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The restriction of hate speech in web-based and conventional media

Balázs Elek¹

Associate professor

Faculty of law

Debrecen University

Hungary

Abstract

Hate speech is any kind of spoken or written expression aimed to humiliating, intimidating, inciting violence, or provoking prejudicial actions against a particular societal group. Hate speech is usually directed at members of minority groups in connection with race, ethnicity, nationality, sexual orientation, gender identification or disability. For texts that are published on the Internet, there is no way to monitor the age of the readers or how they may interpret a given. Interpretations can vary greatly among different age groups.

When hate speech is employed in spoken or written form, the speaker consciously uses linguistic expressions that constitute defamation, label, intimidation or other offenses, for instance Holocaust denial. Such language is often concealed within web-based and social-media texts; the writer deliberately uses expressions that appear entirely acceptable on the surface. Hate speech is already punishable as an independent category of criminal law.

Key words: media, internet, hate speech, media law, criminal law.

1. Introduction

Stereotypes are generalisations, the kind that basically everyone uses, that concern themselves with characteristics ascribed to societal groups or classes. These characteristics may be personality traits, physical attributes, societal roles, or personal behavioural patterns. Stereotypes may relate to ethnicities, religions (Christian, Muslim, Jewish), occupations (lawyers, linguists, teachers) or even attributes such as hair colour (blonde women).

Dangers arise when the holder of stereotypical views does not wish to abandon such categorical thinking despite having had experiences that contradict it. At this point, stereotypical views morph into prejudice. Hate speech also is most commonly directed against members of a specific gender, race, ethnicity, nationality, religion or sexual orientation, and its goal is to humiliate, intimidate or incite violent or prejudicial actions against members of a societal group.

¹ Contact: elek.balazs@law.unideb.hu.

2. Hate Speech

It is not possible to provide a precise definition of the term “hate speech” that covers all the acts within its scope. In terms of content, hate speech includes expressions and statements that are capable of fomenting hatred, as well as the description, distribution, declaration, or sharing thereof. The danger of hate speech lies in the fact that it may initiate actions that can incite hatred, producing hatred, or setting in motion a process that will result in such acts.

The “speech” part of “hate speech” might be misunderstood. Indeed, it may obscure the true meaning of term, since the spoken word is not the only type of communication capable of inciting and sustaining hatred.

A spoken or written text’s ability to effect hatred also means its ability to incite fear. This is what gives hate speech its constitutional significance.

When it comes to evaluating expressions of hatred, we can examine whether the manifestation qualifies as an expression of opinion or has an aggressive character – that is, whether it qualifies as “fighting words.”²

Hate speech is any kind of spoken or written expression aimed at humiliating, intimidating, inciting violence, or provoking prejudicial actions against a particular societal group. Hate speech is usually directed at members of minority groups in connection with race, ethnicity, nationality, sexual orientation, gender identification or disability. For texts that are published on the Internet, there is no way to monitor the age of the readers or how they may interpret a given. Interpretations can vary greatly among different age groups.³

a) Gypsy Lexicon

Typical example of hate speech from the “Gypsy Lexicon” on the Internet⁴:

“Vulgar Gypsy: This is the most common breed of Gypsy. Specimens can be found in many parts of our country. Favorite stomping grounds: sun-exposed trash heaps and ditches. A truly dangerous species whose extermination is highly recommended! They can thrive in any environment, including radioactive-contamination zones and areas that are saturated with poison gas. The species can (unfortunately) endure even the most extreme conditions and can reproduce rapidly, even in captivity. A female can spawn six to 24 offspring at once and can produce 12 to 24 litters in a single year. The young members of the species gather in hordes to make trouble and mess around with both their peers and with people. Extermination tip: A high-caliber machine gun or shoulder-fired rocket.”

“Olah Gypsy: The most cunning, trashy, mean-spirited and highly dangerous species. Every negative Gypsy characteristic can be observed here. Nothing is secure unless it is nailed to the ground. Principal weapon is the pocket knife, which it carries everywhere. Is especially active at night. Has an incredibly low IQ and is especially fond of using antisocial, obscene words. Principal source of nutrition is sunflower seeds looted by other species of Gypsy. Favorite stomping grounds: Treetops, especially apple trees that belong to the neighbors. Reproduction is not seasonal. During the rutting season, Gypsy bulls can become rather aggressive, causing severe, bloody fights to break out within a herd. The alpha male has a harem of 35-50 females who are continuously in heat. The Olah Gypsy spends the

² Péter Tilk, *A kifejezési szabadság és a gyűlöletbeszéd néhány alkotmányjogi vonzata* (Freedom of Expression and Hate Speech in Several Constitutional-Law Cases, ACTA HUMANA, no. 1 (2005), pp. 5-32.

³ Bárándy Gergely, *A gyűlöletbeszéd*, Kriminológiai Közlemények no. 60 (2002), pp. 99-102.

⁴ <http://huligan07.gportal.hu/gindex.php?pg=21100617> (accessed 10.05.2018).

winter hibernating in prison; however, some spend their entire lives here. A truly trashy, thuggish race. They fritter away their free time with games, e.g. sleight of hand. Tips for defense: shotguns, tanks, anti-tank cannon, Katyusha rocket launchers, nuclear missiles, or a gang of at least 280 skinheads. Their extermination is not against the law and is every citizens' God-given right. This is not a protected species and can be freely hunted without a permit."

This hate speech is distinctive by virtue of its sheer repulsiveness, devoid of any feeling. It talks about Gypsies as if they were the subjects of a lexicon about animals. It talks about their habitat, their reproduction cycles and their feeding habits. The text does not contain any obscene, aggressive or ugly words, but rather foment hatred through its emotional detachment. While it is stylistically unobjectionable, it qualifies as hate speech because of its hidden content.

The defining characteristic of hate speech is its effect and its manipulation, not its factual content. The text has a double meaning that gives rise to societal tension. The people described in the text interpret these words in a much different manner than the text's target audience. The primary message is the double and triple entendres.

b) The „so-called Holocaust“

Another example is the politician who referred to the *“so-called Holocaust.”* The dictionary meaning of *“so-called”* is *“more precisely”* or *“the official label or designation of a word.”* However, its secondary meaning is *“of questionable interpretation”* or *“dubious.”* (For instance, *“a so-called female artist was present at the event.”*)

Member of Parliament: *“Thank you very much. I would like to remind everyone that the both the Hungarian state and various other states on the losing side of World War II have paid out a fortune in compensation to so-called Holocaust victims and survivors.”*

Creating *“hybrid words”* is also a typical form of hate speech. An example of this is the Hungarian *holokamu* – a fusion of *holokauszt* and *kamu*, which means *“fake”* or *“fraudulent.”* In spoken Hungarian, this hybrid word can easily be confused with *“Holocaust.”*

3. International treaties, conventions and case-law on hate speech and freedom of speech

International law treats hate speech as a type of discriminatory expression based upon intolerance toward a person's race, skin color, national or ethnic origin, or religious affiliation.⁵

1. International Covenant on Civil and Political Rights 1966
2. International Convention on the Elimination of All Forms of Racial Discrimination 1965
3. Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation Against Racial Discrimination (UN) Third Decade to Combat Racism and Racial Discrimination (1993-2003) (Model Law against racial discrimination)
4. Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950 (articles 10, 14 and 17)
5. European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 7 on National Legislation to Combat Racism and racial Discrimination adopted on 13 December 2002.

⁵ Bárándy Gergely, Gyimesi Zita, *A gyűlöletbeszédre vonatkozó magyar büntetőjogi szabályozás a nemzetközi jogi és európai jogi kötelezettségeink tükrében*, Európai Jog, (2009) vol. 9. no. pp. 28-36.

4. Human rights Committee practice

4.1. *Robert Faurisson v. France*⁶

On 13 July 1990, the French legislature passed the so-called "*Gayssot Act*", which amended the law on the Freedom of the Press of 1881 by adding an article 24. The latter made it an offence to contest the existence of the category of crimes against humanity as defined in the London Charter of 8 August 1945, on the basis of which Nazi leaders were tried and convicted by the International Military Tribunal at Nuremberg in 1945-1946. The author submitted that, in essence, the "*Gayssot Act*" promotes the Nuremberg trial and judgment to the status of dogma, by imposing criminal sanctions on those who dare to challenge its findings and premises. Mr. Faurisson contended that he has ample reason to believe that the records of the Nuremberg trial can indeed be challenged and that the evidence used against Nazi leaders is open to question, as is, according to him, the evidence about the number of victims exterminated at Auschwitz.

Shortly after the enactment of the "*Gayssot Act*", Mr. Faurisson was interviewed by the French monthly magazine *Le Choc du Mois*, which published the interview in its Number 32 issue of September 1990. Besides expressing his concern that the new law constituted a threat to freedom of research and freedom of expression, the author reiterated his personal conviction that there were no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. Following the publication of this interview, eleven associations of French resistance fighters and of deportees to German concentration camps filed a private criminal action against Mr. Faurisson and Patrice Boizeau, the editor of the magazine *Le Choc du Mois*. By judgment of 18 April 1991, the 17th *Chambre Correctionnelle du Tribunal de Grande Instance de Paris* convicted Messrs. Faurisson and Boizeau of having committed the crime of "*contestation de crimes contre l'humanité*" and imposed on them fines and costs amounting to FF 326,832. The Court of Appeal of Paris upheld the conviction and fined Messrs. Faurisson and Boizeau a total of FF 374,045.50.

The conviction was based, *inter alia*, on the following Faurisson statements:

"... No one will have me admit that two plus two make five, that the earth is flat, or that the Nuremberg Tribunal was infallible. I have excellent reasons not to believe in this policy of extermination of Jews or in the magic gas chamber..."

"I would wish to see that 100 percent of all French citizens realize that the myth of the gas chambers is a dishonest fabrication ('est une gredinerie'), endorsed by the victorious powers of Nuremberg in 1945-46 and officialized on 14 July 1990 by the current French Government, with the approval of the 'court historians'".

The author contended that the "*Gayssot Act*" curtails his right to freedom of expression and academic freedom in general, and considers that the law targets him personally. He complained that the incriminated provision constitutes unacceptable censorship, obstructing and penalizing historical research.

The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as it is required to do under article 5, paragraph 1, of the Optional Protocol. Any restriction on the right to

⁶ Communication No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996) (The Human Rights Committee was established under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights).

freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve a legitimate purpose. The restriction on the author's freedom of expression was indeed provided by law i.e. the Act of 13 July 1990. It is the constant jurisprudence of the Committee that the restrictive law itself must be in compliance with the provisions of the Covenant. In this regard, the Committee concluded that the finding of the author's guilt was based on the mentioned two statements. His conviction therefore did not encroach upon his right to hold and express an opinion in general, rather the court convicted Mr. Faurisson for having violated the rights and reputation of others. For these reasons the Committee is satisfied that the Gaysot Act, as read, interpreted and applied to the author's case by the French courts, is in compliance with the provisions of the Covenant.⁷

5. European Court of Human Rights Case-Law

5.1. *Garaudy v. France*⁸

On December 1995 the applicant published a book entitled *The Founding Myths of Israeli Politics*. In five orders made by the investigating judge of the Paris tribunal de grande instance, the applicant was committed to stand trial before that court for five offences.

The applicant complained that the French courts had misunderstood the thrust of his book. He submitted that he had never denied the Nazi crimes against the Jews in his book or claimed that they had not amounted to crimes against humanity. Since, in his submission, his book had centred on a political critique of Zionism devoid of any racist or anti-Semitic thinking, he could not be regarded as a revisionist and should have fully benefited from the freedoms of opinion and expression. He relied on Articles 9 and 10 of the Convention. That line of argument underscored the applicant's entire reasoning.

Regarding the existence of the gas chambers, the applicant submitted that he had merely referred to documents which he had considered reliable. In his submission, he could not be regarded as revisionist for quoting from those documents. In the instant case the Court noted that, according to the Government, the application is inadmissible under Article 17 of the Convention.

„As regards firstly the applicant's convictions for denying crimes against humanity, the Court refers to the purpose of Article 17 of the Convention, which “in so far as it refers to... individuals is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; ...no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms; (...)”⁹.

There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist

⁷ Bán Tamás, *A holocaust tagadása: a Faurisson-ügy*, Fundamentum 1999. 1. sz., pp. 162-167.

⁸ ECHR, decision from 07.07.2007.

⁹ See *Lawless v. Ireland*, judgment of 1 July 1961, Series A no. 3, pp. 45-46, § 7.

regime and, as a consequence, accuse the victims themselves of falsifying history. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others. Their proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention.

The Court considered that the interference pursued at least two of the legitimate aims provided for in the Convention: “the prevention of disorder and crime” and “the protection of the reputation and rights of others”.¹⁰

5.2. *Lehideux and Isorni v. France*¹¹

The *Le Monde* newspaper published a one page advertisement bearing the title “*People of France, you have short memories*” in large print, beneath which appeared in small italics, “*Philippe Pétain, 17 June 1941*”. The text ended with an invitation to readers to write to the Association for the Defence of the Memory of Marshal Pétain and the National Pétain-Verdun Association.

The text, which was divided into several sections each beginning with the words “*People of France, you have short memories if you have forgotten...*” in large capitals, recapitulated, in a series of assertions, the main stages of Philippe Pétain’s life as a public figure from 1916 to 1945, presenting his actions, first as a soldier and later as French Head of State, in a positive light.

The applicants alleged that their conviction for “public defence of war crimes or the crimes of collaboration” had breached Article 10 of the Convention

The Court further noted that the events referred to in the publication in issue had occurred more than forty years before. Every country must make to debate its own history openly and dispassionately. The Court reiterated in that connection that, subject to paragraph 2 of Article 10, freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. The court has ruled that the case “*does not belong to the category of clearly established historical facts – such as the Holocaust – whose negation or revision would be removed from the protection of Article 10 by Article 17*”.

5.3. *Hans-Jürgen WITZSCH against Germany*¹²

In an answer to an article the applicant wrote:

„It is actually established that there is no indication in party programs of the National Socialist German Workers’ Party, the NSDAP, and Hitler intended to murder the Jews. Anybody who – with all the means at his disposal – fostered the emigration of the Jewish

¹⁰ Koltay András, *Az internetes kapuőrök és az Emberi Jogok Európai Egyezményének 10. cikke – a sajtószabadság új alanyai*, Állam- és Jogtudomány, LVIII. évf. (2017) no. 4., pp. 129-140.

¹¹ Case no. 55/1997/839/1045, application no. 24662/94, Publication 1998-VII, no. 92), 23 September 1998, ECHR.

¹² European Court of Human Rights Decision, Application no. 7485/03.

minority until late after the beginning of the Second World War can hardly be said to have prepared the murder of the Jews. A long time ago, the historian Irving has publicly proposed to pay a thousand pounds to any person who could prove that Hitler had ordered, for racial reasons, the murder of one single Jew. So far, nobody has produced evidence. After the war, tens of thousands of totally immaculate officials of the NSDAP have attested on oath not to have known until the end of the war about the murder of Jews. None of the dignitaries of the German Government accused in Nuremberg admitted to have known about the mass murder of Jews. Not even in their closing words under the gallows!"

On 27 July 2001 the Fürth District Court convicted the applicant of disparaging the dignity of the deceased pursuant to Section 189 of the German Criminal Code and sentenced him to three months' imprisonment. With reference to the case-law of the Federal Constitutional Court, it recalled that it was historically proven that the mass killing of Jews in concentration camps was planned and organised by Hitler and the NSDAP. Although the applicant had not denied the Holocaust as such, his denial of Hitler's and the NSDAP's responsibility in this respect was tantamount to a negative value judgment.

The applicant complained under Articles 9 and 10 of the Convention of an infringement of his right to freedom of expression, in particular because the German courts had not taken into account that the statements at issue had been made in a private letter.

The Court, on the contrary, noted that, *"nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

The Court observed that the general purpose of Article 17 is to make it impossible for individuals to take advantage of a right with the aim of promoting ideas contrary to the text and the spirit of the Convention.

6. Restrictions on Hate Speech in Hungary

On Hungarian law, the hate speech is a crime on certain cases: Incitement Against a Community is committed by 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.¹³

The Open Denial of Nazi Crimes and Communist Crimes is also a crime in the Criminal Code

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.¹⁴

¹³ Act C of 2012 of the Hungarian Criminal Code, Section 332.

¹⁴ *Ibidem*, Section 333.

On other cases the hate speech may fall under the restrictions of administration law or media law.

6.1. The Media Council Practice in Hungary¹⁵

Echo TV, a privately held news channel, on 18 July 2009 broadcast a program called *Képtelenségek* ("Absurdities") in which an author discussed the historic impact of the French Revolution and one of its key achievements, the *Declaration of the Rights of Man and of the Citizen* (1789). He argued that these ideas led to a "proliferation" of individual behavioral forms, which gave way to the development of "diversity."

"So-called human rights and the forceful imposition of human rights, such as the imposition of gay rights, clearly was always one of the liberal forces' basic tools for liquidating... disintegrating and mangling a given society. This can, in a way, serve as the starting point for these people to spread the false mythology that one must be an individual, a free individual, and that the free individual can do whatever he wants. And if he does whatever he wants with a greater sense of freedom and pride, all the better.

But it is worthwhile to think through a little mental exercise about what would be, or what would happen, if, for example, a cell in the human body should decide that, even though I know we exist as a single organism, which means I must behave like this or like that, I am a free individual, and therefore I am going to decide what functions I am going to perform from the standpoint of the organism, so, all other cells, please respect my diversity.

Luckily, evolution has already ensured that if one cell turns out this way, then sure enough, an automatic suicide mechanism exists. So, mechanisms are at work among these cells that ensure, with 99.99% probability, that if one cell crosses a certain critical line in its deviancy, in its freedom, in its freedom of self-actualization, then these mechanisms force the cell to kill itself. If this does not work, it means the beginning of a proliferation of cancer in the organism.

It is also worth pointing out – excuse me – that official power does not confront the destructive parasite, but rather labels the immune system's reactions against the parasite as "extremists" and tries to liquidate them... I believe that this is the last opportunity for white civilization, including Hungary, to come to its senses and see what kind of fate awaits it."

The commentary thusly compared the gay community's role in society to a "cancerous cell" growing in the human body – an idea that is suitable for fomenting hatred against homosexuals. Viewers were given with the impression that "gay civilization" and "white Christian civilization" are mutually exclusive, so one or the other must disappear. People who are gay or support homosexuality are destructive parasites who must be annihilated.

The National Radio and Television Authority (ORTT), Hungary's broadcast regulator at the time, launched an administrative procedure. In its ruling, the authority stressed that opinion makers, news editors and broadcast-show hosts must take special care to present a minority in an objective, unbiased and stereotype-free manner. The broadcast in question did not attempt to do this in the slightest, which further exacerbates exclusionary and hateful behavior toward gays. The commentator made

¹⁵ Török Bernát, *A gyűlöletbeszéd tilalmának mércéi*, Jogtudományi Közlöny, 2013. vol. 68. no. 2, 59-72.

damaging comments about gays and no countervailing points of view were offered. The Media Council, the ORTT's successor, imposed a fine on Echo TV for violating the legal prohibition on incitement of hatred and the mandate to respect human rights. In its justification, the ruling stressed that hate-fomenting pronouncements that violate human rights are capable of causing a breach of societal order and peace.¹⁶

6.2. *Disclosing the Perpetrator's Background in the Media*

Proceedings were launched against Hír TV, a private news channel, because the following sentence appeared in the news ticker at the bottom of the screen during a 5 p.m. live news bulletin:

"A funeral will be held tomorrow afternoon for the 30-year-old policeman who was run over by a repeat-offender Roma man last Friday near Budapest's Eastern Railway Station."

The sentence appeared in the news ticker twice before being replaced with the following text:

"A funeral will be held tomorrow for the 30-year-old policeman who was run over last Friday near Budapest's Eastern Railway Station."

In this case, the Media Council found no evidence of wrongdoing and terminated the procedure. While the news ticker did mention the perpetrator's ethnic background, neither its phrasing nor its appearance was appropriate for inciting hatred against Gypsies as an ethnic minority. The reference to the perpetrator's ethnic background may be worrisome from an ethical point of view, but the factual reportage of the news was not capable of fomenting hatred against individuals, genders, peoples, or ethnic, linguistic or other minorities, or any church or religious group.¹⁷

6.3. *Christmas Greetings*

On Falu TV, a small community channel, the host of the 2010 "Christmas Greetings" program read out a memo that listed crimes committed by people whom he clearly identified as "Gypsies." The host disparaged the Roma minority using extremely hurtful epithets and generally accused them of habitually committing grave crimes.

The second half of the program featured a closely related segment entitled "*A patkányok honfoglalása*" ("The Occupation of the Rat House"), whose secondary title was "*An Instructive Tale for Young Hungarians*." The story concerns a pack of rats that move in to the house of a hardworking and honest man, steal his hard-earned food, abuse his good nature, grow fat and reproduce; then, when the rightful owner tries to defend himself, the rats rise up and kick him out. But since the rats cannot work, or do not want to, the house sinks into a state of decrepitude and the new inhabitants eventually depart. The man moves back in and, through diligent work, restores his home to a pristine state. However, some of the rats have remained hidden in the house. When the man realizes that they are once again starting to multiply, he considers his options. The commentary ends with a call to action: "You think about it, too, and do what is necessary!"

¹⁶ András Koltay, *A gyűlöletbeszéd korlátozása Magyarországon (Restrictions on Hate Speech in Hungary)*, Budapest, Wolters Kluwer, p. 308, Media Council ruling 1337/2013 (VIII. 28).

¹⁷ András Koltay, cited, p. 330.

Hungary's Media Council levied a monetary fine, ruling that the broadcaster had violated the legal prohibition on inciting hatred and the mandate to respect human rights. The Council referred to the Hungarian Constitutional Court's ruling 1006/B/2001, which states, "'Incitement to hatred' means laying the emotional groundwork for the denial of the right to diversity and minority protection, as well as the foundation for violent resolution of conflicts. 'Abuse of the freedom of opinion' means qualifying a defined group of people or collectivity in an intolerant manner, such that is characteristic of a dictatorship, not a democracy." The Council also invoked a 2007 Constitutional Court decision that media regulations should have a much lower threshold of tolerance for hate speech than general law does. Hence a violation of media law can be established even if a given set of facts would not otherwise qualify as a crime.

The Media Council established that the show was capable of fomenting hatred through a speculative discussion of hypothetical criminals – a communication that cast the Roma minority as criminally inclined group that rejects the norms of societal coexistence and routinely breaks the laws of Hungary. The content was capable of inciting hatred by bolstering the negative stereotypes of Gypsies that are prevalent in the majority society. Thus incitement of hatred was realized, along with exclusionary practices. The program also portrayed the minority group and all its members as second-class citizens by nature, which is incompatible with the principle of peaceful societal coexistence.¹⁸

6.4. Report from Jerusalem

The host of "Klub," a program on the ATV channel, introduced a report on Jerusalem with the following words:

"An unexpected, widely ignored tragedy: Thousands of Christians are forced to leave the Middle East because of violence, persecution and economic hardship. Many others are moving out of the Holy Land, the historic homeland of Christianity." In the programme was a discussion of the events covered in the segment, during which one of the commentators said, *"and some people say Islam is the religion of peace."*

Authorities initiated a procedure based on complaints that the statements conflated Islam with violence, which may postulate a link between Muslims and violent behavior.

The Media Council ruled that the TV channel had violated the law on radio and television. It said the commentators had dealt with Islam and its adherents in a stereotypical, intolerant and exclusionary manner in relation to an event that had been triggered not only by deteriorating economic conditions, but also by the permanent conflict between Judaism and Islam. Statements such as *"and some people say Islam is the religion of peace"* conflate Islam with violence. Such a one-sided stereotype may convey the impression that Islam as a religion, and *ergo* Muslims themselves, is linked with violent behavior and religious persecution. The Media Council therefore opined that the ideas expressed in the program might be damaging to the Islamic community and may bolster prejudice against Muslims.¹⁹

A court of judicial review later overruled this decision.

The court argued that the presenter had expressed an opinion that was qualified as offensive, but the opinion fell within the scope of free expression of opinion. All in all, the

¹⁸ Media Council decision 828/2011 (VI. 22).

¹⁹ András Koltay, cited, p. 370, Media Council decision 138/2011 (I.19).

program did not ignore the facts, did not intend to break the law, and cannot be regarded as providing a mouthpiece for inciting hatred against Islam. The media content that appeared on the screen was not capable of adversely influencing public opinion, not even in light of the objectionable statement on Islam, which had originally been voiced by former U.S. President George W. Bush. Upon viewing the program, the court concluded that the statement made by the commentator, along with the stereotypes to which the Media Council referred, did not meet the criteria for reasonable suspicion of spreading prejudice against Islam, when taking the entire report and its substance into account.²⁰

6.5. Offensive Commentator at a Football Match

During a broadcast of a FIFA Confederations Cup Match between Brazil and Japan on Hungarian State Television's M1 channel on 15 June 2013, a sportscaster commented on the Nigerian national team, whose members had gone on strike after receiving only half of their €10,000 bonus for winning a World Cup qualifier match. The walkout cast doubt on whether Nigeria would participate in the FIFA Confederations Cup. The commentator evaluated the situation as follows:

"I would say these are petty, jerkwater African footballers, and I am not using 'African' in a negative or pejorative sense. But basically every player on the Nigerian team is part of a foreign team somewhere, so they clearly do not need this 5,000 euros for bread. They earn much more than that in a month, and now they want to kick up a huge fuss about it here. This is a typical African mentality, and I'm sorry if I'm offending anyone by saying this. Much respect to the exceptions, I want to add that right now. But it is so typical, we always hear this kind of news from Africa, about which team is having a tantrum about something."

The Media Council declined to launch a procedure in response to complaints that the sportscaster had violated the prohibition on discrimination and incitement of hatred. According to the authority, any group that is "distinct," based upon any criterion, may qualify as a "protected community." However, this broad interpretation does not mean that the regulation is boundless in scope. The group's "separation" must be real and tangible in order to receive protection. Generally speaking, "inhabitants of a continent" cannot be interpreted as a "distinct group" based upon any decisive or essential personality characteristics. If no "community" exists, it is therefore not possible to induce prejudice against a nation, a community, a national, ethnic, linguistic or other minority, or members of any majority.²¹

7. Closing remark

Hate speech is a verbal or written statement whose goal is to humiliate, intimidate or incite violent or prejudicial actions against members of a societal group. Hate speech is most commonly directed against members of a specific gender, race, ethnicity, nationality, religion or sexual orientation. When hate speech is employed in spoken or written form, the speaker conscientiously utilizes linguistic expressions that constitute defamation, libel, intimidation or other crimes, for instance Holocaust denial. Such

²⁰ Fővárosi Bíróság 8.K.31.215/2011/7. sz. Fővárosi Ítéletábla 4.Kf.27.410/2011/5. szám.

²¹ András Koltay, cited, p. 403, 1271/2013. (VII.24.) sz. médiatanácsai határozat.

language is often concealed within web-based and social-media texts; the writer deliberately uses expressions that appear entirely acceptable on the surface. Hate speech is already punishable as an independent category of criminal law.

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