

# The Role of Civil Society in Responding to 'Hate Speech'

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## **ABSTRACT**

This thesis deals with the question of the extent of 'hate speech' regulations that respective countries should adopt in regards to the strength of their civil society. In the paper I suggest possible implementation of more liberal restrictions when the civil society in a country is considerably strong, while more restrictive policies may be needed if the country's civil society is weak. I further set the criteria determining the strength or weakness of a civil society and apply them on the examples of Slovakia and Hungary. As the findings of this paper suggest, in spite of the fact that the civil society of Hungary and Slovakia is not particularly strong, it proved its ability to respond to 'hate speech' accurately in the important instances, and therefore the restrictions on 'hate speech' may not be needed, or they could be needed only to a certain extent.

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# Introduction

Freedom of speech is one of the most fundamental human rights that people have fought for (and in many countries still are), for decades or even centuries. This freedom is often considered to be one of the indicators of the level of democracy that individual countries experience. However, in all countries, no matter how democratic or developed they are, at least some restrictions of the freedom of speech can be found. Every country has experienced different historical and cultural development and this fact is often reflected in the policies that respective countries adopted in relation to both protection and restriction of these freedoms.

The level of restrictions of freedom of speech may vary to a great extent. In general, we can observe that less democratic countries tend to impose much stricter regulations than the countries with the long established democratic tradition. Countries that lack the respect for the most essential democratic principles are likely to impose the strong regulation of the media content and also of the public speech, while in the democracies with strong civil society these restrictions tend to be much less significant.<sup>1</sup>

Therefore, the main aim of this paper will be to examine the relationship between the policies restricting the freedom of expression, especially with regards to 'hate speech', and several societal factors such as the level of democracy, historical and cultural development of the respective countries, and most importantly- the state of civil

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<sup>1</sup> This is not to say that a democratic country cannot impose quite extensive restrictions on 'hate speech', i.e., France is the country with long democratic tradition and still chooses to impose the regulation of 'hate speech' that is more restrictive than the restrictions in other Western European Democracies or the United States, however, this fact doesn't make it less democratic

society. Many researchers have already examined the question of the impact of restrictions of freedom of expression on the level and state of democracy. In this work I will therefore focus on analyzing the reversed relationship between the two, more specifically; I will examine how the state of civil society may influence the strictness of the 'hate speech' regulations. If the civil society is strong enough to respond accurately to the 'hate speech' manifestations targeting specific groups, the state policies restricting the freedom of expression are less necessary. On the other hand, if the civil society is too weak to engage in counter speech, some restrictions might need to be implemented in order to prevent potential negative consequences endangering members of specific target groups. This relationship between civil society and policies regulating 'hate speech' will be examined through the specific cases of Slovakia and Hungary.

In the first part of this paper I will analyze different theories that defend the importance of the protection of freedom of expression as well as theories advocating the opposite point of view, that is; the theories claiming the need for 'hate speech' regulation in preventing contiguous hate crimes. Even though, in some cases it may seem that the regulation of free speech would potentially have a well-founded and important role, the question is whether the country in need of such regulations would be able to apply these policies meaningfully and fairly. We could presume that countries in the biggest need of such restrictions would be least likely to prevent their abuse. On the other hand, the countries able to ensure the meaningful implementation of policies restricting 'hate speech' would presumably have fewer reasons to adopt these policies at all due to the well-functioning civil society.

The second chapter will examine the specific cleavages that create subsequent tensions in the countries, present the potential target groups of 'hate speech', and portray the typical stereotypes connected to these groups. In the third chapter I will focus on various aspects that have to be considered when measuring the strength of the civil society. When is the civil society strong enough to respond to 'hate speech' without the legal restrictions? Should we measure civil society in terms of number of NGO's, political participation, or completely different criteria?

Subsequently, the fourth chapter will examine the particular situation in the countries selected for the case studies: Slovakia and Hungary. There will be a comparison of the legislation regulating the freedom of expression in these two countries, list and analysis of the problems that respective countries experience, and mention of some of the target groups that are supposed to be protected by this legislation. I will also focus on the implementation of the policies because many times the legislation and its de facto enforcement may differ quite substantially. The important part of this chapter will deal with the examination of the state of civil society based on the historical development and the tradition of democracy which may have an effect on resulting civic courage and involvement of citizens in public discourse. I will also take into account other criteria, such as citizen activism and participation in political and also informal sphere, support for NGO's and other non-profit organizations, and citizens' trust in such organizations.

The last part of the paper will deal with the implications and conclusions based on both- theory and the actual situation found in the countries of our examination.

# I. Theory Overview:

## Definitions

To be able to discuss necessity or redundancy of ‘hate speech’ restrictions we have to define what ‘hate speech’ actually means. One of possible perspectives is offered by Bhikhu Parekh who specifies that ‘hate speech’ may have different meanings in different contexts. Every country provides a different definition in its ‘hate speech’ restricting legislation. (Parekh 2006) According to Parekh, ‘hate speech’ could be defined as a speech that “*expresses, encourages, stirs up or incites hatred against a group of individuals distinguished by a particular feature or set of features such as race, religion, nationality and sexual orientation.[...] It implies hostility, ill-will, severe contempt, rejection, a wish to harm or destroy the target group, a silent or vocal and a passive or active declaration of war against it.*” (Parekh 2006, 214)

Another perspective concerning the possible definitions is provided by the advocate of ‘hate speech’ regulations, Jeremy Waldron. In his paper *Dignity and Defamation: The Visibility of Hate* Waldron states that the commonly used term ‘hate speech’ bears several conceptual difficulties. (Waldron 2010) These conceptual difficulties are tied to both parts of this expression, ‘hate’ and ‘speech’. According to Waldron, the term ‘speech’ automatically creates an association with solely spoken word while other sorts of expression could be neglected in spite of their importance. The term ‘hate’, on the other hand, could create an impression that the regulations are imposed in order to “*change people’s attitudes or control their thoughts*”. (Waldron 2010, 1601) Therefore, as Waldron suggests, we should rather use terms such as “*group libel*” or

“*group defamation*”. (Waldron 2010, 1601) However, despite Waldron’s suggestion, for the purposes of this paper the adoption of the term ‘hate speech’ will be made. This will be done for two reasons. First of all, the distinction between ‘hatred’ and ‘defamation’ or ‘libel’ is quite substantial. As Parekh (who is also a defender of ‘hate speech’ restrictions) puts it, “*Hatred is not the same as lack of respect or even positive disrespect, dislike, disapproval or a demeaning view of others.*” (Parekh 2006, 214) In this paper I will examine different levels of strictness of ‘hate speech’ regulating policies. The most restrictive of them will include ‘libel’ and other similar content that is present in Waldron’s definition of ‘hate speech’. The least restrictive policies would require the imminence of violence affecting certain group in the society. Second, ‘hate speech’ in this paper will not only refer to the verbal communication of ideas but also to other forms of expression bearing the features of Parekh’s definition.

## Concepts

When looking back to the 18th century, already several important documents can be found establishing the freedom of speech as one of the most essential rights.

Undoubtedly, one of these documents is the Declaration of the Rights of Man and the Citizen from 1789. Article 11 of this declaration states that: “*The free communication of ideas and opinions is one of the most precious of the rights of man; every citizen can then freely speak, write, and print, subject to responsibility for the abuse of this freedom in the cases is determined by law.*” (Kreis 2004) Back in 1789 the rights were not only formulated. The latter part of the Article 11 of the Declaration clearly states the



possibility of further regulation of these rights in order to prevent their abuse. So the problem being dealt with in this paper can be dated back to the formulation of these freedoms itself.<sup>2</sup>

The debate focusing on the adequate limitations on freedom of expression is not a recent issue as well. One of the most prominent defenders of the free speech is John Stuart Mill. In his concept of the freedom of speech he focuses specifically on the issue of proper justifications for possible restrictions. The most important aspect of his defense of free speech is his claim that also the speech that would defend the immoral opinions and teachings should have the same legal guarantees to be expressed to preserve the plurality. (Mill 1978) This is a crucial argument for our further research and many other authors are sharing the same or similar position.

However, Mill himself proposes that in specific circumstances there exists an exception of the rule. In his famous work *On Liberty* he clearly states, that there is a difference between expressing one's opinions and expressing opinions that would cause a potential harm to others.<sup>3</sup> (Mill 1978)

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<sup>2</sup> Another document that was created almost at the same time as the Declaration of the Rights of Man and the Citizen is the Constitution of the United States. The first Amendment lists the same right for freedom of expression. However, unlike the Declaration, the First Amendment does not mention any further regulation of this right.

<sup>3</sup> *"On the contrary, even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavorable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people[...] That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men's modes of action, not less than to their opinions".* (Mill 2010, 37)

In a way, what Mill illustrates in *On Liberty* on his example of expressing negative (hateful) opinions about a corn-dealer in front of a raging mob is a ‘test of clear and present danger’<sup>4</sup> which is common in the United States’ approach to the limitations of freedom of speech provided in the First Amendment of the Constitution. In many European countries the restrictions of freedom of expression go beyond the ‘test of clear and present danger’ and the limitations also quite often include the speech that does not necessarily present immediate threat to the group of people targeted by such speech. This approach is in the United States often referred to as ‘balancing’. (Baker 2009)

Balancing, as I have already mentioned, is very common approach found in many European countries. However, C. Edwin Baker claims that this specific approach could still be found in many cases also in the United States, and, on the contrary, the concept that ‘hate speech’ has to undergo ‘test of clear and present danger’ is now also adopted by one European country.<sup>5</sup> (Baker 2009) The question is: balancing of what? We could answer this question by looking at the documents such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. While Article 10.1 of the Convention for Protection of Human Rights guarantees the freedom of expression, Article 10.2 specifies that this freedom may be limited in order to protect “*national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for*

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<sup>4</sup> ‘test of clear and present danger’ was first presented by Justice Oliver Wendell Holmes in 1917 in case *Schenck v. United States*. Holmes “[...] explained that when performed with the appropriate intent, the act of speaking or writing could constitute the crime of attempt if, as a matter of “proximity and degree,” the “tendency” of the communication was to cause the punishable act of obstructing the draft.” (Post 2000, 2358) Later in case of *Debs* Holmes added the requirement of imminence to his previous formulation of ‘test of clear and present danger’ (Post 2000)

<sup>5</sup> the prominent example in Europe is the Hungarian Constitutional Court decision for racially motivated hate speech to pass the American ‘clear and present danger’ test (Baker 2009)

*the protection of the reputation or rights of others*". (Convention for Protection of Human Rights 2010) Similar formulation can be also found in the International Covenant on Civil and Political Rights in Article 19 and 20. This formulation is, however, quite vague. I will examine whether the restrictions that limit the freedom of expression more extensively than to the threat of 'clear and present danger' are justifiable, or dealing with 'hate speech' should be left for the civil society to cope with.

An important concept while talking about the policies regulating freedom of speech is the theory of the 'marketplace of ideas' or 'free trade of ideas' introduced first in 1918 by the Justice of the United States, Oliver Wendell Holmes. (Post 2000) The 'marketplace of ideas' can be considered a parallel to the liberal theory of economy introduced by Adam Smith in his famous concept of the 'invisible hand of the market'. The common feature of both theories is the self-regulating capacity of the marketplace. As Post describes it, in the 'marketplace of ideas' the different thoughts are competing with one another. The one that passes the test of acceptance of the marketplace can be considered to be true. (Post 2000) In this paper the strength of the 'marketplace of ideas' is determined by the strength of the civil society. If the civil society is strong, so is its 'marketplace of ideas'. In case that the country's civil society is capable to combat 'hate speech' and other opinions that would be perceived as inadmissible, the justification for adopting restrictive policies on freedom of speech might be more difficult to prove. However, in countries where the civil society is still lacking the ability to reject presumably harmful speech, some restrictions on free speech and expression would probably be acceptable or even needed to ensure the safety of the citizens targeted by such speech.

Robert Post is one of the authors that almost constantly contribute to the debate around the 'hate speech' regulations. One of the points he makes suggests potential conceptual difficulty in distinguishing “*hatred from ordinary dislike or disagreement*” the latter of which are generally considered to be acceptable emotions. (Post 2009, 125) This distinction becomes especially important once the 'hate speech' restrictions are codified in the country's laws. Post specifies that this distinction is then crucial for assessing concrete actions as either violating the law or being in accordance with it. Law also represents an important institution which is another of the factors that Post examines in his work *Hate Speech*<sup>6</sup>. There are many various institutions<sup>7</sup> that are in charge of enforcing of the legislation in a country. They are also important when it comes to the meaningful and fair implementation of 'hate speech' restricting policies.

The risk connected to the implementation and enforcement of the 'hate speech' regulations is their abuse. Possible abuse of such regulations is described by Andras Sajo. He especially points out the danger of misuse of the 'hate speech' restrictions by the state authorities in order to “*prevent the communication of facts which would cause embarrassment, or which are otherwise needed for the free formation of opinions or for artistic freedom*”. (Sajo 2004, 15) The role of civil society that is being examined in this paper is crucial also in this aspect. Strong civil society would be able to react adequately to the abuses of the regulations by the government authorities while weak civil society would be more likely to neglect such abuse. Sajo also points out that practices connected to the abuse of these restrictions are commonly found in the undemocratic

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<sup>6</sup> this work was, among others, also presented as one of the papers at the series of workshops dedicated to “‘Hate Speech’ and Incitement to Violence” at Columbia University School of Law in 2009

<sup>7</sup> Law itself, schools (Post 2009), police, civil society organizations, regulators, etc.

regimes as, i.e., communism and other totalitarian and authoritarian regimes. (Sajo 2004) The two countries that are going to be presented in the following parts of this paper are former members of the Soviet Block (Slovakia and Hungary). The question to analyze is whether the civil society of these countries is still marked by the legacy of communism, or whether 20 years of democracy have been enough to form a civil society able to react to potential abuses of 'hate speech' restricting legislation.

One of the most fundamental questions for us to answer is whether the countries should adopt 'hate speech' regulating legislation at all. As pointed out by Christopher Patz, law can have both "*instrumental and symbolic role in influencing societal behavior*". (Patz 2009, 7) The first, instrumental, function of law reflects our traditional understanding of it, that is; "*law can change social behavior through sanctioning certain types of conduct*". (Patz 2009, 7) The second type of the law's function, symbolic, is based on the assumption that law can in the long term affect the perception of society on what type of conduct is socially acceptable or "*morally wrong*". (Patz 2009, 7) These roles of legislation are of particular importance when it comes to the legislation dealing with 'hate speech'. But are the laws really able to change people's personal beliefs? Will people stop hating each other just because of the piece of legislation? One of the possible challenges to this theory can be found, again, in works of Edwin Baker who specifies six reasons why the 'hate speech' restrictions in law would not help to solve but rather worsen the perception of 'hate speech' and hate crime in society.<sup>8</sup> (Baker 2009)

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<sup>8</sup> "(1) allowing and then combating hate speech discursively is the only real way to keep alive the understanding of the evil of racial hatred;

Another author that question legitimacy of the ‘hate speech’ regulating policies is Ronald Dworkin. His works provoked lively debate with the defenders of such policies (i.e., Jeremy Waldron). Dworkin and Parekh both claim that freedom of expression is definitely one of the most important rights. However, Parekh in his works claims that free speech is our moral right (not the natural right) (Parekh 2006), and Dworkin adds to this statement that the freedom of expression is also important “*instrumentally*”- when people will be allowed to express their true opinions, it will produce much better effects for the whole society than would be provided by the ‘hate speech’ restrictions. (Dworkin 1996, 200)

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- (2) forcing hate speech underground obscures the extent and location of the problem to which society must respond;
  - (3) suppression of hate speech is likely to increase racists’ sense of oppression and their willingness to express their views violently;
  - (4) suppression is likely to reduce the societal self-understanding that democracy means not eliminating conflict through suppression – what Justice Jackson described as the unanimity of the graveyard 34 – but rather moving conflict from the plane of violence to the plane of politics;
  - (5) legal prohibition and enforcement of laws against hate speech are likely to divert political energies away from more effective and meaningful responses, especially those directed at changing material conditions in which racism festers;
  - (6) the principle justifying prohibitions and the specific laws prohibiting hate speech are likely to be abused, creating a slippery slope to results contrary to the needs of victims of racial hatred (including jailing the subjects of racial hatred for their verbal responses) and to the needs of other marginalized groups.” (Baker 2009, 20)

## II. Challenges in the Civil Society

### Cleavages

One of the external factors influencing the legislation and policies that are implemented in respective countries is their historical development which is often also an underlying factor for creation of the cleavages that these countries experience. A widely accepted definition of such social cleavage can be found, i.e., in the work *International Society, Cleavages and Issues* by Fulvio Attinà who states that social cleavage “is the division of the members of society on the basis of some criteria. *Cleavages divide society members into opposite groups and cause political conflict when reciprocal hostile attitudes and actions arise in the opposite groups.*”<sup>9</sup> (Attinà 2002, 219) The concept of social cleavages is very important aspect to consider in this paper because the hostile attitudes are often reflected and manifested in the form of ‘hate speech’.

Cleavages in society are closely connected to the country’s demography. Especially relevant is the number of minorities (mainly those based on nationality, ethnic and religious affiliation, sexual orientation, etc.) that can potentially create the target groups of ‘hate speech’. The importance of the cleavages is also in their predisposition to shape the political situation in the country as the political parties are often formed around the issues standing behind these cleavages. Subsequently, the voting behavior

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<sup>9</sup> The hostile attitudes don’t necessarily have to be reciprocal, sometimes they are only coming from one side of the cleavage

of the citizens is also influenced by the specific cleavages and divisions. (Andersen and Heath 2003)

Moreover, the number of cleavages in the country further influences the strength of civil society. If the society is polarized on multiple issues- creating many cleavages- then there is a higher chance that such a civil society will not be able to act jointly on the issues concerning only the 'other side' of the cleavage. Therefore, if the society experiences too many cleavages, it may diminish its chance to perform as a single actor that could effectively participate in the creation and fair enforcement of the policies. On the other hand, the diversity within a society does not necessarily have to lead to the creation of cleavages. It can be, on the contrary, the factor that contributes to the creation of plurality of opinions that is one of the most important preconditions of creating a strong civil society that is subsequently strengthening the state of democracy and encouraging productive public discourse. Furthermore, plurality that does not create cleavages is enabling civil society to handle some of the issues even without (otherwise possibly necessary) state intervention. This is especially relevant for dealing with hate speech restrictions.

## Target Groups

According to the hate crime statistics of FBI, in 2009:

- *"48.8 percent of the victims were targeted because of the offender's bias against a race.*



- 18.9 percent were victimized because of a bias against a religious belief.
- 17.8 percent were targeted because of a bias against a particular sexual orientation.
- 13.3 percent were victimized because of a bias against an ethnicity/national origin.
- 1.2 percent were targeted because of a bias against a disability” (Federal Bureau of Investigation 2010)

Even though these statistics refer to the hate crime rather than ‘hate speech’, they are very helpful for our identification of the target groups. A target group is *“the group that is both subject and audience of the hate speech”*. (Moon 2008) These statistics are, of course, not representative of the target groups in other countries. However, as I will demonstrate in the individual case studies and as it is also reflected by the FBI statistics, the target groups are often determined on the basis of being a member of specific ethnicity, nationality, religious belief, sexual orientation, but also by the affiliation to, i.e., a political party or other organization, institution, or association (both formal or informal).

All of the above mentioned groups are commonly targeted by ‘hate speech’. However, the inclusion of these groups in the society may differ and so can their involvement in the public discourse. This brings us back to the strength of civil society in terms of its commitment to tolerance and equality which can be also measured by the ability of these diverse groups to protect themselves from potential ‘hate speech’ assaults, and by the willingness of majority population or other groups within the society

to condemn and actively fight against such assaults. Therefore, the importance should be also ascribed to creating and facilitating the conditions for the so-called counter-speech<sup>10</sup>, as Katharine Gelber points out, for the target groups to “*answer back, to engage in more speech to discuss, and counteract, the hate speakers’ messages*” (Gelber 2012)

## Stereotypes

Stereotypes can be understood as generalizations of the assumed characteristics of a certain group of people. Stereotyping can have a very negative impact on the way how a specific group is perceived by the rest of the society. Negative stereotypes can create prejudices that may lead to appearance of problematic behavior including discrimination (both positive and negative), violence, and more frequent occurrence of ‘hate speech’ targeting the stereotyped groups.

The big importance should be also ascribed to the way how these stereotypes are presented in the society. As will be illustrated on the examples of election campaign billboards portraying minorities in Slovakia in the Case Studies section<sup>11</sup>, stereotypes can have especially negative effects on the perception of these groups by the society when they come from a political (at the time of publishing of these billboards also the governmental) party which can be seen as some sort of an authority approving of this kind of perception and prescribing certain behavior towards the depicted groups.

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<sup>10</sup> “Counterspeech ought to be conceived of as a supported, enabled response to hate speech, one that enables speakers both to contradict the messages contained within hate speech acts and to counteract the silencing and disempowering effects of hate speech acts.” (Gelber 2012)

<sup>11</sup> See page33

### III. Determinants of Viable Civil Society

In this section I will focus on several factors that have an influence on the strength, flexibility and ability of the civil society to react in situations that would require its involvement such as, i.e., when a specific segment of the population is a subject to the 'hate speech' assaults. These factors can also both directly and indirectly<sup>12</sup> determine the extent of the regulations of freedom of speech that the respective countries (should or could) adopt. Also, the factors like: level of democracy, historical and cultural development of the country, involvement of the individuals in both formal and informal organizations (civil society organizations, non-governmental organizations, non-profit organizations, etc.), media systems, distribution of assets, etc., can function as a set of criteria while examining the civil society of the countries chosen for the case studies- Slovakia and Hungary.

#### Level of Democracy and Historical and Cultural Development

Undoubtedly, the level and state of a country's democracy create preconditions for the policies that country decides to adopt and enforce. However, this relationship is usually examined from a different standpoint. The researchers are often more interested in how the restrictions on speech themselves influence the state and level of democracy, rather than what are the conditions preceding the creation of such legislation. This approach is often reflected in the indices created by various institutions monitoring the

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<sup>12</sup> i.e., level of democracy may have direct influence on the extent of the regulation, indirect influence occurs through civil society

state of democracy in countries all over the world, i.e., Democracy Index by the Economist Intelligence Unit.<sup>13</sup> Thus we can observe that the relationship between the legislation addressing freedom of speech and the level of democracy in the country is mutually reinforcing- while the adherence to democratic principles is likely to influence the policies and legislation that are being adopted, the extent of the (free speech) regulations is affecting the country's further democratic standing in the future.

However, the relationship between democracy and civil society is often not as clear. Non-totalitarian way of governance is very important for creating conditions for development of a strong civil society. (Malena and Heinrich 2007) Adherence to democratic principles creates an environment in which it is easier for the civil society to become an underappreciated agent in the political discourse. Although, just providing these conditions doesn't implicitly mean that strong civil society will indeed develop. Many democratic countries rank lower in the already mentioned indices precisely because of their inactive and non-participant civil society. On the contrary, a viable civil society can be also formed in countries that do not necessarily observe the democratic principles. In case that such a civil society is formed, it can contribute even to the change of the regime's practices and strengthen the process of democratization.<sup>14</sup> Productive political discourse and ability to influence the creation and effective enforcement of policies is therefore more the matter of a strong civil society than the state of a country's democracy.

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<sup>13</sup> Ranking of the individual countries in the indices often depends on how much protection of freedom of speech are they able to ensure (both in the media and in public speech) (The Economist Intelligence Unit 2010)

<sup>14</sup> This is, of course, possible only under certain conditions in non-totalitarian regimes, i.e., people have to have at least some possibility to assemble or share information, etc. The example could be recent protests and revolutions in the North African states (especially Egypt).

Moreover, even if the country follows the democratic principles at present, often it is its historical and cultural development that influences the state of civil society. If the country experienced long periods of undemocratic rule, civil society may take a longer time to adjust to the new rules of the game- or to be formed as such. As the social experiment of Robert Jacobs and Donald Campbell suggests, some of the established social norms (even the arbitrary ones) can persist in the society as long as up to five or six generations after removing of the initial impulse<sup>15</sup>. (Jacobs and Campbell 1961) Therefore, if the culture of political participation was by any means suppressed under undemocratic rule it may take several decades for the civil society to become an equal and involved actor in political discourse.

## Citizen Participation

Civil society is often defined in the terms of citizen participation. This participation is often determined by membership in formal organizations- either the ones directly connected to the political arena or non-governmental, non-profit or civil society organizations. However, some authors suggest that assessing the strength of civil society solely through the membership in the formal associations is, at best, inadequate. *“Definitions of civil society that focus on 'organisations' fail to account for informal and ephemeral forms of collective action. Second, such definitions tend to lead to an assessment of civil society according to the number and form of existing organisations. This type of approach introduces a bias towards those countries, mainly in the West,*

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<sup>15</sup> Persistence of the norm depended on the size of the group and on the number of associates (actors) placed in the first generation. The lower number of both- group members and cooperating associates- the shorter persistence of the norm (Jacobs and Campbell 1961)

*where formal or registered organisations are more prevalent, discriminating against countries where - for a variety of reasons - most CSOs are informal or not registered.”* (Malena and Heinrich 2007, 340). Bearing this in mind, in the examination of the countries selected for the case studies we will consider participation on both formal level- by participation in the elections, etc., and informal level- by looking at citizens’ interactions in everyday life. Similar approach is also recommended by Caroline Hodges Persell who further distinguishes the institutional and qualitative dimension of civil society. (Hodges Persell 1997) However, Persell includes the informal associations in the same category as the formal ones and places them into the institutional dimension. The qualitative dimension includes factors that affect the quality of citizens’ social life *“including safety, mortality, civility, respect for diversity, and social order.”* (Hodges Persell 1997, 150) This dimension should be considered equally important for this paper as is the institutional one, as it deals with the concepts directly associated with ‘hate speech’, especially when it comes to tolerance and social order.

Respect for diversity may be influenced by another factor- the distribution of assets in the society. Persell’s study shows that less economic distress is associated with higher tolerance towards racial and different sexual orientation minorities. (Hodges Persell 1997)

## **Media Systems**

Media plays a very important role in the discussion about ‘hate speech’ for several reasons. First of all, they are an important source of information (especially

when free and impartial) which is vital for a well-functioning civil society. One of the factors that is always being considered while measuring the level of democracy is the freedom of the media. Therefore, there are several institutions that focus specifically on assessing the media freedom in countries around the world as, i.e., Freedom House, International Research & Exchanges Board (IREX), and Reporters Without Borders (RSF). (Burgess 2010) It is not that only the media has to be free and impartial, it is also the question of the ownership of media and independence of the regulators that are in charge of enforcing the policies. If either the media or the regulators lack independence from the state, the media is more likely to become a tool for government propaganda than to serve the civil society. Media (if functioning properly) is often considered to be the watch-dogs over politics and therefore they may constitute a powerful partnership with the civil society to influence the proper enforcement of the policies regulating the freedom of speech.

Secondly, media can be very influential in spreading the 'hate speech' by either present it in the form of stereotypes and prejudices, or direct incitement towards hatred. (Neier 2008) Extreme cases of such media abuse have occurred in Bosnia and Herzegovina and Rwanda, where genocide occurred on a big part because the media provided the space for propagating intolerance and incitement to violent action. (Neier 2008)

Lastly, as some authors claim, by depicting and publicizing hate crimes media allow the offenders to acquire the 'fame' among the groups of extremists (Dharmapala and McAdams 2005), which may lead to potential further dissemination of 'hate speech'. These authors argue that in the society there are more people who share the extremist

points of view but not all of them will necessarily admit this fact, let alone actual engage in 'hate speech' or hate crime. That's why they state that "*suppressing hate crime publicity could also work to lower the potential offender's estimate of the number of potential esteemers for the crime. Like hate speech, the factual reporting of hate crimes could cause individuals to update their beliefs about the number of individuals in society who approve of such acts.*" (Dharmapala and McAdams 2005, 112) In spite of this claim, we have to admit that 'hate speech' and hate crime will not disappear by omitting them from the news. On the contrary, if 'hate speech' and hate crime are not publicized, civil society may stop perceiving them as an actual problem.



## IV. Case Studies: Slovakia and Hungary

### Possible Impact of 'Hate Speech' Regulations

Before looking into the specific 'hate speech' regulations and policies of their enforcement in Slovakia and Hungary, we should consider the effects that the potential regulations could have. A study by Dhammika Dharmapala and Richard McAdams shows that depending on adoption of the specific policies, the state would be able to monitor the distribution and amount of the extreme views that stand behind the expression of 'hate speech' and incidence of hate crime. Dharmapala and McAdams can be considered the defenders of some 'hate speech' restrictions, as they claim that there is a direct correlation between incidences of 'hate speech' and hate crime. (Dharmapala and McAdams 2005) as some of their findings suggest, no matter whether the state decides to adopt formal sanctions on 'hate speech' or not, it would still have the opportunity to get quite accurate idea about the dissemination of the extreme views in the society and, therefore, both state and civil society would be prepared to act when it would seem that 'hate speech' could lead to potential hate crime.<sup>16</sup> However, when the state sanctions on 'hate speech' are imposed *"some speech may be deterred, the result being a (partially or perfectly) pooling equilibrium that creates uncertainty about true social attitudes."* (Dharmapala and McAdams 2005, 97)

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<sup>16</sup> "Equilibrium with no sanctions: Thus, the equilibrium involves sincere expression: each individual expresses her true viewpoint and there is no uncertainty in equilibrium about the number of extremists. [...]  
Equilibrium with Formal Sanctions Only: Thus, those individuals whose  $x_i$  is within the permitted range of speech engage in sincere expression. The extremists, on the other hand, make the most extreme statement ( $g$ ) that is consistent with the law. Any rational observer can infer straightforwardly that those making statement  $g$  are all extremists; thus, the fraction of extremists in the population,  $r$ , is revealed in this equilibrium." (Dharmapala and McAdams 2005, 104,105)

## Methodology

In the following case studies I will assess the state of civil society of the respective countries based on the criteria that was outlined in the previous chapter. To do this assessment I will use the statistics and indices produced by the various institutions monitoring the state and level of democracy, the freedom of the media, etc.. I will further use the responses to the questionnaires that I have designed and distributed online (both in Slovakia and in Hungary) in order to demonstrate the opinions of citizens on subjects as ,among others, membership in the civil society organizations, tolerance and participation in political discourse. I will also examine the extent of regulations imposed on the freedom of speech, particularly focusing on ‘hate speech’ restrictions and de facto enforcement of these regulations.

## Slovakia and Hungary: A Comparison

### State of Democracy

In the past century, Slovakia has been part of five different state entities. (Mesežnikov and Gyárfášová 2008) Out of these, only two can be considered to be democratic- the first Czechoslovak Republic in 1920's and the present Slovak Republic.<sup>17</sup> After the fall of communism, Slovakia, as well as Hungary<sup>18</sup>, committed themselves to observe the democratic way of governance and to protect the civil

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<sup>17</sup> We have to mention that the democratic way of governing was adopted before the actual establishment of the Slovak Republic in 1993. We can date the beginning of the democratic rule back to 1989-1990- after the Velvet Revolution which meant the fall of communism in Czechoslovakia.

<sup>18</sup> Hungary held its first democratic elections in 1990 (Freedom House 2010)

liberties of their citizens. In the latest Democracy Index by the Economist Intelligence Unit , Slovakia ranks at number 38 and Hungary at number 43. These positions still qualify them as the democracies, but rather flawed than full. (The Economist Intelligence Unit 2010)

Democracy Index 2010

Category scores							
	Rank	Overall score	I Electoral process and pluralism	II Functioning of government	III Political participation	IV Political culture	V Civil liberties
Estonia	33	7.68	9.58	7.50	5.00	7.50	8.82
Chile	34	7.67	9.58	8.57	3.89	6.88	9.41
Botswana	35	7.63	9.17	7.14	5.56	6.88	9.41
Taiwan	36	7.52	9.58	7.14	5.56	5.63	9.71
Israel	37	7.48	8.75	7.50	8.33	7.50	5.29
Slovakia	38	7.35	9.58	7.50	5.56	5.00	9.12
Cyprus	39	7.29	9.17	6.43	6.11	5.63	9.12
India	40	7.28	9.58	8.57	4.44	4.38	9.41
Lithuania	41	7.24	9.58	5.71	5.56	6.25	9.12
Timor-Leste	42	7.22	8.67	6.79	5.56	6.88	8.24
Hungary	43	7.21	9.58	6.07	5.00	6.88	8.53
Jamaica	=43	7.21	9.17	6.79	5.00	6.25	8.82
Trinidad and Tobago	45	7.16	9.58	7.14	6.11	5.00	7.94
Panama	46	7.15	9.58	6.79	5.56	5.00	8.82
Brazil	47	7.12	9.58	7.50	5.00	4.38	9.12
Poland	48	7.05	9.58	6.07	6.11	4.38	9.12
Latvia	=48	7.05	9.58	5.36	5.56	5.63	9.12

Source: The Economist Intelligence Unit

As illustrated in the table above, while both Slovakia and Hungary are scoring very well in the categories like protection of ‘Civil liberties’ and ‘Electoral process and pluralism’<sup>19</sup> the significant deficiencies can be observed in the categories directly concerning the performance of civil society- ‘Political participation’ and ‘Political culture’. The low performance in these two categories may be caused by their historical development,

<sup>19</sup> In the 2010 elections in Hungary, the single government party (Fidesz) obtained enough votes to have the constitutional majority in the parliament. This may further influence the plurality.

more specifically, the long periods of undemocratic governance and the lack of democratic tradition (compared to the Western European democracies). During communism there was no space provided for the civil society to develop to a truly participatory political culture.<sup>20</sup> Taking into consideration the social experiment of Jacobs and Campbell, after little more than 20 years of democratic rule, Slovak and Hungarian civil societies still did not get rid of the social norms set by the communist rule- discouraging participation and involvement in the political process and discourse. However, depending on the urgency of the issues both Hungarian and Slovak civil societies are in some cases able to mobilize and act as shall be demonstrated later in this chapter.

### Media Freedom

Since the establishment of the independent Slovak Republic, the media has gone a long way. The latest Transparency International Slovakia report shows that number of media since 1993 has been multiplied several times in all areas- press, television, radio, and the online media. (Transparency International Slovakia 2011) After 1998 (the end of Vladimír Mečiar's government term), the media finally started to play their role of watchdogs over the political situation less arbitrarily. (Šipoš 2004) However, the situation in the media is still not ideal. In the rating of the Reporters Without Borders, Slovakia ranks at the 35<sup>th</sup> place which is the worst position among the Visegrad Group (V4) countries (order: Hungary and Czech Republic 23<sup>rd</sup>, Poland 32<sup>nd</sup>, and Slovakia 35<sup>th</sup>). (Reporters Without Borders 2010) Problematic issues while assessing Slovak media

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<sup>20</sup> Most of the formal associations were state-created under the communism and participation in the elections was compulsory.

freedom are: the media ownership, independence of media from the state, and the Press Act from 2008.

According to the study from 2004, the majority of the private media in Slovakia was owned by four foreign media groups (many of which have ties to active politicians or other influential individuals), and public media is still owned by the state. (Šipoš 2004) We can observe that plurality in the media is much bigger than in the past, but neither private nor the public media- both public television and radio which still have a reasonable share of audience, can be considered truly independent as a large part of the financing of the public broadcasters comes directly from a state budget which may lead to creating incentives for the media to please the government

Although, the most important issue for this paper is the Slovak press law that was adopted in 2008. This law *“provides for direct culture ministry control over media coverage of a range of subjects considered sensitive, as well as automatic right of response for anyone who, rightly or wrongly, thinks they have been defamed or insulted.”* (Reporters Without Borders 2008) The adoption of this law was condemned by multiple Slovak and foreign institutions as a huge violation of press freedom. As the Freedom House reports; *“Prime Minister Robert Fico filed multiple libel cases against the press in 2009, receiving up to \$135,000 in damages. In one case, Fico in September demanded roughly \$47,000 from the parent company of the daily SME after it published a caricature that mocked the secrecy surrounding his supposed health problems. The threat of lawsuits has reportedly led to growing self-censorship among journalists.”* (Freedom House 2010)

Hungary faces very similar challenges in the relation to media freedom and independence. Likewise in Slovakia, the Hungarian media are considered to be free and their ownership is largely in the hands of foreign media groups. Also, the public broadcasters face the trouble of proving their independence from the parliament and government;" *Hungary's National Television and Radio Commission (ORTT) came under significant criticism in October 2009 for awarding the only two national commercial radio licenses to frequencies with suspected connections to the ruling MSzP and opposition Fidesz.*" (Freedom House 2010) As well as in Slovakia, the public media are state supported. (Freedom House 2010)

The new media law that was recently passed (December 2010, amendments made in March 2011 did not affect the most problematic parts) is especially crucial for further development of media freedom in Hungary. As well as the Slovak Press Act, it provoked huge criticisms and the involvement of the European Union. However, the possible impacts of the Hungarian law could be much worse. The new media law establishes a Media Council which is "[a]ppointed directly by the government, the Media Council's five members will not only have a right of oversight but also the authority to impose heavy fines (of up to 700,000 euros for a TV station and 89,000 euros for an online publication) for content that is "not politically balanced" or "violates human dignity." The council can also punish offences against religion and the nation, while journalists can be forced to reveal their sources when national security is involved. Although the government intends to ensure "fair balance" in the media, it has not respected this principle in its choice of Media Council members, who all belong to the

*ruling Fidesz party. The council is supposed to enforce “balance” but it will have no opposition representatives.” (Reporters Without Borders 2010)*

### **‘Hate Speech’ Legislation, Enforcement, and Civil Society Responses**

Freedom of speech in Slovakia is guaranteed by the Constitution and regulated (in regards to ‘hate speech’) by the law number 300/2005 of the Collection, the most recently amended in 2009. Articles 421-424 specifically determine the ability to punish the action (speech) that:

§ 421- supports or promotes the extremist groups that incite towards hatred or commit hate crimes

§ 422- by the use of symbols (flags, signs) shows sympathy towards such groups, or denies and approves of holocaust

§ 423- publicly defames any nation (and its language), race, ethnic or religious group

§ 424- incites towards national, racial or ethnic hatred, and publicly threatens either individual or a group because of their affiliation to any nation, nationality, race or skin color.

This law, compared to the legislation of Hungary, is quite extensive in regulating ‘hate speech’. However, the actual enforcement of these policies may somehow seem not as strict. For illustration we consider the example of the Gay Pride march organized in Bratislava in May 2009. The event found a huge aversion on the side of the conservatives and nationalists. These two groups organized a simultaneous counter-demonstration. Participants of the counter-demonstration were publicly defaming

homosexuals and their supporters by shouting offensive slogans. The police forces that were supposed to secure the safety of the Gay Pride march stepped in only after the participants of the counter demonstration had started to incite towards direct violence, threaten, and throw rocks to the supporters of the Gay Pride march. The police scattered the counter demonstration on a basis of actual violence that its participants were conducting, not because the actual 'hate speech' that preceded this violence. However, when we take a closer look at the legislation again we can observe that sexual minorities are not mentioned in any of the articles. This would imply that the police securing the event acted in accordance with law, but it also means that Slovak 'hate speech' legislation does not protect all of the minorities equally.

Civil society in Slovakia, as well as in Hungary, experience big deficiencies when it comes to citizen engagement in civil society organizations. In the questionnaire that I have distributed online, only 31% of the respondents stated that they are active members of clubs or other (formal or informal) associations and only 8% claimed to be active supporters of organizations with political affiliation. Furthermore, 69% of respondents stated that they have never participated in a demonstration and another 26% participated only in very few, and 74% thinks that Slovak society is either quite or very intolerant towards minorities, but almost half of the respondents indicated that they challenge the stereotypes about minorities only sometimes.<sup>21</sup>

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<sup>21</sup> The results of the questionnaire may be slightly biased as more than a half of those who responded indicated that they have university education and therefore their perceptions on some issues may differ





Source: pluska.sk



Source: postoy.sk

The pictures above are the official billboards of the Slovak National Party in the campaign before the 2010 elections in Slovakia. The text on the billboards can be translated as follows: 'So that we don't feed those who don't want to work.' on the first billboard and 'So that our neighbor won't become our enemy.' on the second one. These billboards are depicting the typical stereotypes and prejudices that some segments of majority population hold towards the Roma and Hungarian minority in Slovakia. These

two groups constitute the two biggest minorities in Slovakia (Ministry of Culture of the Slovak Republic 2011) that are often stereotyped in very offensive ways. However, just few days after the appearance of these billboards many civil society organizations announced that they will file a law suit against the Slovak National Party, and the company who published these billboards removed them on its own expenses. This can be perceived as a very powerful intervention of an otherwise not so strong civil society. It also points out that even when the society is not a truly participant on some important issues it is able to mobilize very quickly and strongly.

In Hungary, the legislation regulating the freedom of speech in terms of ‘hate speech’ is probably the most liberal among the European countries. Similarly as in the United States, the Hungarian Constitutional Court decided to use the ‘clear and present danger test’ when assessing ‘hate speech’. This approach of the court *“highlights not the risk of allegedly or really dangerous speech, but rather the risk of restricting freedom of speech on the basis of its content, the danger of censorship.”* (Molnar 2009) This formulation, of course, does not mean that speech directly inciting towards hatred or violence is legal in Hungary as can be illustrated, similarly as in Slovakia, on the example of a Gay Pride parade. *“Extreme right groups urged visitors to their Internet sites to attack the gay pride parade in Budapest on July 5, 2008. This was not mere “hate speech” directed against the participants in the parade, protected by the American and the Hungarian constitutions. It was incitement to violent, lawless action at a specific event, and it was instrumental in producing actual physical attacks. Hateful comments expressed while many “counterdemonstrators” were holding and throwing stones and acid-filled eggs at the peaceful marchers and homemade bombs at the police meets*

*even the narrowest test required for prohibiting only speech that creates – or directly contributes to the creation of – a clear and present danger of violence.” (Molnar 2012)*

However, Hungary recently adopted a new law which makes punishable the denial of the holocaust. In the past *“Hungary's courts have rejected previous attempts to prohibit Holocaust denial, on the grounds of infringement of freedom of speech.” (Zeldin 2010)* In addition, the new media law also poses severe threat to the freedom of speech.

The tendencies of the questionnaire responses in Hungary are very similar to those in Slovakia in regards to participation, membership in formal and informal organizations and tolerance towards the minorities.<sup>22</sup> Almost 70% of the respondents think that Hungarian society is quite intolerant, and additional 12% claims that it is very intolerant. The data of the Democracy Index 2010 shows, that Hungary is doing slightly worse than Slovakia when it comes to the ‘Political participation’, but on the other hand, Hungary scores better when assessing the ‘Political culture’. In spite of the fact that civil society in Hungary is not in an ideal state, when an important urgent issue appears, it is able to mobilize the same way as we have demonstrated in Slovakia. An example for such mobilization could be the chain of events following the adoption of mentioned media law. This adoption provoked an extensive involvement of civil society regarding both- actions of formal civil society organizations and the creation of informal initiatives accompanied by the participation of citizens in the several demonstrations *“Over ten thousand protesters filled a huge square in front of the parliament building in the Hungarian capital of Budapest on Friday in the largest public show of disapproval so far for the government's new media law”.* (Deutsche Presse Agentur 2011)

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<sup>22</sup> The results of the questionnaire may not be representative because of the low response rate

## Conclusion

Freedom of speech is one of the most important features of a democracy. 'Hate speech' regulations implemented by most of the countries in the world pose restrictions to this freedom in order to protect specific segments of society- target groups of 'hate speech'- from the intolerant practices including stereotyping, prejudices and incitement towards hatred and violence. In this paper I demonstrated in a novel way the relationship between the strength of civil society (in terms of citizen participation, tolerance, historical development, and the state of democracy) and restrictiveness of the 'hate speech' regulating policies. My hypothesis in this paper was, that the countries in which the civil society is considerably strong may want to impose more liberal 'hate speech' regulations as the civil society is able to cope with 'hate speech' by its own means. This is in comparison to countries with a weak civil society that should consider adopting more restrictive policies towards 'hate speech' to protect the safety of their citizens. In the case studies I have demonstrated that the civil society in Slovakia and Hungary still experiences extensive deficiencies when it comes to the strength of civil society, especially in the area of participation and tolerance. This would imply that these countries could consider imposing more regulation on 'hate speech'. However, as the case studies have shown, civil society in Hungary and Slovakia is able to, in important situations, respond to the possible problems caused by 'hate speech' and therefore, the restrictive policies are not necessarily needed, or they might be required, but only to a limited extent.

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