

**“Understanding and Implementing the Obligation to Prohibit Incitement”: Side Event at OSCE Human Dimension Implementation Meeting**

On Tuesday 24 September, two members of CEU faculty – namely Sejal Parmar, Human Rights Program, Department of Legal Studies and Peter Molnar, Senior Research Fellow, Center for Media and Communications Studies (CMCS) – convened a side event on the subject of incitement in international law at the 2013 OSCE Human Dimension Meeting in Warsaw. The side event was moderated by Andrey Rikhter, Director of the Office of the OSCE Special Representative on Freedom of the Media, Dunja Mijatovic, and included presentations by Parmar, Molnar as well as by Alexander Verkhovsky, the director of the prominent Moscow-based Centre for Information and Analysis. This event followed up on the CMCS’ event, *Would You Ban “Hate Speech”? Examining content-based restrictions and speech leading to imminent danger*, convened by Peter Molnar on the 30th of May at CEU with the participation of John Shattuck, Rector and President of CEU, Mijatovic, Molnar, Richter and Parmar among other experts (see <http://www.ceu.hu/event/2013-05-30/would-you-ban-hate-speech-examining-content-based-restrictions-and-speech-leading>, panel

1: <http://www.youtube.com/watch?v=RUUmfZzjXyc>

panel 2: <http://www.youtube.com/watch?v=pbdtl3TTeMl>, “Hate Speech” Monologues: [http://www.youtube.com/watch?v=X76EebVS2\\_E](http://www.youtube.com/watch?v=X76EebVS2_E))

Parmar explored the legal and non-legal policy implications of the Rabat Plan of Action (see <http://www.ohchr.org/EN/NewsEvents/Pages/RabatPlanOfAction.aspx>), the result of a series of workshops organized by the UN Office for the High Commissioner for Human Rights on international law’s prohibition of “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence”. She showed that the Rabat Plan, which was adopted by experts a year ago in October 2012, envisages a holistic approach to the implementation of states’ international obligations encompassing criminal, civil and administrative sanctions and anti-discrimination legislation, as well as policies and practices to promote mutual respect and understanding. She also explained the implications of the Rabat Plan’s six-part test which establishes a high threshold for determining when speech should be criminalised as incitement. Parmar argued that because of the participatory nature of the process of the OHCHR workshops that led to its adoption, as well as its substantive content, the Rabat Plan of Action and its recommendations deserved to be taken seriously by states, the media, intergovernmental organisations and civil society.

Molnar argued that the six-part test of the Rabat Plan of Action focuses on the context of incitement to hatred, except the part about content. He welcomed this focus on context, and also argued that drawing the line between speech that cannot be banned by criminal law and incitement to hatred that must be criminalized is less up for abuse if the line is focusing on context rather than the content of speech the interpretation of which is very subjective. Molnar highlighted that this choice is presented in the title and chapters of the book that he co-edited, *The Content and Context of Hate Speech – Rethinking Regulation and Responses* (eds. Herz-Molnar, Cambridge University Press 2012, can be ordered with 20 % at [www.cambridge.org/CCHS13](http://www.cambridge.org/CCHS13)) and that this broadly comparative volume can be helpful in understanding and implementing the Rabat Plan of Action as well. He disagreed with the *intent*

part of the six part test and quoted the interview that Nadine Strossen gave him for the book. The former long time president of the American Civil Liberties Union agreed that the threshold is “recklessness (...) more than negligence and less than specific intent” (p. 396.). Molnar stressed what he calls the paradox of content-based regulation of “hate speech”: that the more a society is full of prejudices and would seem to need such regulation, the less is the chance to have such subjective regulation applied fairly instead of being abused against the very minorities that are already discriminated against.

Alexander Verkhovsky discussed Russian legislation as an example of bad practice about so-called “hate-speech”. The basis of that legislation is the law “On the Counteraction of Extremist Activities”. The word “extremism” is associated with serious danger, but the vague definition in the law encompasses a much broader range of speech. Verkhovsky argued that the gap between the natural meaning of the word and the way it is defined in the law is misleading for the public debate, for law enforcement, for the interpretation of the legislation. This legislation also gave rise to extremely inconsistent and selective enforcement against so-called “hate speech”, which has almost completely discredited the idea that in certain limited circumstances, freedom of expression may be restricted. At the same time, political groups have no way of understanding where is the “red line” between speech which is caught as “hate speech” and which is not. Verkhovsky also discussed principles of proportionality of punishment for “hate speech”, very specific relevant Russian legal tools, the list of banned extremist materials and the lack of non-punitive responses.

Following the presentations, there was a lively discussion followed the presentations on the subject of freedom of expression and its limits, a topic which was a dominant issue in the first three days of the two week conference.