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Modern standards of the freedom of speech – from Otto Preminger Institut to the era of social media

Introduction

The purpose of this presentation is to discuss the evolution of legal mechanisms regarding the protection of the freedom of speech. The time-frame of my analysis are assigned from the Otto Preminger Institut case examined by the European Court of Human Rights in 1994 until current era of social networks. The analysis will also focus on the influence of different factors of the current mechanisms of protecting freedom of speech, taking into consideration differences between certain States. This article should be also an attempt to answer the question about acceptable limitations to the freedom of speech and existence of the common standard of protection of this fundamental freedom.

1. The relations between law and morality:

The point of departure for this presentation can be a statement that every freedom is directly associated with certain responsibility. In connection with this statement, immediately appears the question about the borders of the liability of the author of certain communicate, or in other words about relations between law and morality. What are the connections between law and morality? In accordance with the first conception the law can be defined as acts which were promulgated as legally binding by competent State authorities in addition with appropriate beliefs and historic facts. In compliance with this theory the relations between law and morality are not essential (although possible) and moral standards don't have to influence legal norms. The second idea establishes the coincidence of the terms of law and morality. According to this theory, in the most fundamental issues, moral standards should be considered as binding. Consequently, legal regulations which stands contrary to those moral standards should be treated as void. Moreover, the intermediate sentence should be also considered. In accordance with this concept, represented by Robert Grochowski[1], in contentious matters law should refer to the moral standards. From one side legal norms and moral standards

[1] R. Grochowski, *Granice prawne i etyczne reklamy w ustawodawstwie krajowym i europejskim*, Poznań-Opole, p. 66.

differ in some valid aspects, like the origin, conditions of coming into force, sanctions for their infringement and source from which we got the information about their entering into force. Legal regulations come into force as the result of enactment by appropriate State authorities, while moral standards are usually created by the certain society. For the violation of legally binding norm there is a punishment imposed by the accurate State power and moreover this punishment is always specified in the penal code. Oppositely, for the infringement of moral standards there is another type of punishment – sanction usually levied by the members of particular community, often in the shape of condemnation. Furthermore legal norm has to be confirmed by containing it in the form of the bill, while particular moral standard are usually acknowledged by the fair justification in the opinion of the certain community. However the most crucial difference, is the fact that some legal norms may be disappointing in moral aspect. Morality is the certain method to express our attitude towards certain behaviour, while norms of legal system only require or prohibit certain actions. On the other hand, the crossing of the scopes of those two sets and as the result, the fact that the set of moral standards should be perceived as the object of the set of legal regulations. Between those two sets of norms occur two types of different connections: essential (based mainly on contents) and functional. This last mentioned type of relations relates to the common influence of both systems of values, with can be observed especially in various general clauses typical for our legal system. The coincidence of regulations contained in the legal and moral standards from one side consolidate the obedience for the legally binding regulations, while discrepancy between them leads to weakness of efficiency of both types of norms. The most vivid example of this last thesis emerges from the *case Otto Preminger Institut* vs. *Austria* from 20th of September 1994.

2. The remarks on the case: *Otto Preminger Institut vs. Austria*

The Otto Preminger Institut was a company promoting audiovisual media in Austria and was also running a cinema in the city of Innsbruck. In 1985 he announced 6 releases of the movie titled “Heavenly Council” which was an adaptation of the novel by Oscar Panizza. The Court of Munich judged the author as a guilty of crime against religion and as a result sentenced him for imprisonment. Consequently, the publication of the movie was prohibited in Germany, but it was still staged abroad. It portrays the God Father as old, seriously ill and helpless man, while the Jesus Christ is shown as mother’s boy with very low rate of intelligence. The most controversial is the image of Virgin Maria described as a Jezebel without any moral principles. Suddenly one day all the trio decides to punish humanity for immorality. They expect to persuade humans to regret

their sins and return for the path of salvation. However they cannot invent an appropriate sanction and as the result, ask Devil for help. He hit on the idea of the sexually transmitted disease which will be commonly infected between man and woman. Consecutively the Devil and Salome breed their daughter who will spread this disease between humanity. Moreover the movie can be characterized by large amount of scenes which present God as amendable, bowing down in front of the Devil, kissing him and calling him friend. In another scenes Maria allows to read some obscene stories in her presence seems fascinated with the Devil. Moreover educationally subnormal Jesus tries to kiss his Mother's breast without any objection from her side. Shortly speaking – God, Jesus and Maria are presented as the Devil's servants – glorifying and applauding him. Information about the projection of the aforesaid movie could be found in the Biuletin of the cinema and on the posters hanging in the different parts of the city, also in the neighborhood of the cinema. The Biuletin contained the information that children under 17 years old wouldn't be allowed to enter the séance. The local press had specified the title of the movie, date and place of its release, but without any further details connected with its contents. On the motion of diocese of Roman Catholic Church, the prosecutor's office had started the proceedings against director of the Institute. He was accused of the offense against religious feelings which is threaten with the imprisonment sanction in compliance with Austrian penal code. Consecutively the prosecutor raised a motion for seizure of the movie. In the same date the court decided that announced séances cannot be published. The court of second instance maintained this decision.

As a result, proceedings was started before European Court of Human Rights. In his application Otto Preminger claimed that seizure and forfeiture of his movie should be considered as violation of Article 10 of the Convention (freedom of speech). He also stated that the national regulations were interpreted in inappropriate way, without the necessity of protection the freedom of expression in the case of artists. In this case the European Court of Human Rights had to balance between two opposite values: freedom of speech (protected by article 10 of the Convention) and freedom of religion (protected in the Article 9 of the Convention). Initially the Court indicated that among European countries, we cannot talk about one concept of the place of religion in the society. Moreover, even in particular States such concepts can distinguish and as the result we cannot create one unanimous definition of acceptable intervention in the freedom of speech in the case when it is directed against religious feelings or beliefs. Consequently, the State authorities have some margin of appreciation to specify the necessity and grades of intervention. However this margin is not unlimited and is define by circumstances of every particular case. In this case decision about the seizure of the movie was justified by its contents which can be deemed as attack for the Christianity, especially for the Catholic

Church. Analyzed judgment specially underlined the role of Catholic religion in daily life of inhabitants of Tirol as confession of 87% of citizens of this region of Austria. Moreover, in this particular period of time existed the special necessity of protection the religious peace and maintaining the public order and safety. In accordance with the judgment from 20th of September 1994, the public authorities of Austria did not exceed the margin of appreciation. In assessment if certain action abused a freedom of speech, we must firstly take into consideration the group of addressees of certain communicate and their moral standards. From one side the applicant stated that he discharged his duties by staging the film only in his private cinema (available only for members who incurred special standing fee). However, the Court agreed that access to the séance was limited, it also underlined that movie was widely advertised. The local community exactly knew the contents of the movie and due to that intension of staging it should be treated as public speech. Moreover, only advertisement of the movie published in the local newspaper could infringe religious feelings[2].

3. General remarks on the margin of appreciation rule

The analyzed judgment was one of many examples in which the European Court of Human Rights referred to the principle of margin of appreciation which is believed to be one of the most fundamental interpretative principles of the Convention. In accordance with the vast majority of doctrine the content of the norm of Article 10 of the Convention has its origin in the European legal tradition, where the borders of the acceptable intervention are first of all defined by the Constitutional legislator. In the continental Europe system the principle is enjoyment of freedoms and rights guaranteed by the Constitution and all the limitations are rather treated as exception from the general rule. Further consequences are direct results of the principle of the separation of powers– the judicial power is appointed to construct the regulations protecting the freedom of speech in the process of practical use of law on the basis of general constitutional clauses. Such solution is treated as prevention from arbitrary decisions by judicial power which may lead to disorder of traditional balance before the State powers and inequality of use of law. The reflection of such postulates is the limitation clause from the Article 10 section 2 of the Convention which establishes the condition of the legitimated intervention in the freedom of speech – the requirements of legality, purposefulness and necessity. Those provisions are clasped with the doctrine of margin of appreciation which gives the member States some scope of freedom in using the Convention on the domestic level and which is also the key to understand the rules of Strasburg system. The rule

[2] R. Grochowski, *op. cit.*, p. 242-243.

of margin of appreciation is firstly justified by the subsidiary character of the obligation arising from the Convention in compliance with its articles 1 and 19[3]. In this frame the principle of the margin of appreciation ought to be understood as the accurate compromise between two unacceptable alternatives. The first of them would be direct use of the provisions of Convention to the facts of the certain case. On the other hand we have to remember that Convention is constructed on the general terms which can be interpreted in various ways.

We should also take into consideration the diversity between European States and different concepts of the role of human rights which are the reflection of cultural, economic and religious variety. Another opposite alternative would rely on limitation of the scope of the European Court control only to examination if the State authorities didn't act in the arbitrary way. This concept is associated with the danger of infrequency of the Court control. The provisions which constitute the limitation clause would become the model of so wide and general contours that it will easily question the sense of the functioning of the Strasbourg system. Both presented concepts are the derivatives of the wider conflict between the rule of universality and subsidiarity. On one hand the European Court needed to construct an effective tool which allow for the flexibility in the process of using the Convention for both: the State members obliged to obey the rules of Convention and the Court by itself. On the other hand, we ought to be aware that while creating the Convention, the States did not intend to establish the homogeneous and detailed legal system – so called "human rights code". Their intention was rather to create the general standard of protection of the most crucial rights and freedoms. As the consequence the rule of margin of appreciation should be understood as golden mean between those two values. In accordance with the statement of P. Mahoney[4] this principle is deemed to be natural and essential result of division of the competences between States- parties to the Convention and bodies of Strasbourg system. The margin of appreciation is traditionally defined as certain scope of freedom given to the State authorities after the establishment of certain controlled standard by the Court which is accurate to the circumstances of particular case. Simultaneously, it must be emphasized that in case of glaring, performed in bad faith violation of the provisions of the Convention, the respondent State cannot allege to the rule of margin of appreciation. The doctrine of margin of appreciation can be applied only in case if the violation can be qualified as performed in good faith. It is often recalled in reference with opposite general interest but imposing the disproportional burden upon the individual. Doctrine of margin of appreciation is often explained in accordance with

[3] J. Skrzydło, *Wolność słowa w orzecznictwie Sądu Najwyższego Stanów Zjednoczonych i Europejskiego Trybunału Praw Człowieka*, Toruń 2013, p. 369 and the next

[4] P. Mahoney, *Marvellous Richness of diversity of Invidious Cultural Relativism?,* Human Rights Journal, Vol. 19 (1998), p.2.

judicial self-restraint, which in compliance with the statement of J. Shokkenbroek[5] means that in certain case the Court simply resigns from exercising its competences guaranteed by the Convention.

In reference to P. Mahoney[6], we can indicate three alternative modes of identifying the sense of margin of appreciation doctrine. First of all it may be understood as allowance for so called judicial opportunism. This rule is sometimes described as a curtain which allows the Court to avoid the liability for judging cases deemed as difficult or politically sensitive. As the consequence of the first alternative, the margin of appreciation can directly lead to the denial of justice, especially from the position of applicant. Such hypothesis is unacceptable from the perspective of the good faith of the Court's judges, but on the other hand it may be treated as the proof of resignation of the Court in certain matters. In the accordance with the third possibility, the margin of appreciation is part of Strasbourg System acquis and fully acceptable interpretative doctrine which can bring benefits rather than creating dilemmas under the condition of its reasonable using.

Referring to the margin of appreciation, R .St. J. Macdonald[7] noticed that invocation on this doctrine is practically possible in two different cases. The first one should be treated as the conscious resignation from exercising its competences in the circumstances of particular case while the second means that in certain matter there was simply no violation of any right guaranteed by the Convention. Moreover P. Mahoney[8] indicated criteria which justify the invocation for the rule of margin of appreciation in accordance with the judicial practice of the Strasbourg Court:

- The existence of common standard in certain matter. Such standard should be accepted at least by the vast majority of parties to the Convention.
- Nature of the protected freedom (right)
- Literal resonance of the regulation – the more detailed the regulation is the less is the scope of the margin of appreciation. Due to the fact that freedom of speech is provided with the limitation clause, the requirement "necessary in the democratic society" would allow for some range of flexibility.
- Nature of the purpose which justified the intervention. The judgment is done from the perspective of democratic society.
- Associating circumstances – the wider the situation diverges from normality, the wider is margin of appreciation.

[5] J. Shokkenbroek, T*he basis Nature and Application of the Margin of Appreciation Doctrine in the Case Law of the European Convention of Human Rights*, Human Rights Law Journal, Vol. 19 (1998), p. 31.
[6] P. Mahoney, *op. cit.*, p. 1-2.
[7] R. St. J. Macdonald, the Margin of Appreciation, New York 2001, p. 85
[8] P. Mahoney, *op. cit.*

Moreover, some specific features connected the use of margin of appreciation doctrine. First of all, if the intervention is legitimated, the State has quite a large scope to choice sanctions which should be levied on. On the other hand in accordance with judicial practice of the European Court of Human Rights the imposing penal sanctions upon the authors of political speeches is rather unacceptable (*Castells* v. *Spain*). What is more, the freedom sanctions for abusing the acceptable borders of the freedom of speech usually stay contrary to the spirit of Convention (*Cumpana* and *Mazare* v. *Romania*). This margin becomes even more narrow when the intervention touches the essence of certain right or freedom. The scope of margin strictly depends on the subject of certain speech. The biggest range of protection is dedicated to the political debate in order to ensure the variety of ideas and pluralism. Wider margin of appreciation is usually used in the cases connected criticism of the judicial power. Even wider margin is guaranteed in commercial speeches or contents qualified as profanity. This last issue is undoubtedly connected with the lack of one European concept of morality and its coincidence with the doctrine of margin of appreciation. However, it should be underlined that judicial practice is not unanimous in this case: the summoned judgment of Otto Preminger Institut can be example of such coincidence, however in case *Open Door* and *Dublin Well Woman* v. *Ireland* the Court created its own standard of morality.

4. The theory of two tiers as the common American standard

Different standards of protection of the freedom of expression are established by the Supreme Court of United States mainly based on the First Amendment to the Constitution from 1791. The content of aforesaid amendment is very limited – it only contains addressed to the Congress prohibition of enacting legislations which limits guaranteed rights or freedoms. The content of the amendment doesn't specify any suggestions connected with the shape of acceptable intervention. As the result, we should pose question about the acceptation of any limitations regarding the freedom of speech as well as their scope. In accordance with the statement of H. Black[9] on the field of freedom of speech we cannot balance any opposite values due to the fact that it was already provided by the legislator who, in Black's opinion, doesn't predict any kind of limitations. However, this interpretation seems rather secluded, which does not solve the issue of potential intervention in the freedom of speech. At the initial stage when the First Amendment entered into force its content was interpreted strictly as the prohibition of prior restraint and licensing or censorship of the press. Such opinion was dominated until the beginning

[9] The dissent opinion of Judge Black in the case of *Konigsberg v. State Bar of California,* 366 U.S. 36. (1961).

of XXth century which is visible in the judgment of the case Patterson versus Colorado from 1907 in which the one of the judges – O. W. Holmes stated: "The main purpose of regulations such as the First Amendment to the Constitution is to refrain the public authorities from imposing the prior orders on the publications which is the common custom for many foreign governments. Whereas it is not their role to protect the author of the certain speech from the liability when this is the requirement of the public interest". This statement often called the concept of present and clear danger breaches the previous method of interpretation, establishing that the general prohibition of intervention includes the cases of prior and post restrain. The role of judicial power was to formulate the criteria determining the acceptable intervention in the light of First Amendment. It must be noticed that even in the conditions of the most democratic and most liberal society some limitations are simply required with the addition to the statement of judge Holmes: "even the strongest protection of the freedom of speech won't protect the perpetuator who raised the alarm in crowded theatre using the word: «fire»[10]. It is crucial if the words were used in such circumstances and were of such nature that they could cause obvious and close threat which should be prevented by the Congress". However, on the basis the justification of the judges from early years of XXth we cannot draw up the axiological base of the solution that wider range of the Constitutional protection of freedom of speech results in necessity of establishment of certain and précised criteria of the intervention in public interest. The lack of précised suggestions resulted in the necessity of balancing between two contentious values to prejudge what types of speeches deserve the Constitutional protection. In other words, the Supreme Court was obliged to construct the limitation clause. In accordance with the opinion of judge F. Murphy it should be indicated that exist certain précised and exclusively enumerated classes of speeches which prevention and punishment did not generate any Constitutional problem". To such category should be qualified words commonly thought as obscene, profane, defaming, offensive or causing the immediate threat to the public peace and safety. Such solution is judged in the light of axiological justification of the First Amendment to the Constitution. In the next years the Constitutional protection was refused to the speeches of defaming, obscene character and moreover speeches relying on public defamation of the racial group, misleading, inciting to the violence or provoking the hostile reaction among the public and direct threat of civil unrest. From the doctrinal point of view the standards of protection the freedom of speech in American system can be presented as the theory of two tiers. Depending on the subject of certain speech, we should identify high or low grade of its protection. The high value speech which is considered as constitutional principle, the possible intervention in the speech is judged as the content-based

[10] *Schenck v. United States*, 249 U.S. 47 (1919).

restriction with all its consequences, especially those connected with the burden of proof. In the case of speeches which value is judged as low, the level of protection significantly decreases (sometimes it equals zero) and the public authorities have definitely wider freedom, nevertheless that legislative activity is directly related to the content of the speech. In accordance with C. Sunstein[11] the theory of two tiers of constitutional protection of the freedom of speech should be treated as the essential part of effectively functioning system of protection of the freedom of speech. It is based on the hypothesis that it cannot exist legal system where the equal guarantee of protection would be given to the speech in the political debate and for example child pornography or defamatory speeches. Resignation from creation the model of various treatment of aforementioned type of speeches and their equal evaluation in the light of Constitutional can lead to the one of two unacceptable alternatives. The first of them simply means that in the process of constitutional control of each legal regulation influencing the use of freedom of speech, restrictive controlling test would have to be replaced by the milder standard in case of both: high value speech and low value speech. As the consequence, the public authorities would obtain a possibility to intervene in the essence of the freedom of speech, for example in the case of public debate and proving the legality of such intervention would be much easier. On the other hand the growth of the standard of protection without reference to the subject of the speech and its social value would lead t the situation when we should use the test characteristic for high value speech also to the second category of low value speeches. The public authorities would not have the legal tool to intervene in cases of infringement the public interest. The separation of so called core of speech depending on its subject, allows for distinguishing of the standards and what is more, strengthen the guarantees of the freedom of speech in the shape of autonomy of individual which should be protected from the intervention of State powers. The principle of the autonomy of individual which is not complemented by the theory of two tiers is simply disappointing while trying to answer the question why some methods of realization of such autonomy could not be acceptable in the democratic society. In the opinion of C. Sunstein[12] the combination of the principle of autonomy of individual with the model of two tiers of protection of freedom of speech allows to avoid this kind of dilemma. Such considerations should be complemented with three further remarks. First of all rating some categories of the speeches to the low value speech does not mean that the level of protection in every circumstances is "equally" low. We should distinguish speeches which only don't contribute to the interest of democratic society (for example commercial speeches) and speeches which value can be qualified as negative (such as criminal offences). Secondly,

[11] C.R. Sunstein, *The Partial Constitution*, Cambridge-London 1993, p. 233-235.
[12] C.R. Sunstein, *op. cit.*

the exclusion or limitation of the protection practically does not mean that the public authorities have entirely free hand in interfacing the freedom of speech. In accordance with the judgment of the case *R.A.V* v. *City of Saint Paul*, some categories of the speeches can be generally prohibited on the base of one of their feature (for example defamatory character), but at the same time we cannot simultaneously imply any kind of discrimination to the process of enacting the law (so called viewpoint discrimination). Thirdly, it should be emphasized that the catalogue of low value speeches has enumerative character. What is more, in such cases the Supreme Court usually implies the legal fiction that those kind of speeches were already excluded from the Constitutional protection (or at least had the limited range at the time of enacting the first amendment. The justification of such mentality can be explicable with the role of Supreme Court in American judicial system which expressly separates the competences of legislative and judicial power. While excluding some categories of speeches from the constitutional protection, the Supreme Court does not complement the content of the regulation, but discovers the original content of the First Amendment. Such concept has significant practical consequences as the legislative power is not entitled to establish the new exclusion which was expressly confirmed in the judgment of the case *United States versus Alvarez*. The American judicial practice is based on the statement that benefits arising from limitations levied on the public authorities prevail over social costs connected with such limitations. This evaluation cannot be voluntarily changed by the legislator and modified only in accordance with the statement that this specific kind of speech does not deserve Constitutional guarantees. The Constitution cannot be treated as the document which constructing the borders of the activities which are classified as legal for the public authorities, at the same time constitutes the blank permission for resignation from those principles when the State power finds it necessary or convenient. Due to that balancing ad hoc the contentious values in the light of First Amendment should be classified as unacceptable with the principles of the Constitution. Analyzing the details of the Constitutional standard of high value speeches, it should be stated that legislative content-based restriction is unacceptable in compliance with Constitutional provisions. Such regulation could be only defended in case of joint fulfillment of two conditions of strict scrutiny test: 1). such legislation must be necessary to serve a compelling state interest and 2). it ought to use narrowly drawn to achieve that end. Moreover narrowly drawn should be defined as such which from few possible alternatives are the less restrictive while the prohibition contained in the legislation is constituted in the most narrow possible way. In this context the most controversial are associated with the definition of the term "content of the speech". In reference to the case of *Police Dept*. of *City of Chicago* v. *Mosley* it can be read that the State authorities have no power to limit

the freedom of speech due to its dispatch, ideas which it contains, its subject or content. The scope of the terms used by the Supreme Court cover in significant part, but the meaning of the term: "content" is the widest and includes three aforementioned. In the American judicial practice the term limitation of the certain freedom is usually understood as direct activity of the State authorities towards the author of the speech relying on implementation of the penal, administrative or civil sanctions and the reaction of State usually follows after introducing certain speech to the public area. However sometimes, the public authorities intervene in the speech before its dispersion, punishing the infringement of prohibition of certain types of speech (prior restraint). But, generally speaking there can be other forms of intervention in the Constitutionally protected freedom of speech. One of the examples arises from the case *Simon* & *Schuster*, *Inc*. v. *Members of N.Y. State Crime Victims Bd*. Among the legislative intervention in the freedom of speech contrary to the First Amendment can be distinguished two types of interface. In case when the legislation generally prohibits speeches for certain subject, it should be classified as subject matter restriction. The second type of infringement is the situation when particular regulation is working selectively, prohibiting the expression of only of certain ideas or believes on the concrete subject, simultaneously allowing for introducing other types of ideas or believes on the same topic. This kind of situation is described as viewpoint discrimination. This last shape of infringement is described as qualified form of infringement due to the fact that apart from violation of constitutional standard of protection of the freedom of expression, it's additionally violates the prohibition of discrimination. On the other hand in accordance with the hypothesis stated by I. Hare the classical shape of content-base restriction practically can cause a very similar effect to its qualified form. It can be especially visible in cases where the public opinion has unanimous idea on certain matter. The entire prohibition of public discussion wouldn't be equally harmful for both parties to the potential debate because the supporter of the dominating view could not be interested in organizing such a debate. It confirms the thesis that regulation which intervene in the content of the speech always has adverse impact on the level of public debate and the lack of easily identified discriminative ingredient does not automatically mean that it will be easier to overthrow the presumption of incompliance with the Constitution of the certain provision.

5. The Islamic model of protection as the alternative to the Western concept

Abovementioned considerations were dedicated to the comparison of the models of protection the freedom of speech existing in continental Europe and United States

of America. Although those two models evince may crucial differences, it should be indicated that they base on similar international agreements such as Universal Declaration of Human Rights and derive from similar philosophical heritage, mainly on the thesis of époque of Enlightenment. These heritage is the ground for the values of Muslim or Islamic civilization. Moreover they often allege the Western Civilization to levy upon them the Conventions drafted by their lawyers without respect to the Islamic culture or tradition. In accordance with the Preamble to the Islamic Declaration: "we community of Muslims believe that the God is the absolute ruler in this life; that it is He alone who is able to guide mankind to that wherein is their good and well-being we assent that human rights is incapable of establishing the most correct plan for life, independently of God's guidance and revelation. We, the Community of Muslims proclaim in the name of the Islam this Declaration of the Rights of Man, derived from the noble Koran and the pure Sunna of the Prophet. On this basis, they are eternal rights, not capable of being suppressed nor rectified, nor abrogated nor suspended. These are rights laid down by the Creator, praised by He, and no single human being, whoever he be, has the right to suspend them nor to infringe upon them"[13]. The differences seem quite clear after cursory analysis of the legal regulations. While UN Universal Declaration as general western concept on human rights is the secular document of human origin based on pragmatic experience and possible to be changed through the specific legal procedure and it is aimed to achieve material purposes. On the other hand, the Islamic Declaration is, according to its authors, religious document of divine origin based on revelation, which cannot be changed. It purposes are very similar to the goals of Universal Declaration but with the religious background. These differences are irreconcilable and it is unnecessary to reconcile them. The representatives of the Islamic doctrine underline the fact that religion ought to be used for the respect of human dignity and not against it in accordance with the Koran which says: "Truly God is not iniquitous to the people, but people are iniquitous to themselves".

In reference to the practical side of protection the freedom of expression in the Islamic reality, it should be recalled the case of the novel titled *Satanic Verses*. It started the stormy debate when, on 14th of February 1989, Imam Khomeiny issued a fatwa ordaining a death penalty on its author- Salman Rushdie. In response, the Director General of UNESCO- Federico Mayor issued a declaration calling for guarantee of the freedom of expression and rejecting all appeals to violence however much offence is caused in the exercise the freedom of expression. The Swiss national Commission for UNESCO expressed the opinion that the international diffusion of the Satanic Verses would be one of the most effective responses to the attack of Khomeiny on elementary human rights.

[13] W. Schmale, *Human Rights and Cultural Diversity*, Goldbach 1993, p. 242.

The publication of this controversial book had taken its toll as the murder of the Japanese translator of the book Hitoshi Igarashi, the assault with the knife on the Italian translator Ettore Capriolo and planting bombs in the objects of some publication offices. From one perspective we must emphasize that such activities are obvious violations of the human rights and of penal code of every civilized country as the Fatwa of Imam Khomeiny. One the other hand we should ask a question about sanction of withdrawing such publication from the market which was applied in the previously analyzed case *Otto Preminger Institut versus Austria*. This is the proof of the use of distinguished standards in the European regional system (represented by the European Court of Human Rights with its doctrine of margin of appreciation) and by general system created by the bodies of United Nations Organization. "Occult forces constantly seek to discredit the Arab and Islamic world for evident reasons. They used this book for their purposes. Whatever be the intention behind its publication, nobody could have failed to realize that it had to provoke a stormy reaction. If such restrictions were not foreseeable, the fact that they subsequently occurred should have been a sufficient reason to withdraw the book from the market". This vivid statement by Sami A. Aldeeb Abu-Sahlieh[14] strengthen by the view that freedom of expression in the Western level is applied selectively giving the example of the book "the Protocols of the elders in Zion" from one side can be a proof that it is always easier to unify the standards at the regional level. On the other hand-imposing upon Muslim world certain standards which from their point of view can be considered as Western should result in giving them the same range of protection. Of course this protection should lead to levying the sanctions specified in Fatwa, but using the same set of remedies which prevent from further violations. Another specific feature which distinguish is the axiological base for protecting the freedom of expression. As previously stated the idea of Islamic model of human rights protection is derived from the religious sources which can lead to the situations which cannot be understood from the European perspective.

6. Role of social media

The best example can become the Dżihad campaign on Facebook. It may be treated as a paradox when we refer to Samuel Huntington and his post Cold War vision of the world. He described the present reality as the clash of two civilizations- Islamic representing the Middle Ages mentality and Western which more or less covers with the definition of contemporary values. However some of the ingredients of his theory

[14] Sam A. Aldeeb Abu Sahlieh, *Muslims and Human Rights. Challenges and perspectives* [in]: W. Schmale, *Human Rights and Cultural Diversity*, *op. cit.*, p. 247.

came true, he did not predict the mixture of two civilization which is the consequence of the fact that the most radical Islamic sections are promoted by the use of the most modern technologies, including social networks created by the Western world. Social networks are not only the widely used and the most convenient source of information which effectiveness we could see on the example of the crowd in Afghan city Mazar-e Sharif who killed the worker of the United Nations Organization due to previous combustion of Koran in Florida. What is even more threatening, Facebook is also the arena of spreading many political views which sometimes stay contrary to the standards adopted by the "civilized nations". To support this statement it is sufficient to recall the website The Third Palestinian Intifada which officially preaches that "day of the Last Judgment will come only if Muslims are killed all the Jewish people". Even more petrifying fact is that before the website was finally removed it became the favourite vitrine of over 350.000 people[15]. On the other hand we have to remember that the influence of social network is often valuable in realization of the axiological base of the Western world, such as theory of democracy and theory of marketplace of ideas. While the postulates of the theory of democracy are quite obvious, the theory of marketplace of the ideas states the natural regulator the various human activities is the market and the public authorities should not react unless there is serious threat to the human life or safety of the State. According to the Syrian revolution "the social media offers a medium to obtain international sympathy and supporting for this cause. Propaganda, one of the rebel's greatest tools is made easier and more efficient by technology. Furthermore, recruiting new insurgents traditionally one of the more difficult tasks of insurgency is made easier due to social media". This is the main reason which does not allow as to overvalue the impact of social media on current political reality.

To summary this essay, it should be emphasized that different world regions are characterized by various level of protection the freedom of speech arising from cultural, political and axiological differences. While analyzing the American system, it ought to be repeated that interventions are treated as the narrow exceptions from the general principle. Consequently, for example the lie included in historic publication is usually guaranteed the equal protection as every academic publication, while in European system is treated as pretext to intervention in accordance with article 10 and 17 of the Convention. In American system "the acceptation of the penal sanction for the hate speech is perceived as the faith in omnipotence of the State power and the lack of faith in human ability to reject the beliefs based on racism"[16]. Furthermore, we ought to be aware that

[15] http://swiat.newsweek.pl/dzihad-na-facebooku,76103,1,1.html (access from: 15.11.2014 r.)

[16] J. Cooper, A.M. Williams, *Hate Speech Holocaust Denial and International Human Rights Law*, EHRLR no. 6 from 1999, p. 597.

the phenomenon of globalization can cause the interpenetration of the certain standards, additionally supported by the impact of social media. In accordance with the statement of Wael Gnohim "if you want to liberate people, give them Internet". Using this precious idea, we should remember that "the liberty of certain individual always ends in the place where the liberty of other begins". The Internet is doubled-edged weapon which depending on the knight, can be used to both: protect or violate the freedom of expression.