

A brief reflection on the impact of the Universal Periodic Review on the efficient investigation of hate crimes in Hungary

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Abstract

Hate crimes, sadly present all over the world, are criminal acts motivated by bias towards a particular group of people. The act itself constitutes an offence under criminal law (e.g. physical assault or disorderly behaviour) and the motive of the mentioned bias is present. Bias motivation is understood as intolerance or hatred directed toward a particular group that shares a common protected characteristic, such as race, ethnicity, religion, nationality, sexual orientation, gender, disability or any other fundamental characteristic. The article sheds light on certain specific aspects of the fight against hate crimes in order to demonstrate through this specific example the nature and the practical impact of UPR recommendations on the protection of human rights. The legalistic (but hopefully accessible) language at certain points of the article is needed for the understanding of the reality of practical details of the criminal legal response on hate crimes. The UPR recommendations fall into this reality: without understanding them, the nature of the recommendations could hardly be assessed.

Keywords: UPR, hate crimes, civil society organizations

Introduction

The creation of the *Universal Periodic Review* (hereinafter: UPR) in 2008 and its operation has been praised as a great achievement related to the protection of human rights within the United Nations. Even though Member States are not obliged to engage

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with the UPR, the widest circle of states participates in the review mechanism. The UPR provides a forum for all Member States to conduct a universal inter-state dialogue on the situation of the protection of human rights in the states under review. All UN Member States are reviewed every 5 years. A total of 42 of them are reviewed each year during three Working Group sessions dedicated to 14 states each. The Final Report of the Working Group includes the recommendations that the state under review will have to implement before the next review.²

There has been an ever growing tendency in the number of recommendations. Progress can be detected in the rate of accepted recommendations as well. In 2008, only 27 percent of all UPR recommendations were accepted, but by 2014 this rate rose to 69 percent.³ Member States tend to give substantive recommendations deeming the UPR as a legitimate forum for suggesting actions to be taken for the protection of human rights. However, one must carefully assess how significant the impact these recommendations have on the protection of human rights is in reality due to two concerns, namely that the recommendations are made by state representatives, and that their content is of a rather general and abstract character.

The UPR debate is based on information gained by the participating UN Member States and the submissions of the government of the State under Review itself – in addition to this, civil society organizations operating in the affected country can submit shadow reports based on their own experiences in the field of human rights. During the last review of Hungary and related to hate crimes, it was the Working Group Against Hate Crimes (hereinafter: WGAHC or Working Group), a coalition of Budapest-based NGOs, which compiled a detailed opinion about the achievements and suggested measures for national authorities. The Working Group was established in 2012 and is composed of several civil society organizations (Amnesty International Hungary, Háttér Society, the Hungarian Helsinki Committee, and the Hungarian Civil Liberties Union) and independent experts. Its aims are to fight hate crimes, and more closely, to contribute to the establishment of a more efficient legal and institutional framework for state responses, to encourage victims to come forth and initiate legal proceedings, and to advocate for a social environment rejecting hate crimes. In order to achieve these goals, they cooperate

² See more at <https://www.upr-info.org/en>

³ Ted PICCONE – Naomi MCMILLEN: Country-Specific Scrutiny at the United Nations Human Rights Council. Working Paper, Project on International Order and Strategy at Brookings, May 2016, p.9., available at: https://www.brookings.edu/wp-content/uploads/2016/07/UNHRC_Country_Specific_v1.pdf

in drafting expert opinions related to the relevant legislation and practice, conducting research, delivering trainings to practitioners, and the member organizations provide free legal aid to victims of hate crimes.⁴

In the following lines, I will briefly summarize the different picture drawn about the current situation by the official report of the Government of Hungary (submitted in the latest UPR closed in September 2016) and the shadow report of the Working Group Against Hate Crimes in order to share basic information needed for the assessment of the nature of the UPR recommendations.

The National Report of the Government

The National Report submitted by the Hungarian Government in 2016 reflected a rather positive image of the situation. According to the document, the protection of minorities is ensured by the legislation including hate crime as a *sui generis* crime within the Criminal Code of Hungary. The report refers to free legal aid provided by the State to victims of hate crimes, strict sentencing policy, special units within the Hungarian police focusing on hate crime cases monitoring extremist communication channels for the sake of prevention, the establishment of the hate crime “expert net” within the police in 2012 to manage hate crime cases with a high degree of efficiency and trainings aiming for improvement as evidences of good practice. A special emphasis is put on the development of training for police and judges on the efficient prosecution and management of hate crime cases.⁵ The National Report indicates the spirit of the Government in which the measures for improvement are supposed to be taken, as follows: *“The Government issued a “zero tolerance policy” towards anti-Semitism and anti-Roma attitudes. Such incidents have been promptly followed-up by high-level official condemnations on the part of the Hungarian government and by legislative changes.”*⁶

Shadow report of the civil society organizations

The shadow report of the WGAHC does not include any harsher criticism about the normative framework applicable to hate crimes (‘violence against a member of a community’ is a *sui generis* crime under the Criminal Code, and base motive provides

⁴ To learn more about the Working Group’s activities and achievements, visit: <http://www.gyulotellen.hu/about-us>

⁵ National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Hungary, A/HRC/WG.6/25/HUN/1, 12 February 2016, par 66-69.

⁶ National Report, par 68.

the normative possibility for the legal practitioners to address other crimes committed with a bias motivation). However, serious systematic problems were identified by the report related to the implementation of the law. The three major deficiencies discussed are the regular “under-classification” of hate crimes, failures of the police to conduct the necessary law enforcement measures (for example for the sake of the prevention of hate crimes) and the failures of national authorities to take all necessary investigative steps for efficient prosecution.⁷

“Under-classification” in the report is understood as the incorrect qualification of hate crimes, namely that the national authorities tend to fail to take into consideration the bias motivation behind a violent crime or an anti-social behavior. Consequently, instead of suspecting, accusing or convicting a perpetrator for violence against a member of a community, because he/she attacked someone due to the victim’s real or perceived membership in a protected (ethnic, religious, national, etc.) group, the national authority proceeds based on the suspicion of other crimes (e.g. physical assault). In these cases, more lenient sentencing provisions of the Criminal Code are applied and by that the authorities fail to send the message to the perpetrator, the victim and their respective communities that bias (racist, anti-Semitic, xenophobic, homophobic, etc.) motivation was noticed and weighed as an aggravating circumstance.⁸ Victims do have available legal remedies for requesting the correct qualification of the crime from the authorities. However, victims without competent legal representatives are not likely to initiate this correction due to the lack of awareness about this right of theirs within legal proceedings. An obvious negative impact of under-classification is that if investigative authorities do not consider bias motivation from the very beginning of the investigation, they can fail in collecting the evidence needed for the conviction of the perpetrator for a hate crime later on. There is a possibility that the initial failures in collecting evidence demonstrating bias motivation behind the criminal act might not be redressed in a later stage of the proceeding even if the authorities later detect an indicator, i.e., a specific circumstance demonstrating potential bias motivation. The obligation of the authorities to unmask bias motivation was outlined in a high number of judgements delivered by the European Court of Human Rights. These judgements have so far affected ethnic (e.g. Roma) and religious

⁷ Working Group Against Hate Crimes: Submission to the UN Universal Periodic Review of Hungary, September 2015, pp.5-6.

⁸ For a brief introduction of certain specific cases where this systematic problem appeared, see: Working Group Against Hate Crimes: Law enforcement problems in hate crime procedures, 2014, pp 4-9.

(e.g. Hare Krisna) victims' communities and other protected characteristics, such as gender identity, sexual orientation and disability. In the case of any protected characteristics, if an indicator of bias (e.g. racial slur of the perpetrator during the attack) is detected by the investigative authorities, they have to take all necessary measures in order to reveal potential bias motivation behind the criminal act.⁹ Conducting an efficient investigation diligently focusing on the potential bias motivation also sends a clear message to the protected communities that they can trust the authorities, and to the society as a whole that hate crimes are unacceptable and the perpetrators will not go unpunished.

Special hate crime police units in practice and in the UPR recommendations

The recognition of the bias indicators, those circumstances which demonstrate the bias motivation of the perpetrator (e.g. relevant date or place of the incident, profile of the perpetrator, the victim's special appearance or language, etc.), requires special expertise on the side of the authorities, including the police who is primarily responsible for the collection of evidence.

The police need to know what facts of the case may reflect prejudices of the perpetrator towards the victim's community. For instance, if a rabbi is attacked while stepping out of the synagogue by a man wearing a black outfit with symbols of an extremist group and shouting anti-Semitic slurs, the bias motivation as a triggering factor would be rather obvious. However, if a Roma person attacks a member of the same extremist group out of self-defense during a demonstration of the extremist group promoting racial ideology, and the Roma person shouts "you dirty Hungarians!", the assessment of the incident (and to decide whether to qualify the act as a hate crime) would not be easy for someone lacking the special expertise. This is one of the reasons why special trainings on hate crimes are needed, and why experts deem it useful to have special hate crime units within the police.

A special hate crime network was established by the Hungarian Police Headquarters in 2012. In each county of Hungary, one police officer is mandated with the task of coordinating and reviewing hate crime investigations (that is, in total, 21 police

⁹ See, for a brief outline of the standards set by the European Court of Human Rights, in some relevant Hungarian cases: Kirs Eszter: **Standards set by the European Court of Human Rights on the Prosecution of Hate Crimes** (a presentation at the conference on "Fundamental Human Rights in practice: European Judicial Training on the rights of persons in need of international protection and victims of racial violence", Athens, 17 January 2018), available at: http://gyuloleletellen.hu/sites/default/files/hc_ecthr_athens_17.01.2018.pdf

officers for all of Hungary). They are supposed to be in regular communication with each other and participate in special trainings. This may seem to be significant guarantee ensuring the correct qualification of bias-motivated crimes. However, the WGAHC pointed out certain deficiencies in the system. The work deriving from the appointment of a hate crime officer is an additional task for the affected police officers without any further resources allocated to this. Police officers in their everyday work are extremely overburdened, hence the Hungarian model of special hate crime units within the police does not correspond to good practice whereby a significant capacity of the special hate crime officer should be dedicated to this function.¹⁰ Additional problems are identified in the shadow report of the WGAHC, such as that members of the special network are rapidly changing, leaving no time for applying the expertise gained at special trainings, while the trainings are not regularly delivered. The operation of the network is not transparent, the contact details of the hate crime officers are not publicly available, and their actual duties and *modus operandi* are uncertain.¹¹

One could wonder, in light of all the above information, what recommendations related to hate crimes UN Member States addressed to Hungary in the framework of the UPR. To list here just a few: Canada recommended to improve the special hate crime network and to allocate sufficient resources, the Czech Republic advocated for a more efficient implementation of the law on hate crimes, France recommended to combat racist and other hate crimes more efficiently, and Italy called for more efficient investigations. As clearly reflected by the above mentioned examples, the recommendations are rather general and abstract, and no specific measures were suggested by the States participating in the interactive dialogue. Surprisingly, one of the more specific recommendations was made by Iran who advocated for the preparation of an investigation protocol for hate crime cases. The Hungarian Government accepted or partially accepted the above recommendations.¹² This might be interpreted as an achievement of the UPR. However, a more skeptical reader might think that it is just too easy to accept such abstract recommendations, since they leave broad room for arguments and measures which demonstrate their enforcement “on paper.”

¹⁰ See for example: <https://www.london.gov.uk/press-releases/mayoral/mayor-launches-unit-to-tackle-online-hate-crime>

¹¹ Working Group Against Hate Crimes: Submission to the UN Universal Periodic Review of Hungary, September 2015, pp 4, 6-7.

¹² A Kormány 1374/2016. (VII. 21.) Korm. határozata az ENSZ Emberi Jogi Tanács Egyetemes Időszakos Felülvizsgálati Eljárása (UPR) keretében Magyarország 2. felülvizsgálata során tett ajánlásokról.

Conclusion

In light of the fact that the next round of UPR with Hungary under review will be in 2021, one could wonder to what extent the UPR recommendations appear in practice, and how far they may impact the fight against hate crimes in the field in the upcoming years?

The Resolution 1374/2016 of the Government, including the reaction on the UPR recommendations, was published in the Official Gazette of 21 July 2016. Who would look into this document in the coming years? Would it impact the decisions of the National Police Headquarters while allocating resources to the special hate crime officers or organizing trainings? Some skepticism may be in order while trying to imagine a decision-making process where the generally abstract UPR recommendations and their governmental acceptance play a decisive role.

In this context, it has to be the local civil society organizations that may facilitate the enforcement of the UPR recommendations. The Working Group Against Hate Crimes itself is using the recommendations as tools in their advocacy efforts during the negotiations with the National Police Headquarters. In the framework of regular meetings with the representatives of the police, they currently strive for the preparation and adoption of an investigation protocol for hate crime cases which, as mentioned above, appears in one of the UPR recommendations.¹³ This seems to be a realistically achievable aim, and the protocol could significantly facilitate the efficient investigation of hate crimes. The success of the efforts of the WGAHC would be a key element in the enforcement of the UPR recommendations on hate crimes, and without these efforts the recommendations would probably remain but words on paper.

¹³ Conversation with Borbála Ivány, expert member of the Working Group Against Hate Crimes. Budapest, 10 September 2018.