Contents

Foreword Acknowledgments Abbreviations	xiv xvi xvii
1 Introduction	1
PART I Theoretical framework	7
Introduction to Part I 7	
2 Hate speech regulation in democracy	9
 Introduction 9 Democracy and fundamental rights: Liberty, equality and human dignity 10 On liberty and on equality in constitutional democracy 12 On human dignity in constitutional democracy 14 Militant versus liberal democracy 18 Loewenstein's study on militant democracy in Czechoslovakia 1918–1939 23 Militant democracy and hate speech regulation 24 The harm principle in regulation of hate speech 26 Definitions of hate speech 28 Three-prong theory of hate speech 31 First model: Hate speech as incitement to violence 33 Second model: Hate speech as incitement to discrimination 35 	
8.3 Third model: Hate speech as incitement to hatred 38	
8.4 Settling the importance of three models of hate speech 41 9 Expressions of hatred: Hate speech versus hate crime 42	
10 Conclusion 45	

x Contents

3 Historical, political and constitutional context of the Czech and Slovak Republics

46

85

1 Introduction 46

2 Pre-communist legacy 46

- 3 Communist human rights experience 50
 - 3.1 Reporting to international human rights bodies under communism 51
 - 3.2 Understanding of public goods and harm prevention under communism 61
- 4 Post-communist rule of law 64
- 5 Velvet divorce and liberal nationalism 68
 - 5.1 Slovak illiberal nationalism 72
 - 5.2 Czech civic liberalism 74
- 6 Post-communist protection of minorities against extremism 76 6.1 Post-communist democracy and extremism 77
 - 6.2 Extremism, defamation and protection of minorities 79
- 7 Conclusion 82

Conclusion to Part I 83

PART II

International responses to the regulation of hate speech

Introduction to Part II 85

4 The United Nations' treaty response to hate speech regulation 87

- 1 Introduction 87
- 2 Conference on freedom of information: Incitement to violence priority 88
- 3 Convention on the prevention and punishment of the crime of genocide 89
 - 3.1 Incitement to genocide and incitement to violence 90
 - 3.2 Incitement to genocide and hate speech 91
- 4 The Universal Declaration on Human Rights 95
- 5 The International Convention on the Elimination of Racial Discrimination 97
 - 5.1 Scope of Article 4 ICERD 98
 - 5.1.1 Obligations to punish offenses under Article 4 ICERD 99
 - 5.1.2 The 'due regard' clause 101
 - 5.2 Concluding observations on hate speech 102

- 5.3 Individual communications on hate speech 103
 - 5.3.1 Racial hate speech inciting violence 104
 - 5.3.2 Racial hate speech inciting discrimination 106

5.3.3 Racial hate speech inciting to hatred 109

- 5.4 Conclusion on racial hate speech 113
- 6 The International Covenant on Civil and Political Rights 114
 - 6.1 Scope of ICCPR's Articles 19 and 20 114
 - 6.2 Obligations under ICCPR Articles 19.3 and 20 117
 - 6.3 Concluding observation on freedom of expression and hate speech 120
 - 6.4 Individual communications on freedom of expression and hate speech 121
 - 6.4.1 Hate speech: Protection of rights of others 122
 - 6.4.2 Hate speech: Advocacy of racial hatred that incites discrimination 125
 - 6.5 Conclusion on hate speech 128
- 7 Conclusion 129

5 European responses to hate speech regulation

- 1 Introduction 131
- 2 Council of Europe 132
 - 2.1 The European Convention on Human Rights 132
 - 2.1.1 Hate speech as incitement to violence 136
 - 2.1.2 Hate speech as incitement to discrimination 140
 - 2.1.3 Hate speech as incitement to hatred 144
 - 2.2 Additional protocol to the convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems 149
- 3 The European Union 152
- 4 The European model of militant democracy 159
- 5 Conclusion 163

6 International soft law and hate speech regulation

- 1 Introduction 165
- 2 Initiatives of the United Nations 165
 - 2.1 Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression 166
 - 2.2 Rabat plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence 170

131

165

- 2.3 Special Rapporteur on minority issues 173
- 2.4 Other special procedures mandate holders 175
- 3 Council of Europe recommendations 178
 - 3.1 Recommendation No. R (97) 20 on 'hate speech' 178
 - 3.2 General Policy Recommendation No.15 on combating hate speech 181
- 4 European Union declarations 185
 - 4.1 The Code of Conduct on countering illegal hate speech online 186
 - 4.2 FRA opinions on tackling hate crime and hate speech 187
- 5 Organization for Security and Co-operation in Europe documents 189
 - 5.1 Responses to hate crime 189
 - 5.2 Joint declarations on hate speech 191
- 6 Conclusion 193
- Conclusion to Part II 194

PART III

The Czech and Slovak frameworks on hate speech regulation

Introduction to Part III 197

7 Dawn of the post-communist hate speech regulation

- 1 Introduction 199
- 2 The establishment of human rights protection and democratization 200
- 3 The regulation of human rights in the Charter of Fundamental Rights and Basic Freedoms 206
 - 3.1 Freedom of expression 210
 - 3.2 Protection of minorities 211
- 4 Slovak constitutional protection of fundamental rights and freedoms 217
 - 4.1 Freedom of expression 223
 - 4.2 Protection of minorities 229
- 5 Conclusion 234

8 Post-communist penal hate speech regulation

- 1 Introduction 236
- 2 Origins of extremism as a framework for hate speech regulation 237

199

281

3 Development of penal regulation of hate speech: 1961-2005/2010 241 3.1 Disbanding Slovak Togetherness (Slovenská Pospolitosť – Národná Strana) 244 3.2 Disbanding the Czech Workers' Party (Dělnická strana) 246 4 Extremism as a framework for hate speech regulation 249 4.1 The 2005 Slovak Penal Code and its successive reforms 253 4.2 The 2009 Czech Penal Code and its successive reforms 258 5 Models of hate speech in post-communist countries 262 5.1 Hate speech as incitement to violence 262 5.2 Hate speech as incitement to discrimination 267 5.3 Hate speech as incitement to hatred 271 6 Combating hate speech in society: From prevention to alternatives of hate speech regulation 274 7 Conclusion 277 Conclusion to Part III 278

9	General	conclusion	

Selected Bibliography		291
Index		316