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## **The International Helping Hand? The Impact of the Council of Europe on Policies towards ‘Hate Speech’ in Slovakia**

In 2015 and 2016, the Council of Europe (CoE) intensively participated in the global public debate about the proper response to ‘hate speech’, even though it still does not offer its own consolidated definition of the term. While the ECtHR’s case law remains to some extent inconsistent, through recommendations by the Secretary-General and the European Commission against Racism and Intolerance, governments can pick up the ‘international helping hand’ the CoE offers as regards proper policies. Slovakia, where the entrance of an extreme right party to the parliament in March 2016 brought the challenge of ‘hate speech’ to the fore in a genuinely domestic context as well, does not seem to have accepted this helping hand in its policies. Despite the declaration of support of democratic citizenship education, the new governing coalition so far has not become engaged in the debate on the CoE recommendations and thereby the type and extent of reforms focused on more effective responses to hateful forms of extreme speech.

### **THE DILEMMAS OF PROPER RESPONSES<sup>2</sup>**

The Council of Europe (CoE) is well known for its numerous initiatives in promotion of human rights, paying prominent attention to freedom of speech. This commitment was confirmed by the 2016 report of the CoE Secretary-General, which considers freedom of speech a building

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<sup>2</sup> All online sources are quoted as to 1 June 2016.

block of ‘democratic security’.<sup>3</sup> Yet it remains unclear whether the CoE initiatives go beyond reporting in that they provide influential guidance for member state governments on how to resolve the numerous dilemmas embedded in the freedom-of-speech agenda. Neither has it been examined what the CoE’s position actually *is*, especially after the violent attacks in Paris and Brussels which triggered several restrictive measures by member state governments.<sup>4</sup>

In Slovakia, the parliamentary elections in March 2016 for the first time in post-1993 history brought to the parliament a political actor (Kotleba – People’s Party Our Slovakia) which demonstrably engages in denigrating rhetoric towards minorities. The party leader, whose name has been elevated to the party’s title, was accused for engaging in hateful expressions back in 2012 already.<sup>5</sup> Currently, he is not only the chairman of one of eight self-governing regions in Slovakia (Banská Bystrica) but also heads a club of 14 deputies in the National Council. One of these MPs is 22-years old Milan Mazurek, a member of the parliament’s Human Rights committee, who, at the 2015 protest against immigration in Bratislava ‘called a Muslim family foul names’, while his companions ‘attacked the family.’<sup>6</sup> Moreover, Mazurek is also suspected of denying the Holocaust on his profile at a social network.<sup>7</sup> During the short activity of the new legislature, Kotleba already managed to gain publicity by demanding a minute of silence for a Slovak pro-Nazi politician, Jozef Tiso,<sup>8</sup> and it can be expected that the party will continue undertaking similar initiatives. We can expect that forms of expression will be used during that course that will attack certain minority groups, such as Roma or LGBTI, or individuals representing views opposed by the extreme right.

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<sup>3</sup> For more on the concept and its framing by the CoE, see Max Steuer. 2016. The Council of Europe and Democratic Security: Reconciling the Irreconcilable? In: *Politikon: The IAPSS Journal of Political Science*, Vol. 29, pp. 267-279. Online: [http://www.iapss.org/wp-content/uploads/2014/10/267\\_Volume-29.pdf](http://www.iapss.org/wp-content/uploads/2014/10/267_Volume-29.pdf)

<sup>4</sup> For example: Angelique Chrisafis, France seeks to extend state of emergency until end of July. *The Guardian*, 20 April 2016. Online: <http://www.theguardian.com/world/2016/apr/20/france-seeks-to-extend-state-of-emergency-until-end-of-july>

<sup>5</sup> Later, however, he was acquitted based on extremely formalist and hence superficial interpretation of the existing criminal law provisions. Cf. Supreme Court of the Slovak Republic, Decision 4 Tdo 49/2012, 2013. Online: [http://www.supcourt.gov.sk/data/att/27207\\_subor.pdf](http://www.supcourt.gov.sk/data/att/27207_subor.pdf).

<sup>6</sup> E.g. Radka Minarechová, Committee spurs controversy. *Slovak Spectator*, 4 April 2016. Online: <http://spectator.sme.sk/c/20128939/committee-spurs-controversy.html>; Roman Cupřík, Extremism moving from internet to the streets. *Slovak Spectator*, 12 May 2016. Online: <http://spectator.sme.sk/c/20161352/extremism-moving-from-internet-to-the-streets.html>

<sup>7</sup> Ibid.

<sup>8</sup> ČTK, Slovakia: Fascist politician seeks minute of silence in Parliament for WWII-era leader, doesn't get it, *Romea.cz*, 19 April 2016. Online: <http://www.romea.cz/en/news/world/slovakia-fascist-politician-seeks-minute-of-silence-in-parliament-for-wwii-era-leader-doesn-t-get-it>

The country's political as well as intellectual and academic elites, and the media in particular, have not yet debated the proper response to hateful forms of extreme speech in detail. They all now face the challenge of finding a proper response in concrete situations that does not bring the unintended consequence of Kotleba and his followers being placed into the roles of martyrs, discriminated against by 'fake democrats' who preach democratic values and human rights, but are ready to curb freedom of speech once somebody uses these rights against their beliefs.<sup>9</sup>

One example where the proper response has not been clear-cut is whether the Slovak president Kiska should have invited Marian Kotleba to a series of informal talks with leaders of political parties that crossed the threshold in the elections. Kiska, immediately after the electoral results were published, spelled out that 'radical political extremism in uniforms [...] made it to the parliament,'<sup>10</sup> and did not invite the extreme right politician. The former Slovak prime minister, Iveta Radičová, criticized Kiska's decision using legalistic reasoning – the party has not been banned by law and therefore should not be excluded, otherwise it 'creates an adverse effect' and 'raises [its] popularity'.<sup>11</sup> Others, such as political scientist Grigorij Mesežnikov or columnist Roman Pataj, disagreed, arguing that there is no evidence that would prove the existence of such an adverse effect.<sup>12</sup> Indeed, various arguments can be presented for the opposite, such as that labeling the party with a clear name (e.g. fascist) might help Kotleba's supporters (many of whom presumably do not support fascism) to turn away from him; or, as Mesežnikov implied, that prohibiting the party's participation at political negotiations might isolate it. Virtually no evidence exists for the effectiveness of any of these strategies either, and without sophisticated large-N analyses of voting behavior and citizen perceptions it is unlikely

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<sup>9</sup> Here I do not enter into the debate whether speech that, for instance, target minorities still falls under the category of speech and is therefore protected by the political right, or not. Views on this differ; for instance, Heinze believes that if we consider certain 'crude speech' not to be speech at all, we indirectly prove it has some content (which is dangerous), and in this way 'the thesis undoes itself.' Eric Heinze. 2016. *Hate Speech and Democratic Citizenship*. Oxford: OUP, p. 210. Waldron, on the contrary, perceives the harm in such speech justifies its exclusion from protected speech. Jeremy Waldron. 2012. *The Harm in Hate Speech*. Cambridge: Harvard University Press.

<sup>10</sup> Ján Krempaský, Prezident Kiska Kotlebu na povolebné rokovania nepozval. *Sme*, 7 March 2016. Online: <http://domov.sme.sk/c/20111735/prezident-kiska-kotlebu-na-povolebne-rokovania-nepozval.html>

<sup>11</sup> Monika Tódová, Iveta Radičová: Smer aj SNS sú neprijateľné. Mali by byť predčasné voľby. *Denník N*, 9 March 2016. Online: <https://dennikn.sk/400108/iveta-radicova-ciste-riesenie-su-iba-predcasne-volby/?ref=tit?ref=in>

<sup>12</sup> Roman Pataj, Kiska, Radičová a Kotleba. *Denník N*, 9 March 2016. Online: <https://dennikn.sk/400510/kiska-radicova-kotleba/>; Redakcia, Kiska rokoval s víťaznými stranami, fašistom dal stopku: Mal prezident pozvať Kotlebu? *Nový Čas*, 8 March 2016. Online: <http://www.cas.sk/clanok/373503/kiska-rokoval-s-vitaznymi-stranami-fasistom-dal-stopku-mal-prezident-pozvat-kotlebu/>

that it will be gathered soon. The absence of reliable data leaves the debate about proper responses to a large extent to perceptions and personal beliefs on what works better in democracies.

Building on the issues raised by the above example, the following sections address the questions of the developments in the CoE as regards ‘hate speech’, by reviewing a few core recent documents, and policies the Slovak government has enacted in response to such speech in the light of these developments. Before that, a very brief exposé will be provided on the significance of the debate as such, which has already been indicated by the above example from the Slovak case.

### **‘HATE SPEECH’: INCREASED ATTENTION INTERNATIONALLY AND IN SLOVAKIA**

Following the attacks on *Charlie Hebdo* in Paris and the arrival of hundreds of thousands of refugees into the EU, various actors have started to pay increased attention to the challenge of speech that targets minority groups on the basis of their racial, religious, political or other type of identity.<sup>13</sup> Before that, however, the debate on the optimal response to ‘hate speech’ unfolded dominantly in academia, where scholars have been concerned with distinguishing the main arguments in favour or against various approaches towards the phenomenon in democratic contexts.<sup>14</sup> These analyses frequently revolve around the core concept of criminal law, which has been used as a sanctioning tool against those who disseminate hateful forms of extreme speech. However, it remains doubtful whether the application of this tool can be justified in democracy at all, and there is definitely a need to ‘de-homogenize hate speech law into its

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<sup>13</sup> For example, the founder of the world’s largest social network announced progress in tackling online instances of speech directed particularly against refugees. Associated Press, Zuckerberg on refugee crisis: ‘Hate speech has no place on Facebook’. *The Guardian*, 26 February 2016. Online: <https://www.theguardian.com/technology/2016/feb/26/mark-zuckerberg-hate-speech-germany-facebook-refugee-crisis>. The European Commission noted that criminalization of ‘hate speech’ is required from all member states, and there has even been a call for projects aimed at ‘Training and capacity building for strengthening criminal responses to hate crime and hate speech.’ Georgi Gotev, Commission wants member states to criminalise hate speech. *EurActiv*, 2 October 2015. Online: <http://www.euractiv.com/section/justice-home-affairs/news/commission-wants-member-states-to-criminalise-hate-speech/>. European Commission, €5.4 million for grassroots projects to prevent and combat racism, xenophobia, homophobia and other forms of intolerance. *Ec.europa.eu*, 20 November 2015. Online: [http://ec.europa.eu/justice/newsroom/fundamental-rights/news/151127\\_en.htm](http://ec.europa.eu/justice/newsroom/fundamental-rights/news/151127_en.htm)

<sup>14</sup> Three exemplary collections offering a diversity of views from influential scholars on the subject are Ivan Hare and James Weinstein (eds.). 2009. *Extreme Speech and Democracy*. Oxford: Oxford University Press; Michael Herz and Péter Molnár (eds.). 2012. *The Content and Context of Hate Speech: Rethinking Regulation and Responses*. Cambridge: Cambridge University Press; and Péter Molnár (ed.). 2015. *Free Speech and Censorship around the Globe*. Budapest: CEU Press.

numerous varieties.’<sup>15</sup> This methodological warning should be taken into account by analyses that provide a more in-depth evaluation of a particular state’s policy towards this form of extreme speech.

The question of whether criminal law works as a response to hateful forms of extreme speech is puzzling in the context of Slovakia as well. So far there has not been a similar in-depth reflection on it as opposed to the global academic communities, which is demonstrated, for instance, by the fact that a recent Slovak monograph on the subject of freedom of expression devotes to the problem of criminal law regulation and ‘hate speech’ no more than 21 out of more than 400 pages.<sup>16</sup>

The Slovak media has not remained blind to the dilemmas entangled in the regulation of extreme speech. After the 2016 parliamentary elections in particular, their attention shifted to speech that representatives of Kotleba’s extreme right party spread through predominantly social media. They reported about a case in which the police had found that several statements that more or less outright denounced the dignity of certain social groups, did not violate the limits to freedom of speech set out in the Slovak criminal law. One justification was that ‘formally it can be a crime but [...] it is questionable whether the appropriate fight against [such] views should be a criminal sanction, i.e. legal repression, or argumentation and reasoning.’<sup>17</sup>

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<sup>15</sup> Alexander Brown. 2015. *Hate Speech Law: A Philosophical Examination*. London: Routledge, p. 316.

<sup>16</sup> Ján Drgonec. 2013. *Sloboda prejavu a sloboda po prejave*. Šamorín: Heuréka, pp. 257-264, 371-385. Here, the author emphasizes that the Criminal code is not a “super law”, although it receives such a (false) aureole from larch strand of the public and the state organs, which apply it’ (pp. 384-5). A similarly warning position to criminal law is presented in the book by Bartoň, who compares a political community to an ‘immunity system’ that can be ‘infected’ with ‘hate speech’. The more the society understands the danger that comes with such speech, the more immune it is vis-à-vis its effects. The scholar, who writes predominantly in the theoretical context and examines the case of the Czech Republic, states that ‘extensive repression can prevent the functioning of natural defensive mechanisms (the appearance of other speech, assemblies, parties etc.) and lead to passivity.’ Michal Bartoň. 2010. *Svoboda projevu: Principy, garance, meze*. Praha: Leges, pp. 234-237. However, while it is clear that very extensive criminal restrictions damage the ‘immunity system’, it remains unknown what is the ‘right amount’ of criminal law so that it strengthens, instead of weakens, the ‘immunity system’ of a political community.

<sup>17</sup> As reproduced in Dušan Mikušovič, Polícia nebude stíhať Kotlebovho Mazureka za „lži a rozprávky o 6 miliónoch židov a mydlách.“ *Denník N*, 24 May 2016. Online: <https://dennikn.sk/469282/policia-nejbude-stihat-kotlebovho-mazureka-za-lzi-rozpravky-6-milionoch-zidov-mydlach/>. Some discussion was triggered also on the approach of Facebook to deleting comments that spread hatred or denied historical events (e.g. the Holocaust), with a subtext mostly indicating dissatisfaction with the less restrictive approach of this social medium. Dušan Mikušovič, Facebook aj polícia tolerujú rasistické reči, na sieti nechajú aj falošného Heydricha. *Denník N*, 24 May 2016. Online:

Just a few days before the time of writing, a well-known Slovak cartoonist reflected on these developments with a sketch displaying the ‘Department on the fight against extremism’ of the Slovak Police Force, where one blind policeman (accompanied by a guard dog) stares into the computer from which a rising hand with a swastika appears.<sup>18</sup> This cartoon highlights the core problem that the Slovak criminal law framework of restricting ‘hate speech’ faces – on the one hand, there are content-based restrictions, on the other hand, institutions are reluctant to apply them.<sup>19</sup> Even if the motivation to guarantee extensive freedom of speech that the representatives of these institutions indicate by not applying existing criminal law provisions is honest, when combined with the presence of such provisions in the Slovak legal system, it legitimizes the instances of hateful forms of extreme speech. In other words, those accused and then acquitted for their statements (such as Marian Kotleba) can claim that they have not engaged in hatred at all, and they have a ‘stamp’ provided by law to support this claim. Before reviewing whether the Slovak government has any concrete plan how to deal with this undesirable situation (such as lifting some restrictions or implementing frameworks how to apply them properly), it is useful to turn to the ‘international’ again via analysing the position of the CoE.

#### **THE COE ON ‘HATE SPEECH’ IN 2015-2016: REVIEW OF MAIN INITIATIVES**

The CoE has been very active in initiatives aimed at eradicating ‘hate speech’ from the public discourse, although its impact remains up for debate. The fact that there is no clear definition of ‘hate speech’ that could be used by all CoE institutions might create subtle differences in what exactly each of them summons under the term.<sup>20</sup>

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<https://dennikn.sk/468584/facebook-aj-policia-toleruju-rasisticke-reci-sietie-nechaju-aj-falosneho-heydricha/>

<sup>18</sup> Shooty, Úsek boja proti extrémizmu. *Denník N*, 25 May 2016. Online: <https://dennikn.sk/469855/shooty-usek-boja-proti-extremizmu-2/>

<sup>19</sup> It is true that in the particular case mentioned above decision of the investigator is supposed to be reviewed after an order was issued from the President of the Police Force. The critical voices of the media which announced the first decision could have contributed to this outcome. See Matej Dugovič, Kotlebovho Mazureka predsa budú vyšetrovať za reči o holokauste, zasiahol policajný prezident. *Denník N*, 26 May 2016. Online: <https://dennikn.sk/471007/kotlebovho-poslanca-mazureka-budu-vysetrovat-za-reci-holokauste/>

However, this does not change the validity of the overall argument on the reluctance of application of restrictions, as (1), the order only means that the original decision will be reviewed, not necessarily modified, (2) even if it was modified, it would only mean the beginning of a new investigation, (3) even if the MP was convicted, it would seem to become not more than the exception which confirms the rule.

<sup>20</sup> European Court of Human Rights, *Factsheet – Hate Speech*. March 2016. Online: [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf)

The Secretary-General of the CoE did not devote much attention to ‘hate speech’ in his 2015 report, but already at that time he has been aware of the potential negative effect of criminal regulations. This awareness is demonstrated by the fact that, according to the report, one of the measurement criteria of existing protection from ‘arbitrary application of the law’ is that ‘Criminal laws on incitement to hatred and hate speech are clear and precise so as to enable individuals to regulate their conduct. These laws have adequate safeguards for freedom of expression.’<sup>21</sup> Clearly, this highlights the danger criminal law can pose to an open and democratic environment.

While the Secretary-General’s report understandably has to be brief on specific issues, it is not the case with the General Policy Recommendations of the European Commission against Racism and Intolerance (ECRI), and the case-law of the European Court of Human Rights (ECtHR). The Court’s position as regards ‘hate speech’ has been ambiguous, when on the one hand it upheld restrictions that interfered with the political debate (e.g. in *Féret v. Belgium*), while not tolerating restrictions in other cases related, for example, to symbols used in totalitarian regimes (e.g. *Vajnai v. Hungary*) or denial of historical tragedies (e.g. *Perinçek v. Switzerland*).<sup>22</sup>

In 2016, however, ‘hate speech’ became the center of the attention of the CoE institutions, which is demonstrated by the term occupying significant space in the Secretary-General’s report. Being one of the six subjects on which the final recommendations are formulated, three recommendations are suggested. The first one focuses on ‘promoting national campaigns in all member states.’<sup>23</sup> The second one suggests to ‘develop and co-ordinate initiatives to combat hate speech among and by political forces in co-operation with the No Hate Parliamentary

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<sup>21</sup> Thorbjørn Jagland. *State of Democracy, Human Rights and the Rule of Law in Europe: A Shared Responsibility for Democratic Security in Europe*. 2015. Online: [https://wcd.coe.int/ViewDoc.jsp?Ref=SG%282015%291&Language=lanEnglish&Ver=original&Back](https://wcd.coe.int/ViewDoc.jsp?Ref=SG%282015%291&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

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<sup>22</sup> A more detailed reflection on the ECtHR’s case law on the subject is offered in a yet unpublished paper (Max Steuer. 2016. *Does Militant Democracy Provide for Peaceful Democracy? The Challenge of Extreme Speech*. Presented at 57<sup>th</sup> Annual Convention of the International Studies Association, Atlanta, Georgia). Online (please, do not quote without permission): <http://web.isanet.org/Web/Conferences/Atlanta2016/Archive/6d380ddb-124d-4ddf-a08a-Odd697e653f2.pdf>

<sup>23</sup> Thorbjørn Jagland. *State of Democracy, Human Rights and the Rule of Law in Europe: A Security Imperative for Europe*. 2016, p. 103. Online: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680646af8>

Alliance'<sup>24</sup> (NHPA), which was established by the CoE Parliamentary Assembly in early 2015. The third one stresses the need to 'update the definition of hate speech and develop and disseminate tools and mechanisms for reporting hate speech.'<sup>25</sup> The emphasis on the definition as well as reporting can be welcomed, although as the objects of the recommendations are supposed to be member states, this particular one does not offer a procedure how such a definition could be accepted on its own.

At the same time, the report has more to offer on the Secretary-General's position towards 'hate speech'. The appraisal of abolishment of blasphemy laws in two CoE member states,<sup>26</sup> and the focus on education for democracy as well as training of young human rights activists 'to sustainably promote action against hate speech'<sup>27</sup> draws a more complex picture of the CoE's focus in this area. Apart from the NHPA, the No Hate Speech Movement, which is also mentioned in the report,<sup>28</sup> seems to gain importance within the CoE framework, in particular when responding to speech targeted against the acceptance and inclusion of migrants and refugees.

The influence of ECRI is traceable in the non-discrimination section of the 2016 report, whereby the Secretary-General, alongside the approach of ECRI, criticized a situation in which existing criminal law measures are often not invoked in member states, or despite the presence of 'aggravating circumstances, [...] perpetrators [are tried] for lesser offences which do not require proving motivation and which carry lighter penalties.'<sup>29</sup> In March 2016, ECRI issued its own General Policy Recommendation No. 15,<sup>30</sup> which, although it did not cope with defining what 'hate speech' is, offered a range of tools for governments how to respond to it.<sup>31</sup> While certain provisions are relatively novel and will require a reflection in domestic contexts first (e.g. the abolishment of financial support for political organizations engaging in 'hate speech')

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., pp. 8 and 40.

<sup>27</sup> Ibid., pp. 97 and 101.

<sup>28</sup> Ibid., p. 93.

<sup>29</sup> Ibid., p. 87.

<sup>30</sup> Viola De Sando. Hate speech targeted by Council of Europe. *EurActiv*, 23 March 2016. Online: <http://www.euractiv.com/section/justice-home-affairs/news/hate-speech-targeted-by-council-of-europe/>

<sup>31</sup> ECRI, *General Policy Recommendation No. 15 on combatting Hate Speech, with the Explanatory Memorandum*. 2016. Online: [http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/212\\_2016\\_03\\_21\\_GPR15\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/212_2016_03_21_GPR15_en.asp)

by public bodies), others (such as the proposal on a detailed monitoring mechanism) do offer guidelines to the governments to improve their policy.

ECRI also clarified its position regarding criminal sanctions to ‘hate speech’ here, when it stressed the subsidiary use of criminal law measures ‘provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected.’<sup>32</sup> While some comments in the explanatory memorandum are not undisputable from the perspective of theories of freedom of speech (e.g. ‘sanctioning serious uses of hate speech is desirable in itself’<sup>33</sup>), the new recommendation elucidates many elements of ‘hate speech law’ and thus is a useful tool both domestic experts on criminal law and stakeholders should become familiar with.

### **REFLECTION ON COE STANDARDS IN SLOVAKIA: AWKWARD SILENCE?**

How has Slovakia reflected on the developments in the CoE that could be described as a manifestation of a somewhat<sup>34</sup> more straightforward helping hand offered to governments by this international organization? The coalition government formed after the parliamentary elections expresses its commitment to ‘European traditions of freedom, human dignity and tolerance in fighting against fascism and right-wing extremism’ in its manifesto. It also claims in the document that ‘in all public policies, especially in education policy, the government will pay attention to development of civil, social and cultural rights, democratic awareness, critical thinking and cultivation of European consciousness and values.’<sup>35</sup> Yet, it remains unclear with which policy tools it intends to pursue this goal, and improve the poor quality of human rights and democratic citizenship education in the country. That there is not a single mention of the CoE in the manifesto, and that, contrary to Hungary or the Czech Republic, no Slovak MP seems to be engaged in the NHPA,<sup>36</sup> are additional indicators that the CoE has not influenced the current coalition’s thinking about extreme-speech-related issues.

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<sup>32</sup> Ibid., p. 9.

<sup>33</sup> Ibid., p. 59.

<sup>34</sup> Due to definitional uncertainties and the limited coherence of the ECtHR’s jurisprudence.

<sup>35</sup> Programové vyhlásenie vlády SR na roky 2016 – 2020. Online: [http://www.vlada.gov.sk/data/files/6483\\_programove-vyhlasenie-vlady-slovenskej-republiky.pdf](http://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf)

<sup>36</sup> NHPA, List of members. February 2016. Online: <http://website-pace.net/documents/19879/1110723/MembersNoHateAlliance.pdf/1a2c81cc-894b-4623-96d5-5c6f6800c6ce>. Given that the list has been published before the parliamentary elections in Slovakia, it might be that a Slovak MP will join the initiative in the upcoming months.

The Conception of Combating Extremism for 2015 – 2019,<sup>37</sup> coordinated by the Slovak Ministry of Interior and drafted during the term of the previous executive, does not refer more often to the CoE either. Instead, it quite extensively operates with the concept of a democracy which is able to defend itself, otherwise also known as militant democracy<sup>38</sup> that provides a set of generalizable strategies how to fight extremism (i.e. not only extreme speech). At the same time, such a strategy would need to be applied carefully, bearing in mind the ethics of such combat, one that should be guided by the values of democracy, including freedom of political speech.<sup>39</sup> The fact that the Conception does not fully follow the last round of recommendations to Slovakia by ECRI, which to a substantial extent focused on introducing new measures criminalizing ‘hate speech’ into Slovak legislation,<sup>40</sup> does not constitute a reason for criticism. In contrast, the subscription to militant democracy as the ‘starting point of the fight against extremism’<sup>41</sup> does, as carelessly applied tools of militant democracy might easily end up in introducing new restrictions without in-depth considerations, instead of searching for less straightforward, but more creative and potentially much more effective solutions.

## CONCLUDING REMARKS

In both Europe and Slovakia, the core pillars of democracy and human rights have been strained by generalized acts of hatred and intolerance. In 2015 and 2016, the CoE has offered a set of guidelines that, while sometimes still not as clear as they could be, allow states to implement several suitable responses to hateful forms of extreme speech, that do not fall under the false belief of (criminal) law solving ‘everything’.

The Slovak case, however, indicates that member states’ governments of the CoE do not always accept its ‘helping hand.’<sup>42</sup> The new Slovak government, where the two parties perceived as

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<sup>37</sup> *Koncepcia boja proti extrémizmu na roky 2015 – 2019*. 2015. Online: [www.minv.sk/?VRAX&subor=225999](http://www.minv.sk/?VRAX&subor=225999).

<sup>38</sup> See e.g. Giovanni Capoccia. 2013. Militant Democracy: The Institutional Bases of Democratic Self-Preservation. In: *Annual Review of Law and Social Science*, Vol. 9, pp. 207-226.

<sup>39</sup> Alexander S. Kirshner. 2014. *A Theory of Militant Democracy: The Ethics of Combating Political Extremism* New Haven & London: Yale University Press.

<sup>40</sup> ECRI, *Fifth Report on Slovakia*. 2014, p. 41. Online: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-V-2014-037-ENG.pdf>

<sup>41</sup> *Koncepcia boja proti extrémizmu na roky 2015 – 2019*, 2015, p. 5. Online: [www.minv.sk/?VRAX&subor=225999](http://www.minv.sk/?VRAX&subor=225999)

<sup>42</sup> To be sure, this finding does not rule out the impact of the CoE on member states as such, as there are channels of impact which might bypass governments and target the society directly or with the help of civil society. Moreover, the ECtHR, which has not been analyzed here, can influence domestic courts

being the most pro-reform and pro-European<sup>43</sup> from the subjects running in the 2016 elections made an alliance with the ruling party that to many symbolizes corruption and intolerance, and a nationalist party known for its aversion towards the EU and multiculturalism, was formed to defeat extremism.<sup>44</sup> However, its policy in this field remains vague and unclear, if any, and there is not much reason to believe that this alliance will be the proper one to, for example, lower the troublesome support of Marian Kotleba among young voters.<sup>45</sup>

The lack of a clear-cut pro-democracy, pro-European and pro-reform alternative among existing political parties may become a source of increased frustration and dissatisfaction with politics as such in Slovakia. Without a much more nuanced policy towards ‘hate speech’ and extremism in general, the likely outcome in this Central European state is the rise, not the fall, of support for false leaders like Marian Kotleba.

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to change the interpretations of certain legal provisions related to the subject, and bring them more in line with the CoE’s general approach in case there is a divergence present.

<sup>43</sup> Cf. Zuzana Gabrižová and Radovan Geist. *Rozšírenie bojového poľa? Analýza postojov a programov politických strán pred voľbami do Národnej rady 2016*. 2016, pp. 33-34, 36-37. Online: [http://euractiv.sk/wp-content/uploads/2016/02/E%C3%9A-vo-vo%C4%BEb%C3%A1ch-2016\\_Roz%C5%A1irenje-bojov%C3%A9ho-po%C4%BEd1.pdf](http://euractiv.sk/wp-content/uploads/2016/02/E%C3%9A-vo-vo%C4%BEb%C3%A1ch-2016_Roz%C5%A1irenje-bojov%C3%A9ho-po%C4%BEd1.pdf)

<sup>44</sup> Nastupuje vláda dohody, kontinuity a pokroku. Prečítajte si programové vyhlásenie. *Denník N*, 6 March 2016. Online: <https://dennikn.sk/433483/nastupuje-vlada-statotvornej-dohody-kontinuity-pokroku-programove-vyhlasenie-vlady/>

<sup>45</sup> Tomáš Vasilko, Kto volil Kotlebu a prečo? Nie, nie je to len pre utečencov. *Denník N*, 13 April 2016. Online: <https://dennikn.sk/395557/volil-kotlebu-preco-nie-nie-su-utecencitito-ludia-volili-kotlebu-tychto-dovodov/>