

Combating Nationalist Hate Speech by Legal Means



Transformation of Nationalism
after the Collapse of the Communism.
Ideas and Structures.
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1. Extremist(s in) Political Discourse.



- ❧ Actors - nationalists, extremists, ...
- ❧ Contents - what is hate speech...?
 - ❧ hate, discrimination, incitement, dangerous propaganda, ethnic conflict (*extremism-nationalism*)
- ❧ Targets -
 - ❧ Jewish, Roma, LGBT, nationalities, ethnic groups, foreigners, democracy, liberals, EU, Catholics...? (*minority-majority?*)
- ❧ Dangers - endangering
 - ❧ personal rights, equal treatment, peaceful coexistence of social groups and nations, public peace
 - ❧ democracy

2. *Actions Combating Hate Speech.*



∞ State

∞ *international level (EU, CoE, UN, ...)*

∞ *national level: legislation, education, ...*

∞ Political Actors (parties, politicians)

∞ *debate or exclusion?*

∞ NGOs

3. Legal Actions Against Hate Speech.



- ❧ Anti-discrimination acts (*equal treatment as a social habit*)
- ❧ Criminal Law (*ultima ratio*)
- ❧ Civil Law (*personality rights*)
- ❧ Media Law, incl. Internet (*media authority, problems of jurisdiction*)
- ❧ Administrative actions (*police, etc.*)
 - ❧ *sport events, associations, assemblies*
- ❧ Parliamentary discipline (*vs immunity?*)

4. EU Actions - Criminal Law.



❧ COUNCIL FRAMEWORK DECISION 2008/913/JHA

❧ *on combating certain forms and expressions of racism and xenophobia by means of criminal law*

❧ Report of the Commission *on the implementation* - Jan 2014

❧ *implementation deadline Nov 2010*

❧ *infringement procedure applicable following 1 Dec 2014*

❧ Conflicting Values - freedom of speech...?

❧ *common values - different legal systems*

❧ *FD shall not have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression as they result from constitutional traditions*

5. Harmonizing Criminal Law?



❧ Racist and xenophobic hate speech (FD Art. 1)

- ❧ *Public incitement to violence or hatred (against groups and members)*
- ❧ *Public dissemination or distribution of tracts, pictures or other material inciting to violence or hatred*
- ❧ *Public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes*
- ❧ *...of the crimes defined in the Charter of the International Military Tribunal*

❧ Further aspects of criminal law

- ❧ *Optional qualifiers [1) disturb public order, 2) threatening, abusive or insulting]*
- ❧ *Criminal penalties (Article 3), Racist and xenophobic motivation (Article 4)*

6. Meanwhile in Hungary



❧ Hate speech 'saga'

- ❧ Crim. Code § 269 (now 332) incitement against a community
- ❧ clear and present danger (Const. Court Decisions 1992, 2004, 2008)

❧ Dignity of communities

- ❧ Fundamental Law Art IX (4)-(5)
- ❧ Civil Code (2013) 2:54.§ (but: Decision 96/2008 CC)

❧ Totalitarian regimes

- ❧ Fundamental Law Art U)
- ❧ Criminal Code § 333, 335

❧ Case of Magyar Gárda

- ❧ freedom of peaceful assembly and association?

7. Civil Law: Dignity of Communities?



❧ Fundamental Law Art IX [4th amendment, 2013]

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

❧ Civil Code (2013) § 2:54

- ❧ enforcement: take action personally or the prosecutor (*in case of public int.*)
- ❧ even countless members can sue (*criteria of comm. membership?*)
- ❧ against the Decision 96/2008 of CC!

8. Heritage of Past - Totalitarian regimes



☞ Symbols

☞ Crim. Code § 335 (*swastika, SS-badge, arrow-cross, sickle and hammer, red star*)

☞ disturbing public peace, harming victim's personality rights

☞ Case Vajnai vs Hungary (2008)

☞ *wearing symbols may have several meanings, cannot always be equated with dangerous propaganda*

☞ *Similar cases in Poland [K 11/10], Czechoslovakia, Lithuania, Moldova*

(see: CDL-AD(2013)004)

☞ Denying, trivialization of crimes of total. regimes

☞ Crim. Code § 333 (*national socialist or communist regimes*)

9. Case of Magyar Gárda



✧ Messages, actions

- ✧ 'gypsy criminality'
- ✧ threatening marching around roma communities

✧ ECtHR - Case of Vona vs Hungary (9 July 2013)

- ✧ the intimidating marches can be seen as constituting the first steps in the realization of a certain vision of “law and order” which is *racist in essence*
- ✧ Large-scale, coordinated intimidation – related to the advocacy of *racially motivated policies which are incompatible with the fundamental values of democracy* – may justify State interference with freedom of association

10. Concl.: How to deal with extremists?



❧ Punish/exclude them! (*militant democracy*)

❧ *do not legitimate them as equal partners...*

❧ *do not help them to disseminate their ideas...*

❧ *history teaches...*

❧ Persuade them! (*deliberative democracy*)

❧ *intellectual/moral supremacy of democratic arguments, debates...*

❧ *defeat them (their hate) by words...*

❧ *self defense of public opinion, long term values, equality...*

❧ Belief in debates – doubts for legal means



Thank you for your attention!

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