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Review Paper

RESTRICTIONS ON FREEDOM OF EXPRESSION: THE LIBERAL AND THE COMMUNITARIAN CONCEPT

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Abstract. *The authors of this paper analyze the practice of the European Court of Human Rights and the US Supreme Court in cases relating to restrictions on freedom of expression, with special emphasis on hate speech which is perceived as negation of freedom of expression. Starting from the differences between the liberal and the communitarian concept of freedom of expression, the authors conclude that the legal standards developed in the US Supreme Court case-law reflect a much broader scope of rights pertaining to freedom of expression, and particularly in terms of counteracting hate speech, than the legal standards established in the case-law of the European Court of Human Rights.*

Key words: *freedom of expression, hate speech, US Supreme Court, ECtHR.*

INTRODUCTION

Hate speech can be defined as any statement that incites violence, hatred and intolerance against individuals or groups on the basis of race, ethnicity, nationality or religion (Mandić, 2014:94). It implies any statement that aims to undermine an individual or a group, on the basis of personal characteristics. Today, hate speech involves the creation of hatred based on sex, religion, political or other opinion, and origin. Hate speech can be expressed verbally, through gestures, in written or graphic form which incites violence or prejudice, or which disparages or intimidates an individual or a group (Mandić, 2014:94). Hate speech is a means to encourage discrimination, stereotypes and intolerance which can lead to the commission of violent crimes. The focal point in defining hate speech is a personal characteristic of an individual or a group. In that context, the expressed attitude toward an individual or a group does not necessarily have to result in the actual use of violence; generally, it is sufficient that such attitude encourages violent behavior. States respond to

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hate speech by envisaging relevant legal protection in the area of criminal and/or civil law (Petrušić, 2012:75-95).

FREEDOM OF EXPRESSION IN THE EUROPEAN UNION

At the international level, the most significant developments pertaining to freedom of expression are embodied in the regulations adopted by the Council of Europe (CoE) and in the judicial practice of the European Court of Human Rights (hereinafter: the Court, the ECtHR). As guaranteed under Article 10 of the European Convention for the Protection on Human Rights and Fundamental Freedoms (hereinafter: the Convention, the ECHR), everyone has the right to freedom of expression, which includes the right to receive and impart information and ideas, without interference by public authority and regardless of frontiers. However, the exercise of these rights may be subject to conditions, restrictions and penalties. In order to be deemed acceptable, any interference with this right needs to satisfy a set of conditions which are stipulated in Article 10(2). Consequently, any restriction imposed on the freedom of expression needs to be prescribed by law, to pursue a legitimate aim, and to be necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Given the fact that hate speech is closely associated with discrimination, Article 14 of the Convention is highly important for legal protection within the CoE framework as it stipulates that: "The enjoyment of the rights and freedoms, set forth in this Convention, shall be secured without discrimination on any ground, such as: sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". In addition, Protocol No. 12 of 2000 introduced universal prohibition of discrimination, especially by public authorities.

In the Recommendation R (97) 20 on "Hate speech", adopted by the Committee of Ministers, the Council of Europe stressed that the term hate speech covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism, or other forms of hatred based on intolerance, including intolerance, expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. This Recommendation requires the Member States of the Council of Europe to introduce the community service sanction in their criminal law protection systems. In the area of civil protection, it is recommended to allow legal standing (legitimacy) to organizations involved in the victims' rights protection. In particular, this Recommendation emphasizes the importance of counteracting hate speech in the media.

The Recommendation R (97) 21 on the media and promotion of a culture of tolerance, adopted by the Committee of Ministers of the Council of Europe, stipulates that media reporting should be based on true facts. Media should be particularly cautious in reporting on cases involving tension between different groups. It is necessary to avoid stereotypes against religious, ethnic and cultural communities. Broadcasters need to challenge prejudices and intolerant statements given in interviews and TV shows.

The case law of the European Court of Human Rights (ECtHR) includes many cases of hate speech, adjudicated on the basis of violation of Article 10 of the Convention. In most cases, it is

about verbal offenses committed through the media, where the Court has to determine whether the applicants were deprived of the right to freedom of expression. The Court has considered different forms of hate speech, such as: ethnic and racial hatred, negationist and revisionist attitudes, threat to the democratic order, circulating homophobic leaflets, condoning terrorism and war crimes, etc. Chronologically speaking, the ECtHR case law has evolved. The Court's earlier approach was based on an estimate of a balance between the freedom of expression and the prohibition of the abuse of rights envisaged in Article 17 of the Convention. Thus, with reference to Article 17 of the Convention, the Court declared such applications to be inadmissible.[1] As opposed to such cases where the Court decided to dismiss the applications, there were several cases when the Court decided to consider whether there was a violation of Article 10. Relying on the merits of a specific case, the Court primarily examined whether there was interference in the freedom of expression exists, whether it was prescribed by law, whether it pursued one or more legitimate aims prescribed in Article 10 (2), and whether such interference was necessary in a democratic society.[2] In line with the more recent ECtHR approach, the violation of rights protected under Article 10 is interpreted in broader terms, as including the expression of views which may be offensive and disturbing (Đorđević, 2012:484). In its practice,[3] the Court has established a standard that, when a journalist seeking historical truth expresses views on historical issues in the interest of a public debate, his conviction constitutes a violation of Article 10. The right to freely express opinions is the very essence of freedom of expression in a democratic society, which contributes to establishing the historical truth. When it comes to journalist articles, the decisive criterion which the Court takes into account is whether the impugned article is unreasonably offensive or insulting, and whether it has incited others to hatred or intolerance.

The more recent case-law reflects the need to rule on cases concerning alleged hate speech on the Internet. The Court first discussed this issue in the landmark case of *Delphi v. Estonia*.[4] The applicant, the owner of an Internet news portal, was convicted of publishing offensive comments that readers posted on the portal, which were later removed by the site owner but only after it had been requested by the company lawyer of the injured party (SLK company). The Court issued a ground-breaking decision, which highlighted the possibility of uncontrolled spread of hate speech on the Internet. Even after deleting comments from a portal, there is a possibility that they remain permanently visible, which prevents the elimination of detrimental consequences. Thus, the Court first established the responsibility of the site owner for comments made by individuals, which unambiguously constituted hate speech against a third party, and which were not urgently removed from the portal. Given the fact that this defamatory speech infringed on the personality rights of others and amounted to hate speech and incitement to violence against them, the Court found that the applicant's freedom of expression has not be violated.

On the other hand, the Court has recently ruled that "the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression guaranteed by Article 10 only in exceptional circumstances, notably where other fundamental rights have

[1] See, for example: Case Ap. 35222/04, *Pavel Ivanov v. Russia*, Case Ap. 65831/01, *Garaudy v. France*, Case Ap. 27510/08, *Perinçek v. Switzerland*
[2] See, for example: Case Ap. 24762/94, *Surek v. Turkey*, Case Ap. 15948/03, *Soulas and Others v. France*
[3] Case Ap. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, *Dink v. Turkey*, which is not final !
[4] Case Ap. 64569/09, *Delphi v. Estonia*

been seriously impaired as, for example, in case of hate speech or incitement to violence".[5] According to the Court, the punishment of a journalist for statements made by another person… should not be envisaged unless there are particularly strong reasons for it.[6] Further, the mere risk of a prison sentence in connection with criminal proceedings may as such have a serious chilling effect. This threat itself may be disproportionate and lead to the violation of Article 10, even if such a sanction has not been issued.[7]

Contrary to the liberal standpoint, there are the so-called communitarians, who stress out that the most important social goal is the wellbeing of the community, and that the right to freedom of speech may be limited to achieve this goal. A fair and decent attitude towards other people calls for imposing certain limitations on freedom of speech, primarily aimed at preventing hate speech. In its case law, the Court also points out that it is possible to limit the freedom of expression for achieving certain goals, among which is the prohibition of hate speech. The Court has emphasized that "tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society". Thus, in some circumstances, it may be necessary to sanction or prevent all forms of expression which "spread, incite, promote or justify" hatred based on intolerance. The actions adopted must, however, be proportionate to the legitimate aim pursued.[8] According to the Court, any remarks directed against the values underlying the ECHR, aiming at the destruction of the ECHR rights and freedoms, are to be excluded from the protection envisaged in Article 10, on the grounds of Article 17 (prohibition of abuse of rights).[9] Moreover, a fundamental question when assessing the necessity of restricting an individual's right to freedom of expression is also whether the applicant intended to disseminate ideas and opinions through the use of "hate speech", or whether he was trying to inform the public about a matter of public interest.[10] Accordingly, a distinction has also been made between the applicants as the authors of the impugned statements or as the people linked to their dissemination (Weber, 2009:37-38).[11] However, regard has also been given to the responsibility of media professionals (in particular) not to provide an outlet for disseminating hate speech (Harris, O'Boyle, Bates, Buckley, 2009:454). In its case law, the ECtHR uses two principles concerning incitement to hatred and freedom of expression: a) Where the comments in question amount to hate speech and negate the fundamental values of the Convention, they are excluded from the protection, as provided for by Article 17 (prohibition of abuse of rights); b) Where the hate speech is not intended to destroy the fundamental values of the Convention, the principle of setting restrictions on protection, as provided for by Article 10 paragraph 2 of the Convention is applied. Based on the ECtHR case law, it may be concluded that there is a thin line between the permitted freedom of expression and hate speech, which requires a casuistic (case-to-case) approach in resolving legal cases.

[5] Case Ap. 33348/96, *Cumpănă and Mazare v. Romania*, § 115
[6] Case Ap. 15890/89, *Jersild v. Denmark*, § 35
[7] Case Ap. 59405/00, *Erbakan v. Turkey*, § 69
[8] See: Case Ap. 35071/97, *Gündüz v. Turkey*, § 40 and Case Ap. 24762/94, *Sürek v. Turkey*, § 62.
[9] See: Case Ap. 26261/05 and 26377/06, *Kasymakhunov and Saybatalov v. Russia*, §§ 113–114 and Case Ap. 24662/94, *Lehideux and Isorni v. France*, § 35
[10] Case Ap. 35071/97, *Gündüz v. Turkey*, § 44
[11] Case Ap. 15890/89, *Jersild v. Denmark*, § 31

FREEDOM OF SPEECH IN THE UNITED STATES

The First Amendment to the U.S. Constitution, adopted on 15 December 1791, envisages the freedom of speech as a constitutional right. The Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".[12] The general phrase for the freedoms guaranteed in the 1st Amendment to the U.S. Constitution is *freedom of expression*, which implies individual liberty and the ability to express and communicate ideas free from government intrusion. It includes the freedom of speech, freedom of the press, freedom of religion, freedom of assembly, and freedom of petition. It is often considered that freedom of speech is the foundation on which all other 1st Amendment freedoms are based; the other freedoms could not exist without it.

The U.S. Constitution is considered to provide a broad protection to freedom of speech, based on ideology that allowing individuals to freely express themselves leads to a transparent and representative government, more tolerant ideas and a more stable society. Although this right is not absolute, there are no explicit definitions nor criteria under the US law for limitations to free speech. Unlike the European Convention on Human Rights, where Article 10 (2) regulates that restriction imposed upon the freedom of expression needs to be prescribed by law, to pursue a legitimate aim and to be necessary in a democratic society, the U.S. Constitution provides no similar criteria for determining whether the restriction could be justified. However, it is the U.S. Supreme Court that has recognized the exceptions to freedom of speech, based on certain types of speech and in different contexts.

The U.S. Supreme Court has identified categories of speech that are not protected by the First Amendment and may be prohibited entirely, such as: obscenity,[13] child pornography,[14] and forms of speech that constitute so-called "true threats".[15] Traditionally, if the speech does not fall within one of the above categorical exceptions, it is protected speech (Ruane, 2014:5). In a 2010 case, *U.S. v Stevens*[16], the Supreme Court made clear that it would not be likely to add more categories to the list of types of speech that currently fall outside the First Amendment's scope. Consequently, the Court has a very narrow approach to the categories of speech which it considers are not safeguarded by the Constitution. However, even when the speech is generally protected by the First Amendment, it may be subject to restrictions in varying degrees, and the Supreme Court has developed its practice on that matter over the years.

In the landmark case of *Schenck v United States*,[17] the Supreme Court defined the limits of the First Amendments' right to free speech in an early 20th century. The case concerned a conviction of a prominent socialist, Charles Schenck, who attempted to distribute thousands of flyers to American servicemen drafted to fight in World War I. In its decision, the Supreme Court found that the First Amendment right to free speech had not been

[12] The Constitution of the United States, Amendment I
[13] Case Ap. 354 U.S. 476, 483 (1957) *Roth v. United States*, Case Ap. 413 U.S. 15, 27 (1973) *Miller v. California*, Case Ap. 481 U.S. 497, 500 (1987) *Pope v. Illinois*
[14] Case Ap. 495 U.S. 103 (1990) *Osborne v. Ohio*, Case Ap. 435 U.S. 234 (2002) *Ashcroft v. Free Speech Coalition*
[15] Case Ap. 394 U.S. 705, 708 (1969), *Watts v. United States*, Case Ap. 537 U.S. 993 (2002) *Stewart v. McCoy*
[16] Case Ap. 559 U.S. 460 (2010) *U.S. v. Stevens*
[17] Case Ap. 249 U.S. 47 (1919) *Schenck v. United States*

violated and concluded that "the question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger". The "clear and present danger" standard encouraged the use of a balancing test to question the state's limitations on free speech on a case-by-case basis. If the Court found that there was a "clear and present danger" that the speech would produce a harm that Congress had forbidden, then the state would be justified in limiting that speech.

This pragmatic standard had been used for over fifty years. In a 1969 case, **Brandenburg v. Ohio**,[18] dealing with free speech, the former standard was finally replaced with the *"imminent lawless action" test*. In this case, the Court ruled that: "The constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation, except where such advocacy is directed to inciting imminent lawless action and is likely to incite or produce such action." This new test stated that the Government could only limit speech that incites **imminent** unlawful action. This standard is still applied by the Court in free speech cases involving advocacy of violence.

Legal standards for limitation of free speech may also be found in the case *Chaplinsky v. New Hampshire*,[19] where the Court developed the "fighting words" doctrine. In the case at the issue, the appellant was a Jehovah's Witness who was arrested for attacking the town marshal, and shouting: "You are a God-damned racketeer" and "A damned Fascist", for which he was later charged and convicted under a New Hampshire statute preventing intentionally offensive speech being directed at others in a public place. He appealed claiming that the law was "vague" and that it infringed upon his First Amendment rights to free speech. In its decision, the Supreme Court upheld his conviction and concluded that the insulting or "fighting words" in the instant case neither contributed to the expression of ideas nor possessed any "social value" in the search for truth. Therefore, they are not protected by the First Amendment.

The previously mentioned case law shows several categories of speech, recognized by The Supreme Court, which can be subject to restrictions. Consequently, freedom of speech in the United States is not absolute. However, the legal protections of the First Amendment remain as the broadest protection provided by any industrialized nation, and occasionally controversial and critical (Lule, 2012: chapter 1.5).

HATE SPEECH IN THE CASE-LAW OF THE U.S. SUPREME COURT

In contrast to the law of many other liberal democratic nations, American law holds that the constitutional safeguards concerning the freedom of expression extend to public speech that promotes hatred against racial, ethnic, and religious groups (Heyman, 2009:156). Over time, the U.S. Supreme Court has ruled in some major landmark cases dealing with hate speech, which illustrate the broad protection that free speech enjoys in the United States.

The importance of freedom of speech in the United States is explained in *Terminiello v. City of Chicago (1949)*.[20] In his speech given to the Christian Veterans of America, a Catholic priest criticized various racial groups and made a number of inflammatory comments. The Supreme Court held not only that this kind of speech was protected under the First Amendment but also that provocative and inflammatory content of speech could

[18] Case Ap. 395 U.S. 444, 447 (1969) *Brandenberg v. Ohio*
[19] Case Ap. 315 U.S. 568 (1942) *Chaplinsky v. New Hampshire*
[20] Case Ap. 337 U.S. 1 (1949) *Terminiello v. City of Chicago*

potentially be seen as positive. As stated in the decision, the vitality of civil and political institutions in society depends on free discussion and it is only through free debate and free exchange of ideas that government remains responsive to the will of the people.[21] Moreover, in this landmark case, the Court concluded that the right to speak freely and to promote diversity of ideas and programs is one of the chief distinctions that set the democratic society apart from totalitarian regimes. Consequently, the conclusion can be made that the U.S. system is based on the ideology that free expression is a necessary condition for the democratic society to exist and, therefore, it must be protected.

The extent of the First Amendment protection is best shown in famous *Skokie*[22] case (1977), dealing with the freedom of assembly. The Court allowed Nazi party members to march in their uniforms with swastikas in the village of Skokie, a predominantly Jewish community. Despite the arguments that, for Holocaust survivors, the swastika was a symbol of physical attack on their life and dignity, and a reminder of the most destructive movements in human history, the Court ruled that the use of the swastika is a symbolic form of free speech entitled to First Amendment protections (Zuchora-Walshe, 2010:36) and determined that the swastika itself did not constitute "fighting words", the legal standard developed in *Chaplinsky* case. Although this decision is considered to be highly controversial, it is a great example of broad protection of freedom of speech in the US jurisprudence, even when it comes to extremes such as a potential promotion of Nazi regime in this case.

One of the ground-breaking decisions on hate speech is the U.S. Supreme Court decision in the formerly mentioned case **Brandenburg v. Ohio**,[23] which not only changed the legal standard concerning the limitation of free speech by adopting the "imminent lawless action" test but it also quite controversially showed the extent of the First Amendment.

The **Brandenburg v. Ohio** (1969) case concerned a Ku Klux Klan leader promoting his white supremacy ideology on television; his speech included utterances, such as: "If our president, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some vengeance taken;" and "The nigger should be returned to Africa, the Jew returned to Israel". Although this kind of speech is an obvious example of hate speech based on racial discrimination, according to the Supreme Court decision, it enjoys the First Amendment protection. The Court found that the Ku Klux Klan leader did not obviously intend to incite specific acts of violence and, thus, the government restriction of Brandenburg's speech was unconstitutional. Consequently, only the speech which is aimed at inciting, or which is likely to incite, imminent lawless action is punishable.

The issue of freedom to express hatred arose again in a 1992 case, *R.A.V. v City of St. Paul*,[24] when a teenager burnt a cross on the lawn of an African-American couple and was charged under the local ordinance in St. Paul, Minnesota. The Minnesota law criminalized such racist and hate-filled expressions, by prescribing that "Whoever places on public or private property, a symbol, object…which one knows…arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender…shall be guilty of a misdemeanor." However, the Supreme Court overturned the decision, holding that the Minnesota law was unconstitutional. The Court reasoning was based on the conclusion that the Minnesota law was too narrow and amounted to a **content-based** distinction. Considering that the hate speech law

[21] Ibid, at 11-12
[22] Case Ap. 432 U.S. 43 (1977) *National Socialist Party of America v. Village of Skokie*
[23] Case Ap. 395 U.S. 444, 447 (1969) *Brandenburg v. Ohio*
[24] Case Ap. 505 U.S. 377 (1992) *R.A.V. v. City of St. Paul*

was not concerned with the mode of expression but with the content of expression, it was a violation of the freedom of speech. Thus, the Supreme Court once again embraced the idea that hate speech is permissible, unless it leads to imminent hatred or violence. Hence, the high protection envisaged under the First Amendment is summarized in the Court's conclusion in: "Let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible. But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire."[25]

The issue of cross-burning rose again in *Virginia v Black (2003),*[26] which gave rise to a debate over the question whether the cross-burning should be declared a First Amendment exception due to the historical association of cross-burning with violence and terrorism. As expected, the Court did not bring such a conclusion. On the contrary, it found that Virginia statute against cross-burning is unconstitutional. However, the Court also concluded that cross-burning done with intent to intimidate can be limited, given that such expression has a long and pernicious history as a signal of impending violence.

In *Snyder v. Phelps (2011),*[27] the Court remained consistent to its concept of free speech. The case involved a protest at the funeral of a young U.S. Marine killed in Iraq, where protestors (church members) held banners with inscriptions: "Thank God for dead soldiers", God Hates Fags" and "Fag troops", wishing to prove the point that American soldiers die in battle because the United States tolerates homosexuality. In its highly controversial decision, the Court found that this case highlighted issues of public import - the political and moral conduct of the United States and its citizens, the fate of the nation, homosexuality in the military and scandals involving the Catholic clergy. Bearing in mind that members of the church conveyed their views on those issues in a manner designed to reach as broad a public audience as possible, the Court held that the speech in question could not be subject to restrictions. Thus, the Court stayed firm in protecting the First Amendment. The Court reasoning underscored the fact that freedom of expression is one of the fundamental rights in the United States system. The Court stated: "As a nation we have chosen a different course - to protect even hurtful speech on public issues, to ensure that we do not stifle public debate".[28] Therefore, the U.S. Constitution protects even the most offensive and controversial speech from government suppression, which is based on ideology that banning speech does not advance democracy and that allowing individuals to freely express themselves constitutes a stable society.

However, in *Snyder v. Phelps,* a different point of view is embodied in the dissenting opinion of Justice Alito, who pointed out t: "Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case. In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims like the petitioner."[29] This dissenting opinion points to the obvious question of whether the freedom of speech is abused or misused at times, by being employed as an assaulting and dangerous weapon, safely protected under the First Amendment. However, no matter what the answer may be, it is safe to conclude that the US Supreme Court is not likely to change its direction regarding the freedom of speech.

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[25] Ibid, at 396
[26] Case Ap. 538 U.S. 343 (2003) *Virginia v. Black*
[27] Case Ap. 562 U.S. 443 (2011) *Snyder v. Phelps*
[28] Ibid, Dissenting opinion of Justice Samuel Alito
[29] Ibid, Dissenting opinion of Justice Samuel Alito

CONCLUSION

From *Schenck v United States (1929)* to *Snyder v. Phelps* (2011), the U.S. Supreme Court has issued rulings on the free speech in many landmark cases. Although the case-law has changed to some point and adapted to different contexts and new types of speech, it remains consistent to its basic principle: freedom of speech is a constitutional right, guaranteed to each individual in the United States. Only the speech that incites violence can potentially be restricted. Bearing in mind that the most controversial and liberal cases, such as *Skokie* and *Brandenbourg*, were issued over forty years ago, it is safe to say that the Supreme Court point of view on freedom of speech is in many ways advanced, as compared to the European Court of Human Rights. It is strongly based on protection of free speech, even in the context which many may find debatable. As previously stated, the Supreme Court is driven by the approach that the right to speak freely and to promote diversity of ideas is a necessary condition for the democratic society to exist. Therefore, freedom of expression is an essential right, which must be protected as the core of democracy. Although it may be subject to criticism, the U.S. Supreme Court firmly upholds the the First Amendment freedoms and refuses to deprive individuals of their constitutional rights guaranteed under the U.S. Constitution.

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1. *Case Ap.* 435 U.S. (2002) *Ashcroft v. Free Speech Coalition*
2. *Case Ap.* 395 U.S. 444, (1969) *Brandenburg v. Ohio*
3. *Case Ap.* 315 U.S. (1942) *Chaplinsky v. New Hampshire*
4. *Case Ap.* 413 U.S. (1973) *Miller v. California*
5. *Case Ap.* 432 U.S. (1977) *National Socialist Party of America v. Village of Skokie*

6. *Case Ap.* 495 U.S. (1990) *Osborne v. Ohio*
7. *Case Ap.* 481 U.S. (1987) *Pope v. Illinois*
8. *Case Ap.* 505 U.S. (1992) *R.A.V. v. City of St. Paul*
9. *Case Ap.* 354 U.S. (1957) *Roth v. United States*
10. *Case Ap.* 249 U.S. (1919) *Schenck v. United States*
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12. *Case Ap.* 537 U.S. (2002) *Stewart v. McCoy*
13. *Case Ap.* 337 U.S. (1949) *Terminiello v. City of Chicago*
14. *Case Ap.* 559 U.S. (2010) *U.S. v. Stevens*
15. *Case Ap.* 538 U.S. (2003) *Virginia v. Black*
16. *Case Ap.* 394 U.S. (1969) *Watts v. United States*

The European Court of Human Rights case-law

1. *Case Ap.* 33348/96 *Cumpănă and Mazare v. Romania*
2. *Case Ap.* 64569/09 *Delphi v. Estonia*
3. *Case Ap.* 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 *Dink v. Turkey*
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5. *Case Ap.* 65831/01, *Garaudy v. France*
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12. *Case Ap.* 15948/03 *Soulas and Others v. France*
13. *Case Ap.* 24762/94 *Sürek v. Turkey*

Treaties and legislations

1. The Constitution of the United States (1787): Bill of Rights: Amendment 1 (1789).
2. European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953)
3. Recommendation R (97) 20 on "Hate speech", adopted by the Committee of Ministers of the Council of Europe on 30 October 1997.
4. Recommendation R (97) 21 on the media and the promotion of a culture of tolerance, adopted by the Committee of Ministers of the Council of Europe on 30 October 1997.

OGRANIČENJA SLOBODE GOVORA: LIBERALNI I KOMUNITARNI KONCEPT

Autori se u radu bave analizom prakse Evropskog suda za ljudska prava i američkog Vrhovnog suda, u slučajevima koji se odnose na ograničenja slobode izražavanja. Poseban naglasak je stavljen na govor mržnje, koji predstavlja negaciju slobode izražavanja. Polazeći od razlike između liberalnog i komunitarnog koncepta slobode izražavanja, autori zaključuju da je praksa Vrhovnog suda SAD izgradila mnogo širi opseg prava na slobodu izražavanja, u odnosu na govor mržnje, nego što je to slučaj sa standardima Evropskog suda za ljudska prava.

Ključne reči: *sloboda izražavanja, govor mržnje, Vrhovni Sud SAD, Evropski sud za ljudska prava*.