarian government, the number of hate crimes against refugees and asylum seekers.	Violence Against a Member of the Community
Action and Defense Foundation (Tett és Védelem Alapítvány)	Antisemitism.	Mostly hate speech, but lately hate crimes have also been on the rise.
Amnesty International Hungary (Amnesty International Magyarország)	(Not stated.)	Violence Against a Member of the Community (Physical Abuse)

Vulnerable Groups

Table 16: The Most Vulnerable Groups at Country Level (NGO Estimate)	
Name of NGO interviewed	The Groups Most Frequently Targeted by Hate Speech and Hate Crime
Háttér Society (Háttér Társaság)	Hate crime: Above all, the Roma. In the past years, also migrants, refugees foreigners, LGBTI people. Sometimes homeless people are also targeted. Hate speech: Jewish people are often subject to hate speech.
Hungarian Civil Liberties Union (Társaság a Szabadságjogokért)	Hate crime: Mostly the Roma. Also refugees, colored foreigners, members of the LGBTI community, people thought to be Jewish.
Hungarian Helsinki Committee (Magyar Helsinki Bizottság)	Hate crime: The Roma, refugees, asylum seekers, the LGBTI community. Lately homeless people have also been targeted by hate crime.

Action and Defense Foundation (Tett és Védelem Alapítvány)	Hate crime: To a large extent, it is the Roma. Also, the disabled and members of the LGBTI community. The Jewish community is subject to hate crime to a less degree than these communities.
Amnesty International Hungary (Amnesty International Magyarország)	Hate crime: The Roma obviously. The LGBTI community. Hate speech: refugees, migrants.

B. Qualitative Assessment of Hate Crime and Hate Speech Issues - Identification of Obstacles to Investigation and Prosecution

This section summarizes the findings of interviews with the representatives of 5 NGOs and the Supreme Court of Hungary.

Is the criminal legislation or the rules of criminal procedure an obstacle to effective criminal proceedings?

None of our interviewees holds the opinion that it is the criminal legislation or the *rules* of the criminal procedure that seriously hinders the efficiency of criminal proceedings related to hate speech and hate crime. Instead, it is the practice of law enforcement that pose the largest problems, especially at the stage of investigation.

However, some criticism has also been offered regarding the legal context itself by our interviewees and the literature we studied. Below is a summary of critical evaluations regarding specific legal measures.

Act C of 2012 on the Criminal Code

1) Types of Hate Speech and Hate Crime Not Covered

- Discrimination is not covered: The country report on Hungary of ECRI found that some types of incitement or violence against a member of a community was not covered in the legislation. Hence, ECRI recommended to extend the scope of relevant legislation to include, for example, incitement to discrimination against a member of a community.³⁰
- Homicide with bias motive is not covered: Háttér Society noted that the statutory definition of "Violence Against a Member of the Community" (Section 216) does not cover Homicide. Other sections of the Act C of 2012 on the Criminal Code also does not include any direct reference to the concept of homicide with bias motive. Homicide (Section 160) itself can be qualified by the aggravating circumstance "with malice aforethought or malicious motive", which is used to imply bias motive, among a number of other motives, but there is no way to denote homicide with a bias motive separately.
- Attack against property is not covered clearly enough: As already mentioned, according to the ministerial justification of the Criminal Code, "Violence Against a Member of the Community" includes attack against property, but it is not stated explicitly in the text of that section. Therefore, in law enforcement attack against property with a bias motive is not always classified as "Violence Against a Member of the Community", observed Háttér Society. Háttér Society recommends including attack against property in "Violence Against a Member of the Community" or adding *bias motive* to Vandalism (Section 371) as a qualifying circumstance.
- The scope of hate crime is not defined clearly enough: According to the Hungarian Helsinki

³⁰ "ECRI Report on Hungary." European Commission against Racism and Intolerance, 2015. p. 12
<http://www.coe.int/t/DGHL/MONITORING/ECRI/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf>

Committee, there is an uncertainty regarding what offences belong to the concept of hate crime. The crime statistics of the police might interpret the concept differently than an NGO.

- The scope of hate speech is not defined clearly enough: According to Háltér Society, “Incitement Against a Community” is usually interpreted in the narrowest possible sense, which makes it a “dead, dormant legal concept”. The representative of Háltér Association is not sure whether the legal measure should be revised or agencies of law enforcement should be encouraged to use the legal measure more often.

2) Vulnerable Communities Covered and Not Covered

- Homeless people not named: In an analysis of the hate crime legislation, the Hungarian Civil Liberties Union recommends to make the list of protected groups closed and include homeless people, which would be justified by both national and international tendencies of hate crime.³¹ The need to name all major vulnerable groups into the legislation against hate crime was further emphasized by the representative of the Hungarian Helsinki Committee, who stated that the 2012 modification of the Criminal Code marked a significant change for the LGBTI community in Hungary. The fact that gender identity and sexual orientation was named among the protected qualities - even if the list is open - made cooperation with the police regarding hate crime against the LGBTI community easier.
- The open list of protected groups creates legal uncertainty: The Hungarian Civil Liberties Union argues in its analysis that the phrasing “certain societal group” or “certain societal groups” (in the definitions of “Violence Against a Member of the Community” and “Incitement Against a Community”) creates a legal uncertainty and makes practices opposing the intention of lawmakers possible.³² For example, the representatives of Amnesty International Hungary and the Hungarian Helsinki Committee noted that the legal concept of “Violence Against a Member of the Community” has been used to classify violence against members of an extremist group as hate crime, which contradicts the logic of this legal concept. Despite a stance of the Supreme Court of Hungary against this practice, this tendency is on the rise.³³
- Lack of a minority protection focus: The notion of “any societal group(s)” can also include members of the majority society, which gives an *identity protection* function to the provision, as opposed to a *minority protection* focus.³⁴ In a written commentary on the Criminal Code, the Hungarian Civil Liberties Union argues for legal measures against hate crime with a clear minority protection focus, for example by introducing racism, homophobia or antisemitism as qualifying circumstances.³⁵

3) Harmony With EU Standards

- According to Action and Defense Foundation, the national legal context is in full harmony with EU law. However, a former judge of the Supreme Court of Hungary offered the private opinion that the practice of law enforcement in Hungary does not correspond to the Council Framework Decision

³¹ “A Társaság a Szabadságjogokért állásponjtja a gyűlölet-bűncselekmények szabályozásáról.” [“The Standpoint of the Hungarian Civil Liberties Union on the Regulation of Hate Crimes.”] Hungarian Civil Liberties Union. 7 May 2015. pp 14-15 https://tasz.hu/files/tasz/imce/tasz-gybc-s-allasponjt-final_.pdf

³² “A Társaság a Szabadságjogokért állásponjtja a gyűlölet-bűncselekmények szabályozásáról.” [“The Standpoint of the Hungarian Civil Liberties Union on the Regulation of Hate Crimes.”] Hungarian Civil Liberties Union. 7 May 2015. pp 14-15 https://tasz.hu/files/tasz/imce/tasz-gybc-s-allasponjt-final_.pdf

³³ Before the passing of the law, the Hungarian Helsinki Committee argued for a closed list. A counter-argument to this, embraced by the Supreme Court of Hungary, is that it depends on the context whether one belongs to the majority or to a minority group.

³⁴ Note that the definition of “Incitement Against a Community” also names “the Hungarian nation” among vulnerable communities.

³⁵ “A Társaság a Szabadságjogokért állásponjtja a gyűlölet-bűncselekmények szabályozásáról.” [“The Standpoint of the Hungarian Civil Liberties Union on the Regulation of Hate Crimes.”] Hungarian Civil Liberties Union. 7 May 2015. pp 14-15 https://tasz.hu/files/tasz/imce/tasz-gybc-s-allasponjt-final_.pdf

2008/913 of November 2008, because sanctioning hate speech have stricter criteria in Hungarian legal practice.³⁶

Is the institutional setting of law enforcement agencies the main obstacle?

As noted above, our interviewees agreed that the most serious problems regarding hate speech and hate crime are related not to the legal environment, but to law enforcement. Below is a summary of the obstacles posed by the institutional setting of law enforcement agencies that were mentioned by our interviewees. (Problems other than these *structural insufficiencies* will be summed up in a subsequent section.)

1) Police

- Hostile approach to reporters of hate crime incidents : Police often tries to discourage people from reporting a crime, stated Háttér Association and Hungarian Civil Liberties Union. According to Háttér Association, the purpose behind this practice is to keep the number of registered incidents at a low level.
- Patrols lacking professional competence: The lack of knowledge regarding hate speech and hate crime results in failing to identify a reported incident as a possible incident of hate crime, which results in failing to pass the case to the proper specialized investigative body, called the police hate crime network. Investigation done by insufficiently qualified professionals results in failing to examine motives and the case will be classified as Public Nuisance (Section 339), Vandalism (Section 371) or Battery (Section 164). Action and Defense Foundation emphasized the need for training of the side of the police.
- Prejudiced organizational culture: Almost all the interviewed NGOs noted that the work of the police is influenced by a stereotyping approach (within the police) to vulnerable groups, subjecting victims of hate speech and hate crime to secondary victimization. This results in a lack of social trust towards the police, especially among members of vulnerable groups, and contributes to a systematic underreporting of incidents of hate speech and hate crime, which finally yield distorted statistics. This prejudiced organizational culture and the resulting social distrust is a general tendency in Europe, but the representative of Amnesty International Hungary noted that it manifests itself more strongly in Hungary than, for example, in Great Britain.
- Pervasive antigypsism³⁷: According to Amnesty International Hungary, in Hungary, it is the members of the Roma community that have the least trust in the police. Hungarian Civil Liberties Union shares the opinion, adding that the Roma face the strongest prejudice from the police, and the largest ethnic minority in Hungary can be humiliated by the police even as plaintiffs. The situation is the worst in northeastern Hungary. The vast majority of hate crime incidents against the Roma remains unreported.
- Selective priorities of police leadership: The leadership of law enforcement agencies does not consider hate speech and hate crime areas of special priority, based on the misperception that the low number of hate speech and hate crime incidents in official statistics reflect crime rates in a reliable way. According to the Hungarian Helsinki Committee, efforts are needed to make authorities recognize the deficiencies of statistical data.
- Lack of compensation: The investigation task force specialized on hate crime is called police hate

³⁶ The representative of the Hungarian Civil Liberties Union holds the opinion that not all forms of hate speech have to be sanctioned.

³⁷ We use the term "antigypsism" in the sense it is defined in the working paper of the Alliance Against Antigypsism and recommend its introduction into the terminology of the project. "Antigypsism - A Reference Paper." Alliance Against Antigypsism. July 2016.

<http://antigypsism.eu/wp-content/uploads/2016/10/Antigypsism-reference-paper-Layouted-version.pdf>

crime network. Its members - who "remain part of their regular police units"³⁸ - are not compensated for the extra work the involvement in the network requires from them, mentioned Amnesty International Hungary and the Hungarian Helsinki Committee.³⁹

- Regional imbalances: The representative of Amnesty International Hungary noted that the performance of the police hate crime network is strongly influenced by personal and geographical factors. In a general sense, police in Western Hungary shows more sensitivity towards the victims of hate crime than in the Northeast of the country, where police workers more often have a distrust to the reports of Roma people about violence against them with a bias motive.
- Personal dependence: Hungarian Helsinki Committee mentioned that the effectiveness of police hate crime networks also strongly depends on the commitment of the person heading the network.
- Workforce fluctuation: The representative of the Hungarian Civil Liberties Union mentioned that many members of the police hate crime network are replaced in a year's time, due to the high turnover of workforce.
- Bad communication strategies: The representative of Amnesty International Hungary recollected that in 2013 the police wrongly communicated to the public after an attack against participants of the LGBTI demonstration Budapest Pride that the attack was not motivated by bias. It turned out rather soon that the public statement was wrong. Cases like this can also contribute to the lack of social trust towards the police, especially among members of vulnerable groups.
- Rigid institutional environment: Being a highly hierarchical institution, organizational development is slow at the police.

2) Prosecutor's Office

- Lack of specialized knowledge: There are no specially appointed prosecutors in charge of hate speech and hate crime cases, but The Office of the Prosecutor General of Hungary has recently stated it will appoint one such prosecutor per county soon.
- Dependence on the work of the police: Once the police failed to classify an incident as hate speech or hate crime at the phases of reporting or investigation, the work of the prosecutor's office will also rely on these false results. At this stage, it is mostly due to the efforts of NGOs that cases are requalified as hate speech or hate crime incidents.
- Pressure for quantitative results: As professional advancement largely depends on the number of successful accusations, prosecutors are motivated to opt for the simpler accusations that are easier to prove in court, such as Public Nuisance instead of Violence Against a Member of the Community, the latter of which requires more proofs.
- Lack of transparency: The representative of Háttér Association noted during the interview that it is difficult for the association to track the activities of the prosecutor's office, as compared to the police, due to a lack of communication about it on the part of the prosecutor's office. For example, the office communicates with the association about professional questions always through the same person, which gives the impression that the office aims to keep a certain distance with the NGO.
- Rigid institutional environment: Being highly hierarchical institutions, organizational development is slow at prosecutor's offices.

Which barriers and problems are present in law enforcement procedures?

1) Law enforcement agencies in general

³⁸ "Ensuring justice for hate crime victims: professional perspectives." European Union Agency for Fundamental Rights, April 2016. p. 48

http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf

³⁹ Despite such a promise from the Hungarian government, emphasized Hungarian Helsinki Committee during the interview.

- Legislation against hate speech virtually neglected: According to Háttér Association and the Hungarian Civil Liberties Union, law enforcement virtually does not use the legal concept of "Incitement Against a Community" in investigations and legal proceedings.
- Members of a community not entitled to take action: In case of the criminal offence "Incitement Against a Community", only the direct victim of the incitement can be plaintiff, not any member of the community.⁴⁰ Action and Defense Foundation recently handed in a complaint to the Constitutional Court of Hungary in this issue.
- Incitement to hatred not sanctioned: Although the concept of the criminal offence "Incitement Against a Community" includes incitement to hatred, in practice it is used to sanction only incitement to violence, that is, when there is a clear and imminent danger of violence. The representative of Action and Defense Foundation suggested that it would be justified to extend law enforcement to include the sanctioning of mere incitement to hatred, without a clear and imminent danger of violence.⁴¹
- Focus on perpetrator instead of plaintiff: The Hungarian Civil Liberties Union holds the opinion that criminal proceedings pay attention mostly to the perpetrator, while the person of the plaintiff is seen as a marginal element. For example, it happens that victims have to give a testimony with the murderer of their children standing half a meter behind them. A physical separation would be preferable in such cases. In a case a victim dropped the case she or he had started, because she or he was afraid to meet the perpetrator in the courtroom. Also, the representative of the Hungarian Civil Liberties Union still has not succeeded in getting the police to provide protection for any hate crime victim.
- Multiple standards of treatment: The experience of Action and Defense Foundation is that when the NGO accompanies a victim of hate crime or hate speech, law enforcement agencies treated the victim in a way that respects human dignity and related legislations. However, he has doubts regarding whether the victim receives the same treatment without a legal representative.

2) Police

- Underclassifying: Police typically classifies incidents of hate crime as Public Nuisance (Section 339, Act C of 2012 on the Criminal Code) instead of Violence Against a Member of the Community (Section 216).
- Evidence is not collected: The representative of Hungarian Civil Liberties Union and the Hungarian Helsinki Committee mentioned the following typical failures in collecting evidence by the police: a) insufficient crime scene investigation, including failing to seize pieces of evidence b) insufficient questioning of witnesses, including failing to reveal possible bias motive c) failing to obtain surveillance camera footage, d) failing to make research on the background of the suspected person(s). In general, investigations often fail to address prejudices ("Authorities do not pay attention to the contents of the consciousness.")
- Information sharing is denied: A large part of hate speech happens online. However, social media companies often do not share information with the police necessary for the investigation, e.g. the personal data of its users. (Action and Defense Foundation)
- Failing to disperse anti-Roma demonstrations: Hate crime against the Roma often happens in the context of anti-Roma demonstrations by extremist groups. In multiple occasions, Hungarian police not only failed to disperse such demonstrations, finally escalation into violence against the Roma, but it even supported the events by its presence. (Hungarian Civil Liberties Union)
- Too much workload: The representative of Action and Defense Foundation noted that the cooperation the police and the NGO is negatively influenced by the lack of capacities on the side of the authority due to overwork. It makes police selective in focus on issues with more social weight, such as crimes against life.

⁴⁰ It is possible through a civil lawsuit only.

⁴¹ However, as previously mentioned, Hungarian Civil Liberties Union is against sanctioning all forms of hate speech.

- Right to complaint denied: Háttér Association pointed out that some investigative authorities deny victims the right to file a complaint if an investigation describes an incident as Public Nuisance or Battery instead of Violence Against a Member of the Community.

3) Victims

- Factors discouraging people to report incidents of hate crime/hate speech: a) they are afraid the criminal procedure will not bring success, b) they are afraid of secondary victimization by the authorities (especially in small villages) or even being criminalized, c) they are afraid to meet the perpetrators in person, d) members of the LGBTI community might have privacy concerns regarding belonging to a vulnerable community, e) ignorance about the special legal category of the offence against them and the available legal aid. According to Háttér Association, people have to be made aware that it is important report hate crimes even if they think there is a low chance that the criminal procedure will be successfully resolved.

Chapter 3: Legal Assistance to Victims of Hate Crime and Hate Speech

Problems Regarding Legal Assistance

- Unequal geographical coverage: The representatives of Hungarian Civil Liberties Union and Hungarian Helsinki Committee informed us that, to their knowledge, free victim protection services run by the state are available only in county seats. They are inaccessible to people in small villages, especially to those living in Roma settlements.
- Lack of information: People with low education level also have less chance to have access to such services, due to inappropriate communication on the side of the police and the court, stated Hungarian Civil Liberties Union. For the same reason, victims are often not aware that the offence against them belongs to a special category of offences. (Hungarian Civil Liberties Union, Amnesty International Hungary)
- Lack of trust: Victims often do not seek help because they are afraid that involving legal assistance will provide publicity to the case or are sceptical with the idea that their case can be advocated successfully. That is why even some of those aware of legal assistance are reluctant to resort to it. NGOs have to build up trust in victims, besides making their services more visible. (Action and Defense Foundation)
- Legal assistance alone is not enough: According to Hungarian Helsinki Committee, victims of hate crime are in need of psychological help besides legal aid, but it is even less accessible for them.
- Limited capacities and coverage: There are NGOs specialized on the special needs of all the major vulnerable groups in Hungary, but their capacities are limited. Amnesty International Hungary also noted that these NGOs are mostly active only in Budapest. According to Háttér Association, the Roma, refugees and the homeless are less likely to find civil society organizations to represent their cases, when compared to the LGBTI community.
- Poor quality public services: The representative of Háttér Association noted during the interview that the legal representatives appointed by the state for victims of hate crime often lack knowledge on this type of crime.

Reporting the case of hate crime / hate speech by victims

- The Second European Union Minorities and Discrimination Survey, published by the EU Fundamental Rights Agency (FRA) in November 2016, highlights that discrimination against the Roma often remains unreported: “only 12% of the respondents who felt discriminated against because of their Roma background at least once in the preceding 12 months reported the last

incident to an authority or filed a complaint.”.⁴² Citing previous survey results, the FRA survey notes that nearly a third of the Roma are not aware of laws against discrimination on grounds of ethnicity and most do not now support organizations for victims of discrimination.⁴³ Although discrimination discussed in the FRA survey is not identical with hate speech and hate crime, the tendency of not reporting them and the lack of knowledge on available assistance also offers insights related to the behavior of hate speech and hate crime victims.

- Reporting tools are available only for those with online access and digital media literacy. “Online [tools] will not typically reach Roma victims in Hungary for the moment” - said the representative of Amnesty International Hungary -, instead younger victims, living in cities. Therefore, the NGO suggests appointing local contact people in disadvantaged rural areas, who are trusted by local residents. Setting up such a “citizen service organization” should be implemented in cooperation with the police.
- Háttér Association mentioned that the Hungarian police used to have an online form for reporting crimes, but it is not available any more, for reasons unknown to the association. Experience shows that reporting a crime in written form is more efficient, as in this case there is a higher chance that the local police office will pass the case on to the proper investigative body.
- The interviewees did not mention any online reporting tool that is presently available in the country. Háttér Association is currently developing one, as part of a project funded by the European Commission. It will be functional in 2-3 months and will be tailored for the LGBTI community.

Chapter 4: Summary of Findings and Recommendations

NGOs interviewed for this report estimate that hate speech and hate crime are significantly underrecorded in Hungary: there could be 10-100 times more incidents than official data reflect. This is due to a number of reasons: victims themselves tend to underreport hate crime and hate speech, but law enforcement authorities also tend to underclassify many of these cases and, finally, legislation often makes incidents of hate speech and hate crime invisible for statistics by indicating bias motive with the aggravating circumstance “with malice aforethought or with malicious motive”, which has a host of further unrelated meanings. Official statistics are further distorted by a lack of a commonly accepted definition of hate speech and hate crime that would clearly set out the list of relevant offences, defining their relation to these two concepts, instead of leaving different stakeholders to use often incommensurable notions and data.⁴⁴

Our interviewees found the legal context much less problematic than law enforcement, especially at the stage of investigation. In legislation there is a clear need to express bias motive by introducing a separate aggravating circumstance for it and introducing multiple aggravating circumstances to denote different types of bias motives would have benefits as well. We also recommend naming all major vulnerable groups - including homeless people - in the relevant legal measures. To make law enforcement more efficient, training on hate speech and hate crime is necessary to participants of each stage of the process, from police officers taking the reports and constables examining the crime scene to legal representatives appointed by the state to victims. The prejudices of law enforcement agencies towards vulnerable groups also has to be

⁴² "Second European Union Minorities and Discrimination Survey. Roma – Selected findings." European Union Agency for Fundamental Rights, 2016, p. 40
http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf

⁴³ "Second European Union Minorities and Discrimination Survey. Roma – Selected findings." European Union Agency for Fundamental Rights, 2016, p. 11
http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf

⁴⁴ For example, we hold the opinion that the concept of hate crime has to include offences related to supporting hate groups, which in Hungary belongs to administrative offences. This justified our including some administrative offences into the first chapter of this report, despite the suggestion of the opposite in the methodological guideline for mapping and data collection.

addressed.

A further insight our interviews revealed is that in Hungary, the Roma are the most severely hit by both hate crime and institutional discrimination. Also, the Roma have the most limited access to the legal assistance of NGOs that - due to the limited capacities - focus their activities in Budapest. Developers of reporting tools have to be aware that online tools are mostly be used by young urban populations with digital media literacy and legal awareness, while those living in disadvantaged rural areas will see the benefits of such tools most likely when offered as part of complex social services.