

ABSTRACTS

ESSAYS

Edwin Baker's paper describes the rationale that a full protection theory of free speech, a theory based on respect for individual autonomy, would give for protecting hate speech. The paper then notes that such a rationale would be unpersuasive to many (including this author) if the harms associated with a failure to outlaw hate speech are as great as often suggested – most dramatically, if the failure to prohibit makes a substantial contribution to the occurrence of serious racial/ethnic violence or genocide. The article then attempts to outline what empirical evidence would be needed to support this conclusion and gives reasons to doubt that this evidence has been or will be forthcoming. Still, given the horrendous nature of the harm, caution suggests not taking the risk. That is, the risk may justify prohibiting hate speech given its possible role in causing these consequences. In response to this last point, however, the paper gives reasons to believe that the attempt to prohibit hate speech is more likely to exacerbate the risk of unacceptable outcomes than to generate the benign opposite. Thus, the argument ends in accepting the theoretical reasons for giving First Amendment protection to hate speech. The English version of the essay will be published in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford: OUP, forthcoming 2008).

INTERVIEW

In an interview Winfried Brugger, professor of law at Heidelberg University compares the American and German solutions to restricting hate speech. He thinks the most important reasons for the differences are different historical experience, and the different notions of the importance of liberty and dignity.

FORUM

Zsolt Krokovay argues that by adopting content-independent means of regulating speech, the authorities can prevent the extremists to hinder the free speech rights of others. Acknowledging the right of assembly of those groups that express unconstitutional ideas at rallies does not mean that the extremists may violently affray others to express opposing political views in public places.

Gábor Polyák examines whether criminal sanctions have the most chilling effect on freedom of speech. By analyzing one of recent decision of the Constitutional Court regarding the competence of the National Radio and Television Commission to withdraw the broadcasting license for hate-mongering programmes that would otherwise not qualify as hate speech crime. The author concludes that administrative sanctions can be more burdensome than criminal ones and, hence, it is particularly problematic that the Court failed to provide adequate justification for the necessity of a separate administrative law hate speech provision.

The most effective means of combating hate speech, according to Jenő Kaltenbach, would be the coordinated action of the public sphere and civil

society. Since the permanent confrontation of parliamentary parties paralyzes meaningful discussion among decision-makers, the civil society should be the primary initiator of a wide and general societal action program.

In Mihály Szilágyi-Gál's view decision-makers must take into account the historic and socio-cultural context of hate speech. This could make the decision-makers consider restricting speeches that aim to threaten well-defined societal groups.

After analyzing the 16 years jurisprudence of the Constitutional Court concerning the criminal limitations of hate speech, Péter Molnár in his essay besides the milder means of the civil law sanctions argues for non-legal tools to overcome hatred, prejudice and intolerance in the society. He suggests new policy measures by the government through cultural programs and in the public education, for instance concerning the Holocaust, as well as initiatives of the civil sector.

András Koltay is on the view that placing stricter limits on hate speech is not a confession of failure of a relatively new, self-cleansing democracy. Such decision would only mean that community does not will to protect certain speeches or certain speeches are not worthy of protection. This may not be motivated by fear or caution, since one can hardly see what role these speeches have in a political discourse.

DOCUMENTS AND COMMENTARIES

Ádám Liber's writing: "Ban on Tobacco Advertising and Freedom of Expression" tries to find out where the freedom of expression and artistic life ends, and where the ban of tobacco advertising may start. In his opinion there is an obvious controversy between the decision of Constitutional Court subordinating tobacco advertising to the freedom of expression, and contemporary official and judicial legal practice, the resolution of which is still to be found.

PRIOR TO DECISION

László Korinek gives his opinion about the lowering of the age limit of children's culpability. He thinks that the use of criminal measures and punishment is necessarily accompanied by a stigmatizing-marking effect, which may mean a real criminalizing factor in the individual's later life. Instead of lowering the age limit of children's culpability social institutions should be created concentrating on children's personality and social conditions, to eliminate the imperfections of socialization of juvenile offenders.

Mária Herczog in her article from the point of view of the sociology deals with the possibilities of prevention and successful treatment of crimes committed by children and minors.

AFTER DECISION

Here we repeatedly present recent decisions of the Hungarian Constitutional Court relating to human rights, and the latest important decisions of the European Court of Human Rights. Besides we present two summaries on two decisions of the United States Supreme Court to voter ID and age discrimination.

PROTECTORS OF RIGHTS

In this column we publish two different suggestions concerning hate speech regulation. the joint proposal of the Hungarian Helsinki Committee and the Bureau of National and Ethnic Minorities aims at modifying the civil code, while the one initiated by the parliamentary ombudsman for national and ethnic minorities deals with different non-criminal approaches, among others the amendment to the anti-discrimination law.

REVIEW

Here we present the review of Máté Paksy on a book about the constitutional order and political institutions of France.