

Thoughts on policing measures of hate crimes

Annotation: The article is focus on incidents with the motive of prejudice and hate crimes, primarily in Hungary and also in another european countries. The article describe examples of hate crimes against Romas, in Hungary during years 2008 and 2009. Because of limited content of the article attention is focused on hate crimes criminal-law aspects.

Key words: crimes motivated by prejudice, hate crimes, Romany community, criminal-law aspects of hate crimes, Hungary.

The purpose of this study

Even though in Hungary attacks and incidents with the motive of prejudice or hatred are proportionally by far in minority compared to other motives, yet they are of great interest and can be considered a topical law enforcement issue, as they are fit to disturb public tranquillity and lead to significant consequences. Also, they are becoming more and more common, and their legal background and legal practice are in the making.

This paper will present the attempts to define offences marked as „hate crimes”, then having outlined the Hungarian examples, it will explore from a normative judicial perspective which statutes of criminal law provide protection against hate crimes.

The presence of hate crime became obvious in 2008 and 2009 in the attack series against Roma, which was profoundly investigated by the *Organization for Security and Co-operation in Europe (OSCE)*. The organisation made statements and put forward an Action Plan. Furthermore, they produced a universal protocol to handle hate crimes. This paper will analyse these comments in the Hungarian legal environment while focussing on the criminal law of hate crimes, in consideration of the new Criminal Code.

The abstract definition of hate crime

The term „hate crime” first appeared in the US in the 1970s. According to the **FBI**, “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, ethnic origin or sexual orientation.”¹

Also in Hungary, hate crime is defined as a crime described in the Criminal Code, which is motivated by hatred against any specific group of society and is committed against the persons or property of the real or presumed members of that group, either in a violent or non-violent manner. A hate crime is a kind of message, which evokes fear and a sense of threat not only in the victim(s), but also in the entire group, of which the aggrieved party is a member either on the grounds of their real or presumed protected features.

The Office for Democratic Institutions and Human Rights of OSCE² took into account the differences in criminal law between the various member states when defining the category „hate crime” and thus created a definition consisting of two conceptual elements. Hate crimes are therefore nothing else but *crimes that are motivated by prejudice*. This motive sets it apart from other crimes. Hate crime is therefore not a special legal statute or offence in itself but any special legal offences, such as Homicide, Assault, Vandalism, etc can be turned

¹ http://www.fbi.gov/about-us/investigate/civilrights/hate_crimes/overview (24/06/2013.)

² Hate Crime Laws- A Practical Guide, OSCE, Office for Democratic Institutions and Human Rights (ODHIR), Warsaw, Poland, 2009, P. 16

into hate crimes by bias. Thus, when such motive is not available, we cannot talk about hate crime.

The other element of this crime, its *differentia specifica*, the specific motive of the offence is prejudice. The perpetrator selects the target of the crime based on a protected feature (of the victim or object of crime). These characteristics may be connected to any disadvantaged social status, which are a constant part of an individual's personal integrity, such as race, language, religion, nationality or ethnicity or other similar identities. OSCE suggests defining these characteristics in accordance with the customs and traditions of the state in question. According to the data, in Hungary, Roma, Jewish and homosexual communities are in the crosshairs of these prejudices. Those subscribing to this attitude are mainly groups with a far-right ideological background.³ The sociological, psychological and historical investigation of this issue would go beyond the limits of this study, as I mainly wish to focus on its criminal judicial aspect. **Andrea Kozáry** and her co-authors⁴ regard all offences against a person or property as hate crime, using the criminological concept of the type of crime whose victim or target has been selected based on their real or presumed connection with a specific group. The features of belonging to such a group may be based on race, nationality, ethnicity, language, skin colour, religion, sex, age, mental or physical disabilities, sexual orientation or other similar criteria. The researchers emphasise that the two essential conditions of this type of offence is the committed crime itself and the prejudice and hatred against the above-mentioned „protected” groups as its background. If no crime is committed, we cannot talk about hate crime as such, only about bias-motivated incidents or behaviour based on hatred.

The abstract definition of hate crime is not totally objective, as there is inevitably too much subjectivity in it. The definition of prejudice is not entirely clear and what kind of prejudices can be under the umbrella term „hate crime” either. It is also controversial what offences can be listed under the heading of hate crime and what strong logical connection there is between the prejudice itself and the committed crime. Having presented the tendencies of hate crimes in Hungary, I will discuss these issues.

The brief outline of the characteristics and tendencies of hate crime

On whatever forum this type of offence is discussed, experts unanimously state that because of the immaturity of the theoretical foundation of this phenomenon and of its management in practice, the statistics of hate offences cannot be accurately specified. On the basis of the data base of the Athena Institute from 2009⁵, there were about 30 such incidents in Hungary yearly. In 50% of the cases, the bias motive was racism, in 30%, it was anti-semitism, in 10%, homophobia. Even though half of them were directed against people, 75% of these did not result in personal injury. 42% of all incidents covered vandalism. One third of the assaults occurred in Budapest, and offences in villages were twice as many as in county capitals.

The already mentioned Office for Democratic Institutions and *Human Rights of OSCE* has issued a report on their results regarding the attack series in Hungary against Roma in

³ The words of Judit Utasi in her study „The Background of hate crimes” are on the evolution and the sociology of its reasons.

http://j1.wplanet.hu/attachments/082_Utasi%20Judit%20A%20gy%C5%B1%3%B6letb%C5%B1n%C3%B6z%C3%A9s%20h%C3%A1ttere.pdf, (20/07/2013..)

⁴ Lóránd Horváth- Andrea Kozáry- Ferenc Krémer - Judit Nagy: Crime Prevention and Fight against Crime Hate Crime Education/module for Law Enforcement Officials (Module description) ComPHEE/Hungary, National University of Public Service Faculty of Law Enforcement, P. 5

⁵ http://athenaintezet.hu/gyuloletbuncselekmeny_adatbazis (2013.07.21.)

2008 and 2009.⁶ There were forty-five official registered offences. One of the most infamous incidents occurred in Galgagyörk in July, 2008, when ten to fifteen shots were fired against three houses with Roma residents at night. In Tarnabod, several Molotov cocktails were thrown at three houses with Roma residents in September of the same year. These attacks did not cause any personal injuries. In Tatárszentgyörgy, in February 2009, the house of a Roma family was set on fire by a Molotov-cocktail, and while the family were fleeing from the burning house, the offenders shot a Roma man and his son dead. In the same village, in April, 2009 the house of the vice-president of the Roma minority self-government was set on fire. In Kisléta, in August 2009, a 43 year-old Roma woman was shot dead. Her 13 year-old daughter also suffered serious injuries.

According to the OSCE, based on the available data, the criminal legal qualification of these crimes are not always possible. In some cases there is an ongoing investigation, thus legal qualification in incomplete matters is rather impractical.

In their paper on hate crimes⁷, the organisation diagnosed the factors that tend to obstruct the investigation of these crimes: hate crimes are often not reported, partly because of the sense of shame, ignorance on the part of the victims, partly because there was a distrust in the authorities. For this reason, a great number of incidents remain obscure. A criminological feature of the incidents and offences motivated by hatred is that they do not only affect their victim but also their community in a negative way and evoke fear. The victim might develop a sense of threat and become isolated, should their integrity be attacked.

The forty-five cases investigated by the OSCE, based on the legal interests protected, were mainly directed against human lives, physical integrity or health. There were some behaviour types that threatened personal freedom and property rights, which can also violate public order and tranquillity.

The objects of crime in these acts were mainly the immovable but to a lesser extent also the movable properties of legal or private persons belonging to the Roma community. Marginally, also various public objects were vandalised. The aggrieved parties were individuals of various age groups and of both sexes, all of them of Roma ethnicity. The types of conducts were to the most part assaults against individuals; objects were much less frequently attacked.

The sites of the crimes were rather varied. Besides the capital city, several county capitals, small towns and villages were the scenes of the incidents. Guns and Molotov-cocktails are the major tools of the offences. The perpetrators are often individuals who subscribe to the Nazi ideology calling themselves Skinheads. As we are talking about violent crimes, the guilt of the offenders is intentional, but their motive of hatred is often problematic to identify. The attacks against objects are manifested in various ways: as racist wall murals and other public manifestations just as well as as vandalism of objects related to the Roma population by gun or by Molotov-cocktail. Persons were menaced and coerced verbally as well as non-verbally. Also, their personal freedom was infringed, what is more, they were assaulted or killed.

Law enforcers bear therefore great responsibility in discovering all relevant data in order to make the right judgment and propose the correct criminal judicial measures regarding the acts in question. The next chapter of this paper will present the possible criminal judicial

⁶ Supplement 1: Addressing Violence, Promoting Integration – Field Assessment of Violent Incidents against Roma in Hungary in 2008 and 2009. Summary of the results, main comments and provisions. June, July, 2009 issued by the Organization for Security and Co-operation in Europe on 15th June, 2010. <http://www.osce.org/odihr/68545>, (24/06/2013.)

⁷ Hate Crime Laws- A Practical Guide, OSCE, Office for Democratic Institutions and Human Rights (ODHIR), Warsaw, Poland, 2009

reactions to hate crimes. By doing so, it will also define the class of crimes that can be listed under the heading „hate crime”.

Incidents of hate in the Hungarian law

There is a wide range of professional literatures and perspectives about what crimes can be listed in the category of „hate crime”. These differences refer to the fact that the theoretical background of this type of crime is still vague and needs to be paid serious attention to.

According to **Gyula Kovács**⁸, the Sections of the Hungarian Criminal Code 174/B on the Violence against a member of the community and Section 269 - Incitement against a member of a community - are to be listed among crimes fuelled by hatred. The statutes on Genocide and Apartheid of the Hungarian Criminal Code just like the statutes on Homicide, Assault and Violation of Personal Freedom for a malicious motive or purpose (hatred) are listed along with crimes of hatred referring to the fact that these can be classified as such.⁹

The crimes *Violation of the Freedom of Conscience and Religion and that of Using Totalitarian Symbols were excluded out hate crimes by Kovács*. The former is a provision not defining special victims not requiring any special motive but penalises aggressive behaviours similar to that of Violence against a member of the community. Should the criteria of both crimes be fulfilled by the perpetrator, the statute on Violence against a member of the community will be applied because of its special nature. Regarding the latter, violence, threat, coercing behaviour and incitement to hatred are not listed among the elements of the statute on the Use of Totalitarian Symbols, thus it cannot be defined as hate crime even if it coincides with the commitment of the same, for example, if an offender attacks an individual on the grounds of their membership of one of the protected groups while wearing a totalitarian symbol, claims Kovács.

In the classification of **Ádám Mészáros**¹⁰, it is a statement to be emphasised that „the Hungarian Criminal Code contains several provisions against explicitly racist behaviour types. These, however, by no means cover all conducts that are to be penalised.” Considering the fact that hate crime does not exist without the actual perpetration of a crime, a special legal statute is highly recommended to qualify these offences based on the Criminal Code. Both the 1978 and the new versions of the Hungarian Criminal Code list the crimes of Genocide and Apartheid among Crimes against Humanity. Also, both Codes contain Crime Against a National, Ethnic, Racial or Religious Group. (Meaning that „the person who assaults somebody else because he belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him with violence or menace into doing or not doing or into enduring something” or that the perpetrator behaves in a ostentatiously antisocial manner towards the aggrieved party.) As Mészáros also points out: „*a phenomenon – in this case, discrimination – is recommended to be regulated on a legal level on which it can be addressed the most effectively. The criterion must not be ignored either that regarding the protection of legal interests, criminal law must be the last resort (Ultima Ratio).*”

⁸ Gyula Kovács: Some recommended criminal methodological considerations to the investigation of hate crime., Magyar Bűnüldöző tudományos-szakmai folyóirat (Hungarian Law Enforcement – periodical, Issue 2011/2., http://bunuldozok.hu/Data/Sites/1/teljes_3_szam.pdf (24/06/2013.), P. 29.

⁹ Gyula Kovács: *ibid*, P. 24.

¹⁰ Ádám Mészáros: In his article 'Possible criminal judicial measures against racism, with special regard to cybercrime' <http://jesz.ajk.elte.hu/meszaros16.html> (24/06/2013), the author collects all statutes of Hungarian Criminal Law related to racism. Although the concept of hate crime may include offences based against several other criteria than race, the author provides us with a useful foundation for further classification attempts.

Tamás Dombos¹¹ – also uses the definition of the OSCE as the starting point of his own definition of this type of offence. In the system of the Hungarian Criminal Code, the statutes of the following crimes can be marked as hate crimes: Violence against a member of the community, Assault or Homicide for a malicious motive or purpose, Theft or Vandalism committed against objects or religious or burial sites, violation of freedom of conscience and religion, the use of totalitarian symbols, and finally the public denial of crimes committed under Nazi or Communist regimes.

As the abstract definition of hate crime, its criminological features, its tendencies and a few classifications of hate-connected crimes are known, it is a far-reaching question how the criminal justice is able to reflect the democratic social demand to eliminate these forms of behaviour, and how it provides the most efficient protection against them. The provisions of Act C of 2012 can be classified in various ways depending on which judicial solution is used to provide protection against the attacks against communities.

1. It is first to be checked, of the legal rules explicitly *name* prejudice against specified groups or/and their members as motive or intent. The word „prejudice” comes up in four statutes, either in their titles or content.
- A. In the first category are the statues on Violence against a member of the community and Incitement against a community, which can explicitly, or *expressis verbis*, be regarded as *hate crimes*.

Section 174/B under the Title on Crimes Against Freedom and Human Dignity was amended by the Crime Novel of 1996 and thereby, the statute of **Violence Against a Member of a National, Ethnic, Racial or Religious Group** was enacted listing the behaviour types which are manifested in violence or coercion against an individual who belongs or is believed to belong to a national, ethnic, racial or religious group. The statute, which was originally dedicated to address racism, was extended by the Legislation motivated by the incidents around the 2008 gay parade, enabling the provision thereby to protect also other groups. The title of the statute was then modified to **Violence against a member of a community**. The list of the protected groups became indefinite by adding the phrase “belonging to specified groups of the population”¹². Furthermore, the Legislation added a new behaviour type to the list of punishable acts. It sanctions ostentatiously antisocial behaviours with identical motives that are able to evoke fear and alarm.¹³ The extension of criminal judicial protection was performed by penalising already the preparations of the criminal act. This offence appears in Section 216 of the Criminal Code of 2012. According to the new code, the list of groups is still indefinite, however, in consideration of the growing number of incidents, in addition to the above-mentioned protected identities, disabilities, sexual identities and orientation are now listed as exemplificative grounds for discrimination as highly protected characteristics. In Part 1 of the statute, it lists a rowdy type of violence against members of community, while the behaviour types of assault and menace are mentioned in Part 2, punishable by a more severe penalty.

In my opinion, by penalising these three types of behaviour, the statute provides sufficient legal protection against violent or rowdy types of behaviour directed against certain communities. The representatives of law enforcement definitely must become aware of their extraordinary importance in the procedure to identify the motives behind the acts that

¹¹ Tamás Dombos: Hate crimes in Hungary: Legal regulation, statistics, aggrieved groups, <http://www.gyuloletellen.hu/szakmai-anyagok>, (20/07/2013.)

¹² By Section 2 of Act 74 of 2008 on the amendments for the protection of the judicial system and public order.

¹³ Section 1 of Act 40 of 2011 on the amendment of Act 4 of 1978 of the Criminal Code of Hungary. In effect since 7th May, 2011.

form the basis of this statute and set it apart from other more general statutes of the Criminal Code.

The offence of **Incitement against a community** has been part of the Hungarian Criminal Code since 1989.¹⁴ The provision of Section 269 under the Title Crimes Against Public Peace sanctioned a person who incites to hatred before the general public against the Hungarian nation or any national, ethnic, racial group or certain groups of the population. Perpetrators who use offensive or humiliating words against the Hungarian nation any national, ethnic, religious or racial group or commit a similar act are punished more leniently.

Decision 12/1999. (V.21.) of the Constitutional Court left Part 1 on so-called “hate speech” in effect, whereas Part 2 on Libel was annulled, as the statute infringed the basic constitutional right of freedom of expression to an unproportional extent. The new Criminal Code placed the statute on hate speech under Section 323 among the Crimes Against Public Peace. In order to emphasise the connection of this behaviour type with the statute on Violence against a member of a community and to meet the international requirements, the list of protected groups was somewhat modified: In addition to the Hungarian nation, national, ethnic, racial and religious groups, some other groups of the populations were also listed, especially those of disabilities, sexual identities and orientation.

In legal practice, the separation of this statute from those on Defamation and Slander might be of crucial importance. Facts and expressions suitable to impair the honour and the interpretatory explanation of the incitement are quite complete thanks to the various courts and the Constitutional Court.

- B. The titles and contents of the statutes of Genocide and Apartheid make it obvious that these are also dedicated to provide protection against behaviours against communities, but in accordance with their legal interests, they are to be listed among Crimes Against Humanity, thus they provide protection to larger scale attacks than the above, which will hopefully not occur in the social environment of the 21st century.

The Criminal Code of 1978 contained the statute on **Genocide** in Section 155 right from its enactment, as Hungary is part of the Genocide Convention¹⁵. The provision is dedicated to preserve the peace of humanity and the existence of protected groups. The total or partial extermination of a national, ethnic, racial or religious group is named as a specific aim in the fact. The possible behaviours are killing the members of the group, causing serious bodily or mental injury to the members of the group because they belong to the group, constraining the group into such conditions of life which menace the group or certain members thereof with death, taking such a measure which is aimed at the impediment of births within the group, displacing the children belonging to the group into another group.

The criminal justice act of 1996 enacted the offence of **Apartheid** under Section 157.¹⁶ This statute sanctions the person who with the aim of the obtention and maintenance of domination by one racial group of people over another racial group of people kills the

¹⁴ Established by Section 15 of Act 25 of 1989. In effect since 15th October, 1989.

¹⁵ In the resolution of the United Nations General Assembly Resolution 96/I of 11th December 1946, titled "The Crime of Genocide", the organisation declared that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx> (30/07/2013)

Hungary announced the Genocide Convention with the Decree Act 16 of 1955.

¹⁶ Before the statute on Apartheid, the Criminal Code contained the provision on **Racial Discrimination** in Section 157, which punished those in subsidiary form who committed acts prohibited by international law with the aim of the obtention and maintenance of domination by one racial group of people over another racial group of people and/or with the aim of the regular oppression of the other racial group.

members of a racial group or groups, constrains a racial group or groups to such conditions of life by which it strives for the total or partial physical annihilation of the groups.¹⁷ The Criminal Code of 2012 left this statute unchanged.

2. The integrity of some communities and individuals belonging or believed to be belonging to them can *indirectly* be protected by the statutes on the Public denial of crimes committed under Nazi or Communist regimes, on the Use of totalitarian symbols, as these are suitable to disturb public tranquillity and the tranquillity of members of certain groups.¹⁸ They can, therefore, be qualified as behaviours *connected* to hate crime, even if they themselves cannot be listed as such.

As of 2010, the Legislation extended the list of crimes against public tranquillity with a new statute (Provision 269/C).¹⁹ According to the new provision on the **Public denial of the Holocaust**, whoever violates the dignity of the victims of the Holocaust by denying and minimising or distorting the facts of the Holocaust is punishable. The provision remained unchanged for merely three months, then it appeared with a new form and new content: **Public denial of the crimes of NAZI and Communist regimes**²⁰ sanctions a person who denies or questions the occurrence or belittles the significance of the genocides and other grave crimes against humanity committed by the National Socialist or Communist regimes, or attempts to justify such crimes in public, shall be liable to punishment. According to the reasoning of the statute, the law treats the crimes of the two totalitarian regimes with equal measure and does not impose different criminal judicial measures to protect the human dignity, right of piety. This statute remained unchanged under Section 333 regarding both its title and content in the new code.

The statute on the **Use of the symbols of totalitarian regimes** became part of the Criminal Code in 1993 as a provision against disturbing public tranquillity in Section 269/B²¹. “The distribution, use before great publicity and public exhibition of symbols such as the swastika, the SS sign, an arrow-cross, sickle and hammer, a five-pointed red star or a symbol depicting the above are treated as subsidiary statutes. The person, who commits the above-mentioned behaviour for the purposes of the dissemination of knowledge, education, science, or art, or with the purpose of information about the events of history or the present time shall not be punishable.” According to the commentaries, the legal interest of this criminal offence is the public tranquillity manifested in the fear-free existence in a democratic political atmosphere. The crimes committed during the above-mentioned regimes left deep and sore wounds in their victims and their family members. Using the symbols of these dictatorial regimes is therefore in some cases under criminal judicial ban. The extent of this ban is controversial, however. In their decision No 4/2013 (II. 21.), the Constitutional Court annulled the legal content of this provision with reference to its too general formulation. The Legislation then completed the statute by adding the phrase “suitable to disturb public tranquillity with the special intent to violate the human dignity and right of piety of the victims of totalitarian regimes”. Having taken

¹⁷ By other Apartheid crimes, according to the declaratory statute of the Criminal Code, we must understand the Apartheid crimes acknowledged by Parts a)/(ii), a)/(iii), c), d), e) és f) of Article II of the Resolution of 30th November, 1973 in New York, which was announced in the Decree Act 27 of 1976.

¹⁸ These crimes were also categorised as hate crimes by Lídia Balogh- Henriett Dinók- András László Pap: „Is law invisible? The practical problems and regulatory issues of hate crimes” by claiming that categorising the denial of the crimes of the Communist regime and the use of its symbols, the as hate crimes may be problematic. See: *Fundamentum*, Issue 2012/4, P.92.

¹⁹ The statute was enacted by Section 1 of Act 36 of 2010 and has been in effect since 10th April, 2010. The section and the sub-title were repealed by Section 7 of Act 56 of 2010 as of 23rd July, 2010.

²⁰ Enacted by Section 7 of Act 56 of 2010. In effect as of 23rd July, 2010.

²¹ Enacted by Section 1 of Act 45 of 1993. In effect as of 21st May, 1993.

the opinion of the Constitutional Court and the case law of the European Court of Human Rights into consideration, this is how the Legislation wishes to express that it is a prerequisite of the statute that the crime must be suitable to disturb public tranquillity. In its new form, the statute is under Section 335 of the new Criminal Code.

3. With regards to the two elements of hate crimes – the motivation of prejudice and the commitment of crime – it is to be pointed out apart from the above-mentioned statutes, *all other, general crime suitable to aggrieve any individual* can be qualified as hate crime, should the motive of prejudice be present. Within this category, two criminal judicial groups can be differentiated.
 - A. In the first group, those provisions can be classified that specify the *motive as a malicious motive or aim (in our case, prejudice)*, and name a severe sanction as a possibility. Such crimes are **Homicide, Assault, Violation of personal freedom, Slander and Illegal restraint**.²²
 - B. The members of certain communities may suffer other insults fuelled by hatred *typical examples* of these: **Defamation, Impiety and Rowdysm, Theft, Vandalism** directed against objects, which are, however, not penalised by statutes that provide high protection against incidents committed with a malicious intent.²³

The statute of **Harassment** in Section 222 of the new Criminal Code provides protection against a behaviour that is meant to alarm, annoy, torment or terrorise others. It also penalises the case when the perpetrator intends to create the impression of an imminent event that directly or indirectly endangers the life or physical integrity of others. The statute against crimes committed by paramilitary organisation was formulated in the provision **Illegal organisation of law enforcement activities** (Section 352), which was a response to the attack series against Roma. This statute bans the organisations that were set up to maintain real or seeming public security from regions where the members of the protected groups reside. Their presence may have a harassing effect and may evoke a sense of threat in the affected individuals.

With regards to the tendencies of hate crimes, I must mention at this point that human rights organisations put forth a recommendation in their hate crime related proposal, namely to implement the criterion of malicious motivation or aim in statutes of Vandalism and Harassment in order to fill that judiciary niche.²⁴ I personally agree with this idea, as the proposal takes the typical form of attack as a starting point. On the other hand, the question arises what other typical forms of hate crime will evolve in the dynamism of prejudice fuelled crime which will require criminal judicial responses. This raises the need to consider a judicial formulation in the Criminal Code also recommended by the above-mentioned human rights organisations that would provide protection for the above-discussed social groups and can be applied to all statutes.²⁵

International examples justify that a typical feature of hate crimes is escalation, which means that the verbal incidents against protected groups become more severe and turn into violence against persons or objects, or even turn into homicide. I therefore believe that verbal attacks, such as **Incitement against a community, Slander, Defamation, Harassment** must be paid special attention to in criminal justice.

²² Sections 160, 164, 194, 226 and 304 remained unchanged in the new Criminal Code.

²³ Sections 227, 228, 339, 370. and 371 of the Criminal Code remained unchanged.

²⁴ See: Recommendations regarding the regulation of hate crimes of the new Criminal Code., http://dev.neki.hu/wp-content/uploads/2013/05/548_civil_szervezetek_gyuloletbcs_javaslat.pdf (29/07/2013.)

²⁵ Recommendations regarding the regulation of hate crimes of the new Criminal Code, P.6., P.15.

The issue of proving the motive of prejudice

The shared anomaly and key problem of all crimes fuelled by bias is to identify its motivation. This necessity does not depend on the formulation provided by the Legislation. Should the Criminal Code name prejudice as an aim, for instance, in the statutes on Genocide and Apartheid, prejudice is to be identified as an evidence, a statutory element relevant from a criminal judicial aspect. If the Legislation creates a statute fuelled explicitly by hatred, such as those on Violence against a member of the community or Incitement against a community, no crime can be stated without identifying the motive of prejudice. Should malicious motive or aim be connected to a statute, like in the statutes on Homicide or Assault, the identification of prejudice as a motive is inevitable to impose a more severe sentence. In all other cases, when the motivation of malice (prejudice) plays no role in the legal judgement of the behaviour in question, it becomes relevant when the sentence is determined and then it results in a more severe sentence within the framework of the base case penalty.

According to the OSCE guidelines on the methodology of incident investigation, the motivation of prejudice can be identified with the following indicators in addition to the general inventory of tools of criminology:

1. Perception of the victim and the witness
2. The verbal and written statements and gestures of the offender
3. Drawing, signs, symbols and wall murals
4. Ethic, religious, cultural differences between the perpetrator and the victim
5. Membership in hostile groups
6. Site and time of offence
7. Earlier criminal record of the offender
8. The nature of the act of violence
9. The lack of other motives

The identification of the motivation is influenced by the nature of the crime, the quality of investigation and the regulation of the crime identification process. According to experiences in foreign countries, hate crimes are often message crimes and explicitly serve to express the perpetrator's views on the group that they attack through its individual member of the group in question. It is therefore obvious that one or more of the above-mentioned indicators or their co-presence are of great use to the investigators while trying to identify the motive of a crime. Not all indicators of hate fuelled crime appear, though, and they are not necessarily very clear. Sometimes, some remarks made to acquaintances, the literature read, the music listened to or the websites checked by the offender will be the indicators of the perpetrator belonging to a far right organisation, and therefore the motive can only be traced indirectly. In some countries, the legal provisions name the indicators to identify bias. The Criminal Code of France²⁶ regard all written or spoken words, images, objects or any acts before, during or after the crime that violate the honour, the good repute, the ethnic, national, racial, religious or sexual identities of an individual or their group as an indicator of hate crime. The relevant provision of the Criminal Code of the UK²⁷ sees the indication as follows: „An offence is racially or religiously aggravated, if at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group.”

²⁶ Under Sections 132-76 and 132- 77 of the Criminal Code

²⁷ Crime and Disorder Act 1998, Section 28

Even though the above-mentioned indicators definitely do provide us with a guideline regarding the legal treatment of hate fuelled crimes, the adequate level of identification is still uncertain based on various sources on Hungarian legal practice. In criminal justice, the issue of objectified aim already appeared in the 1980s.²⁸ In the system of general legal statutes, aim is a factor playing a role on the agent's side.²⁹ In case of special statutes, the intent of the perpetrator is considered straightforward. Identifying the orientation of intent and the aim is no easy job, however. The aim is not to be concluded from the object-related circumstances of the crime; it must be justified by the cognition of the perpetrator too. We face the same problems concerning the statutory element of the motive. The question arises, to what extent the objective circumstances of the offence, such as the objects of crime or aggravation, its site, time, method and tools, influence the identifiability of the motive. Uncertainty might also occur, if the authorities must determine to what extent offences with two or more motives were influenced by prejudice. The solution of these questions is an issue that is to be unified and considered under the guidance of criminal justice authorities.

Transition to a world without prejudices

The Office for Democratic Institutions and *Human Rights* of OSCE suggests several actions in the form of an Action Plan to Hungary regarding the violent incidents against Roma, addressing various areas of state power as well as civil organisations.³⁰ From a political perspective, these provisions represent clear objection to and condemnation of the violence fuelled by racial and ethnic prejudice. Besides, a comprehensive national strategy is highly recommended to be established to combat hate crimes. The responsibility of the Legislation is primarily to intensify the criminal judicial protection against racist incitement. It is also the Legislation's task to call the media providers to account that enable this racial hatred to be spread.

As far as law enforcement measures against hate crimes are concerned, these must definitely have priority over other measures. The *policing* goal to be reached is strong and effective investigations. For this reason, the methodology to investigate hate crimes must be better developed, with special focus on the above-mentioned issue of the identification of the motive. A database to track incidents motivated by hatred and to collect data is to be implemented. It is recommended that law enforcement authorities inform the public as comprehensively as possible about the stages the investigations and the measures taken in order to reassure the threatened communities.

From a *public order policing* perspective, it is a vital goal to protect the Roma community from further violence and to re-establish a sense of security. The investigation of complaints against the police is of crucial importance in both professional fields.

In the area of *police training*, it is highly recommended to create and implement special curricula to address hate crime in the most effective way possible. It would be preferable to integrate this special material into the basic training course as well as into the curriculum of further professional training courses.

Specialized *crime prevention* programmes and initiatives appear as the tasks of police force units that are specialised in crime prevention. There is high demand to encourage the population to report hate crimes so as to minimalise the number of cases remaining obscure. Developing training campaigns can lead to a more open, more tolerant and accepting society.

²⁸ See e.g.: Court Decision No BH1982.278.

²⁹ A basic dogmatic category of criminal law, namely the system of general legal statutes, handles the types of guiltiness (intentionally or negligent), the aim and the motive of the perpetrator as subjective characteristics of a crime. Guiltiness is a necessary, aim and motive are possibly elements of a crime.

³⁰ OSCE *ibid.*: P. 38-41.

Concerning the personnel political consequences, the organisation suggests to law enforcement bodies that they should increase their capacity and provide all organisations with sufficient resources that monitor hate crimes and help victims. Moreover, steps must be taken to integrate Roma in the police force in order to enhance tolerance and the acceptance of diversity.

I completely agree with the statement of the OSCE that racist incidents and their tracking are of essential importance regarding the interest of the victims and their family members just as well as the good repute of Hungary, as a constitutional state. Of equal significance is the ability of the Hungarian authorities, to draw appropriate conclusions from these incidents and focusing particular attention on the need to improve practices in such fields as law enforcement and criminal justice, data collection and hate crime legislation.³¹ I go along with the following statement that the Hungarian legislation created regulations dynamically, adapting to the current social demands. The efficiency of the judicial measures against crimes fuelled by hatred depend as much on the intentions of the law-enforcement authorities as on the framework supplied by the Legislation.”³²

Should we accept that the protection of communities provided by the criminal legislation has been solved adequately and the efficiency of forces of criminal justice is sufficient, though can definitely be improved, we will have to study this issue in a broader sense: „... *the context in which these crimes took place leads to the inevitable conclusion that significant problems relating to integration of Hungary’s Roma minority community into the mainstream of society should be addressed as an urgent priority.*”³³

While taking the provisions of the OSCE into account, I mean to emphasise that those social conflicts of the 21st century that are manifested in crimes cannot be handled with the etatism of the Socialist countries. It is not the right way, if the only establishment that responds to crimes is the state and its criminal justice. It is therefore not appropriate and effective, if only the approach of reaction and retaliation is applied in the field of criminal justice. Crime prevention and the existence in a community free of prejudices are multi-layered and complex goals, which are to be reached making use of the results of Western European crime prevention concepts and by interpreting the protocols of measures against hate crimes.

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³¹ OSCE: *ibid.*: PP. 13.

³² Lídia Balogh- Henriett Dinók- András László Pap: Is law invisible? The practical problems and regulatory issues of hate crimes, *Fundamentum*, Issue 2012/4 *Fundamentum*, Issue 2012/4., P.91.

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Kľúčové slová: zločiny motivované predsudkami, zločiny z nenávisti, Rómska komunita, trestno-právne aspekty zločinov z nenávisti, Maďarsko.

Súhrn

Článok sa zaoberá zločinmi, ktoré sú motivované predsudkami a zločinmi z nenávisti, predovšetkým v Maďarsku ale aj iných európskych krajinách. Príspevok opisuje príklady zločinov z nenávisti voči Rómom, v Maďarsku v roku 2008 a 2009. Z hľadiska obmedzeného rozsahu sa príspevok zameriava predovšetkým na trestno-právne aspekty predmetnej problematiky. Z právneho pohľadu je venovaná pozornosť Protokolu pre riešenie zločinov z nenávisti, ktorého tvorcom je Organizácia pre bezpečnosť a spoluprácu v Európe (OBSE). Autorka v článku komparuje najnovšiu trestno-právnu úpravu predmetnej problematiky so staršou úpravou, pričom ale jedným dychom dodáva, že aktuálna maďarská právna úprava nie je postačujúca, resp. je nejasná. Zdôrazňuje, že je potrebné venovať zvýšenú pozornosť prevencii takto motivovaných incidentov, ktoré sú čoraz častejšie a ktoré sú považované za „konflikty 21. storočia“. Podľa autorky, spomínané možno dosiahnuť spoluprácou štátnych (polícia, súdy, ...) a neštátnych (tretí/súkromný sektor) zložiek a taktiež spoluprácou a výmenou informácií v rámci jednotlivých európskych krajín.

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