Summary of the doctoral dissertation: "The admissibility of limitations on freedom of speech which are introduced in order to eliminate different forms of racist speech. The comparison of solutions adopted in the United States of America and in the Fifth French Republic"

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Currently it is generally believed that France and United States of America adopted different legal solutions pertaining to "racist speech". The principal aim of the dissertation was to verify how profound are the differences between French and U.S. approach to the protection of national, ethnic and racial minorities from verbal assaults. Moreover, in the introductory part of the thesis some other research issues were raised. It was then important to:

- Check whether French and U.S. citizens have possibility to challenge the constitutionality of provisions introducing limits on free speech. It was also crucial to determine the level of predictability of decisions made by judicial bodies of constitutional control in which the admissibility of introducing provisions aimed at ensuring legal protection to historically persecuted minorities from "hate speech" is assessed.

- Define the main differences in both countries between the standard of assessing the admissibility of limits to the freedom of speech and a general standard applied by judicial bodies of constitutional control when they evaluate the constitutionality of provisions limiting other rights and freedoms. It was also important to verify whether such specific standard pertaining to free speech limits was consistently applied respectively by: the Supreme Court of the United States and by French Constitutional Council.

- Determine whether, basing on analysis of French and U.S. experiences, it is possible to propose an universal solution concerning regulations on "racist speech" that can be applied in other countries.

- Determine how provisions adopted on an international level influence U.S. and French system of protection of freedom of speech.

The argumentation aimed at finding answers for aforementioned research questions is presented in 5 different chapters.

In the first chapter I showed different legal and philosophical theories which justify why the freedom of speech should be protected. Although freedom of expression is a fundamental value that should

not be underestimated, it is hardly possible to prove that the freedom of communication is of an absolute character and no exceptions are allowed under any circumstances.

In chapter no. 2 I focused on the description of French legal regulations aimed at fighting against "racist speech" and on the assessment of their efficiency and constitutionality. In chapter no. 3 I described the most important judgments of U.S. Supreme Court in which it was checked whether the provisions aimed at protecting historically persecuted minorities from verbal assaults are in conformity with the requirements of the First Amendment to the U.S. Constitution.

Chapter no. 4 of the dissertation was zeroed in on the problem of "historical negationism", i.e. utterances denying veracity of historically established facts concerning mass-atrocity crimes committed in the past. In France the parliament thrice adopted regulations introducing severe criminal sanctions (including imprisonment) for disseminating the lies about history. At the same time in the United Stated members of editorial board of liberal newspapers discussed whether they should show their attachment to the values of the First Amendment and publish articles written by authors who publicly deny the Holocaust. Being aware of differences between U.S. and French approach towards "historical denialism" it was important to determine how judicial bodies of these 2 countries should deal with the situation in which an utterance forbidden in France is published in the Internet by an American web-user. Referring to famous dispute between *Yahoo!* company and French anti-racist non-governmental organization (*LICRA*) I indicated that generally American federal courts would defend the value of free speech providing the dispute was ripe for court to resolve and there was a real threat that American entity was put at risk of paying substantial penalty because of exercising its right to freedom of speech.

In the last chapter I evaluated how legal regulations and jurisprudence in France and in the United States are influenced by international law.

The analysis which I made in 5 aforementioned chapters enabled me to formulate answers for the questions addressed in the introductory part. It was then established that:

1. The belief that France and the United States assumed significantly different approach to "racist speech" is well-found. Whereas in U.S. the Supreme Court recognized that the right to freedom of speech can be exercised by the leader of Ku Klux Klan assembly, in France criminal law regulations penalize even non-public racist group defamation. While in the Fifth Republic the Constitutional Court found that provisions which forbid denying nazi-crimes were in conformity with the Constitution, in U.S. it was allowed to organize a march of supporters of Third Reich in a Jewish city. There are much more similar examples showing

differences between U.S. and French approach and the most illustrative ones were presented in the dissertation.

2.1 It was indicated that in the United States there might be some difficulties in predicting what kind of argumentation will be used by the court assessing the constitutionality of the provisions forbidding "racist speech". However, because of the fact that each standard of control of limits of freedom of speech is rigorous, it is highly improbable that the court would find that a provision introducing criminal sanction for dissemination of racist views is an admissible limit to the freedom of speech.

2.2 In France it can be generally predicted that doubts on the constitutionality of provisions aimed at eliminating "racist speech" will be considered by the judicial body as ill-found. It is, however, difficult to predict whether such decision confirming the constitutionality of anti-racist regulations will be made by the Constitutional Council or it will rather be issued by the Court of Cassation whose role is theoretically limited to evaluate whether "priority question on constitutionality" (*QPC*) filed by the party meets the formal requirements. Assuming that the complaint was recognized by the Constitutional Council, it could be predicted which standard of control of proportionality of freedom of speech limitations would be nominally mentioned in the Council's decision. However, it is more difficult to guess whether such standard would be in practice duly applied.

3.1 Here it should be noted that it results from the jurisprudence of French Constitutional Council that the control of proportionality of limitations on freedom of expression is subject to stricter scrutiny than control of proportionality of limitations of many other rights and freedoms. In case of scrutiny of regulation infringing on some second-tier rights, the Constitutional Council often limits the scope of its analysis and checks only whether the regulation in question is not manifestly disproportionate to its objectives. However, if freedom of speech is at stake, the Constitutional Council underlines that it is indispensable to determine whether introduced measure is suited, necessary and proportional (in strict sense of this word) to achieve the aim of a constitutional rank. The problem is that it often happens that although Constitutional Council indicates the necessity of applying rigorous "proportionality test", it does not follow such standard or applies it in a limited scope.

3.2 As far as the standards of control of limitations of freedom of speech applied by U.S. Supreme Court are concerned, it was determined in the dissertation that even such regulations that would meet the criteria of so-called "strict scrutiny standard" are sometimes considered as contrary to the First Amendment to the U.S. Constitution. Conformingly to the

"strict scrutiny" standard, a limitation of particular freedom will be deemed constitutional if the government is able to prove that the regulation in question serves a compelling state interest and it is narrowly tailored to achieve such aim. However, when the Supreme Court assessed the admissibility of limitations on freedom of speech it happened that certain provisions pertaining to "racist speech" were considered as contrary to the Constitution despite the fact that they were narrowly tailored to serve a state compelling interest.

4. It was determined in the thesis that the endeavors to create an universal model of freedom of speech protection system may meet with some obstacles. It should be then noted that solutions concerning the limitations on freedom of expression should take into account historical and social context which is different in various states. However, the examples of impunity of the authors of racist utterances in U.S. which were shown in the dissertation should be a cause for concern and reflection about the consequences of an "absolutization" of the freedom of speech. Nevertheless, supposing the parliament of one or another country of the world decided to introduce certain limits on freedom of expression, it should make all possible efforts to avoid mistakes committed by French legislator. Consequently it should be ensured that adopted regulations would be precise, and the penalties inflicted on authors of racist utterances would not be disproportional. Irrespective of the content of possible legal provisions, it should be guaranteed that the control of their constitutionality would be carried out conformingly to uniform and consistently applied standards.

5.1 Evaluation of the conformity of French regulations pertaining to "racist speech" with the international standards lead to conclusion that generally legal provisions adopted in the Fifth Republic are consistent with the rules of international and European law (which developed also under the influence of French experiences).

5.2 As for the United States, it should be explained, that its authorities attached numerous reservations to UN treaties. It caused that the value of stipulations of these treaties became purely symbolic. Although some doubts may be raised whether the reservations made by the United States were compatible with the object and purpose of international conventions defining the catalogue of fundamental human rights, it must be noted that U.S. courts generally confirm the admissibility of reservations to the International Covenant on Civil and Political Rights which are aimed at obtaining exemptions from stipulations of ICCPR which infringe on freedom of speech.

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