

Abstract

Verbal hate speech and the legitimacy of its criminal punishment

Hate speech has been enjoying an elevated level of media attention in the last few years. These biased expressions of hate – most often verbal – targeted against specific groups of people are a manifestation of social antagonisms and as such, disturb public order and coexistence of people; furthermore, they are often associated with issues of prejudice, bias-motivated violence, xenophobia, discrimination, and extremism. Criminal punishment of this type of expression is already possible today and it can be reasonably expected to become increasingly important.

The purpose of this thesis is a critical review concerning the legitimacy of criminal punishment of verbal hate speech in the Czech Republic, including identification of troublesome elements of the current legislation. Conclusions of this review shall stem primarily from the legal analysis of constituent elements of relevant crimes, commentary literature, jurisprudence and legal literature related to the topic.

The first chapter aims to explain the central concepts – hate speech, verbal hate speech and the relationship between them. A closer look is given to the phenomenon which links these concepts together and, at the same time, constitutes an inherent part of them both: biased hatred.

The second chapter dives into the historical beginnings of targeted regulation of biased hatred in the USA and the different methods of its implementation. The resulting categorisation is then applied to the current Czech legislation: provisions regulating biased hatred are identified and the constituent elements of crimes which allow for the punishment of verbal hate speech are isolated.

The third chapter analyses in-depth the different relevant constituent elements of crimes, its focus being on the clearest possible definition of boundaries for criminalising a type of verbal hate speech. Observations regarding ambiguities and legislative shortcomings are made, possible excesses on the legislature's part are identified and amendments *de lege ferenda* are suggested.

The final chapter reviews the legitimacy of the current form of criminal punishment of verbal hate speech. An integral part of the evaluation is a proportionality test of the regulation as a whole as it constitutes a restriction of the constitutionally guaranteed freedom of expression, and broader considerations regarding whether the regulation is really desirable as currently conceptualised.

Keywords:

hate speech, freedom of expression, subsidiarity of criminal punishment, hypertrophy of criminal law