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Meeting: 1355<sup>th</sup> meeting (September 2019) (DH)

Communication from a NGO (Working Group against Hate Crimes in Hungary) (22/05/2019) in the case of Balázs v. Hungary (Application No. 15529/12)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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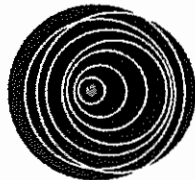
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Réunion : 1355<sup>e</sup> réunion (septembre 2019) (DH)

Communication d'une ONG (Working Group against Hate Crimes in Hungary) (22/05/2019) dans l'affaire Balázs c. Hongrie (requête n° 15529/12) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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WORKING GROUP AGAINST  
HATE CRIMES IN HUNGARY

DGI

22 MAI 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**Committee of Ministers of the Council of Europe**  
**Department for the Execution of Judgments of the European Court of Human Rights**  
**DGI - Directorate General of Human Rights and Rule of Law**  
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**Budapest, 22 May 2019**

Communication from  
the Hungarian Working Group Against Hate Crimes

Dear Madams / Sirs,

Under Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments, the Working Group Against Hate Crimes in Hungary (hereinafter referred to as: Working Group) submitted a communication letter on 18 January 2018 on the implementation of the judgments of

1. BALÁZS v. HUNGARY (Application no. 15529/12) Judgment of 20 October 2015  
and
2. R. B. v. HUNGARY (Application no. 64602/12) Judgment of 12 April 2016  
and
3. KIRÁLY AND DÖMÖTÖR v. HUNGARY (Application no. 10851/13) Judgment of 17 January 2017  
and
4. M.F. v. HUNGARY (Application no. 45855/12) Judgment of 31 October 2017

requesting the Committee of Ministers to consider the Working Group's general observations on the systemic failures of the authorities in processing hate crimes along with its recommendations. The Working Group urged the Committee of Ministers to give priority to the supervision of the implementation of these judgements and requested the Committee to handle the M.F. v. Hungary judgment together with the three final judgments in case it gets final by the time of the consideration of the submission given that the same systemic deficiencies occurred in these cases.

According to information on [hudoc.exec.coe.int](http://hudoc.exec.coe.int) the M.F. v. Hungary judgement is examined under enhanced procedure as a repetitive case for Gubacsi v. Hungary within the issue of inhuman and degrading treatment by law enforcement agents (<http://hudoc.exec.coe.int/eng?i=004-49181> ). At the same time, the four cases are dealt with in a standard procedure as a group of cases under the leading case Balázs v. Hungary

(<http://hudoc.exec.coe.int/eng?i=004-10593>) concerning violations of the prohibition of discrimination read in conjunction with the prohibition of inhuman or degrading treatment on account of the authorities' failure to carry out effective investigations into the question of possible racial motives behind the ill-treatment inflicted on the Roma applicants by law enforcement agents in their official capacity or off-duty; or violations of the right to respect for private life on account of inadequate criminal investigations into offences allegedly committed in the context of anti-Roma demonstrations (Article 14 read in conjunction with Article 3; Article 8).

An action report for the case of R.B. was received by the Committee on 2 August 2017 (DH-DD(2017)900). A submission from the Hungarian Civil Liberties Union – HCLU was received on 8 September 2017 (DH-DD(2017)1081). Hereupon, the Hungarian authorities submitted a revised action report on 25 September 2017 (DH-DD(2017)1091). A submission from our Working Group was received on 18 January 2018 (DH-DD(2018)100).

With regard to general measures, the judgment in the case of R.B. was translated and published on the website of the Government. The Government further submitted that soon after the events complained of the Criminal Code was amended to provide sufficient protection against similar actions in the future (for the details see the action report). These amendments took effect as of 7 May 2011.

In reply to the above-mentioned submission by the HCLU, the authorities submitted that “the Public Prosecutor’s Office pays paramount attention to the investigation of racist motives of crimes. Procedures to follow in criminal proceedings initiated on charges of hate crimes are guided by the public prosecutors’ protocol, based on recommendation of the 2010 working papers of OSCE ODIHR, made available for all public prosecutors and forming part of the training material provided by the Hungarian Public Prosecution Centre. This protocol provides detailed information on the criminological and legal nature of such crimes, including foreign models, and draws the attention to the importance of racist motives to be recognised as early as possible and to be addressed in a way reflecting its significance. It gives detailed guidance on the identification of crimes, investigation and prosecution, and also on the protection of victims.”

The Working Group Against Hate Crimes emphasised in its submission that one of the structural causes of systemic deficiencies in hate crime procedures outlined in the communication is the lack of a police protocol specifically for the investigation of hate crimes and the fact that, although the prosecutor’s office keeps count of a prosecution protocol for hate crimes which is a word by word translation of the OSCE/ODIHR protocol, it is not adjusted to the Hungarian criminal procedure and is not known or applied by prosecutors.

According to [hudoc.exec.coe.int](http://hudoc.exec.coe.int) information as regards the cases belonging to this group is awaited in an updated group action plan/report, also setting out which further general measures are envisaged or taken to prevent similar violations, in particular, in the light of

the fact that the events in the case of Király and Dömötör took place in August 2012, that is despite the amendments of the Criminal Code, which came into force in May 2011.

The Working Group Against Hate Crimes in Hungary confirms the systemic failures and their causes outlined in its earlier submission, and wishes to respectfully inform the Committee of Ministers about the following developments since its previous submission:

Thanks to the United Nations' Universal Periodic Review's recommendations the police started to develop a hate crime investigation protocol in 2018 in cooperation with our Working Group. However, unfortunately the police unilaterally terminated the cooperation between the Working Group and the Hate Crime Special Network in the summer of 2018 without substantial explanation. Therefore we could not participate in the drafting process of the protocol. According to our knowledge it is still only a draft.

As to the prosecution protocol for hate crimes referred to by the Government, we would like to highlight once more that it is a word by word adoption of the OSCE/ODIHR protocol. It is not adjusted to the Hungarian criminal procedure, and presumably there is also a lack of awareness of the protocol and there is no proof or reference of it having been used. Furthermore the OSCE/ODIHR document does not have a practical point of view therefore cannot be used in the daily operation. No special training exists in the official curricula of prosecutors. Regular annual trainings touch upon the issue of the prosecution of hate crimes solely through a 2-hour long lecture per training. These are considerable problems as the prosecutors are also responsible for the under-classification of cases and they also often fail to instruct police to take investigative steps. On the 7th of March 2019 our Working Group urged the Prosecutor's Office in a letter to adopt a usable and practicable hate crime protocol and we offered our cooperation in the drafting process. Unfortunately we haven't received an answer yet.

Data collection on hate crimes was significantly improved in July 2018, however it still suffers from serious deficiencies that do not allow for the comprehensive and timely compilation of statistics. There is no specialized data collection by public authorities on hate crimes. Data on crimes reported to the authorities are collected in the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Egységes Nyomozóhatósági és Ügyészégi Bűnügyi Statisztika, ENYÜBS). In July 2018 two new fields were introduced in the statistical form: a yes-no question on whether the crime is a hate crime, and a question on the protected characteristic (race, nationality, ethnicity, religion, sexual orientation, gender identity, disability, other) if the crime is a hate crime. This is a significant improvement to the previous system that only allowed to identified hate crimes if they fell under Art. 216, and the list of protected characteristics was inconsistent.

It is still, however, problematic that the categorization of the crime as hate crime is based solely on the decision of the authorities, thus in case the authorities do not recognize the bias motivation, the crime will not show up in the relevant category. Furthermore, recording only protected characteristics, but not the group targeted lumps together highly different forms of hate crimes (such as anti-semitic, anti-muslim and anti-christian crimes under

'religion') making it difficult to have a real understanding of the problem. There are also three general problems with ENYÜBS that significantly undermine its usability altogether. First, data on registered crimes is entered into the system upon closing or suspending the investigation; therefore, in case of a long investigation the crime appears in the system only months or years after its occurrence. Second, the system only contains data on investigation and prosecution, but not on sentencing, for which a separate statistical system is in place, that is lot less detailed and does not allow the tracking of a case from reporting to sentencing. Finally, researchers claim that the accuracy of the system is very low: there are many statistical forms which are not fully completed or contain mistakes.

While ENYÜBS is set up to publish crime data every month, there have been no data released since the introduction of the new system in July 2018. At present it is not clear whether data on hate crimes will be available with the regular public updates or will only be available upon a special request.

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

In the Working Group's view the deficiencies of the official data collection and the lack of regular victimization surveys make it impossible to understand the real number of bias motivated crimes which, in effect, leads to the distortion and underestimation of the scale of the problem.

In the light of the above it is the firm standpoint of the Working Group Against Hate Crimes that the recommendations relating to general measures to be expected from the Government and listed at the end of our previous submission dated on 18 January 2018 are still relevant and should be completed with a recommendation to cooperate with competent civil society organisations such as our Working Group.

We respectfully ask the Committee to inform our Working Group if the Hungarian Government's group action plan/report has already been submitted and is publicly available in contradiction to the information available on the Committee's webpage (<http://hudoc.exec.coe.int/eng?i=004-10593>).

Respectfully,



In Representation of the Working Group:  
Máté Szabó, Director of Programs, HCLU