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Abstract: This article offers a case study of Slovakia focusing on the *Mazurek* case, the first criminal conviction of an incumbent Slovak far-right MP of *hate speech*. My explorative analysis uses data from my work as expert appointed by the investigation. It shows that cultural expertise in the Slovak *hate speech* cases involving prominent politicians has helped pinpoint the anti-minority narratives hidden behind the incriminated speech. The far right attempted to weaponize the legal process to cement their electoral base, raising the question of the mitigation strategies available to experts to counter this trend. The analysis points to the relevance of global legal pluralism not only in approaches to *hate speech*, but also regarding the interaction between the legal doctrine, the humanities and social sciences, and local legal regulation. The article concludes with positioning cultural expertise vis-à-vis global legal pluralism, whereby increased transparency of data from the proceedings and access to specialised training could mitigate the difficult position of cultural experts in *hate speech*.

Keywords: cultural expertise, expert witnesses, Slovakia/Slovak Republic, hate speech, far right

Introduction

To conclusively identify instances of *hate speech* – which is usually defined as extreme speech capable of inciting discrimination, hatred or violence (Weinstein and Hare 2009, 4; Pejchal 2020) – is a challenging task. The same speech act (understood broadly to encompass symbols as well) may be received very differently depending on the cultural background of the recipients and the communities they are embedded in. Furthermore, multiple actors – states, but also private platforms – advance their own approaches to *hate speech* and its regulation (Cammaerts 2009; Land 2020). While international legal regulation is significant, the "line drawing" in *hate speech* cases occurs first and foremost at the level of "national jurisdictions" (Land 2020, 993).

The importance of cultural contexts for the application of state-based legal norms, such as national regulations of *hate speech*, has been underscored by the theoretical lens of global legal pluralism (Berman 2020). Global legal pluralism calls for "culturally interpretive approaches to making decisive judgements about what exactly hate speech might be, at a particular moment and in a particular space", which are particularly important in "societies that are transitioning to democracy" with comparatively greater risks of excessive speech restrictions (Stremlau and Gagliardone 2019, 386–87). Cultural experts (Holden 2019) can satisfy such calls, if they are sensitive to *both* local specificities and global developments in locating instances, and understanding the societal impacts of, *hate speech*.

In Central Europe after the fall of state socialism in 1989, legal restrictions on speech were generally softened. Yet, a "culture of rights", in which the awareness and commitment to human rights is widespread, was not advanced with proactive measures, notably human rights education (Kusý 1994) or systematic reporting about human rights issues in the media (Farrell, Drywood, and Hughes 2019). This resulted in the increased prominence of extreme political actors in the public discourse (Přibáň and Sadurski 2007, 219). Proactive measures were missing in Slovakia, independent since 1993, as well. The presence of extreme political actors gave rise to *hate speech* litigation, with a potential for involving cultural experts. In 2016, the far-right People's Party Our Slovakia (PPOS) led by Marian Kotleba gained parliamentary representation as the first party of its kind in Slovak history, and *hate speech* cases became more prominent. One of PPOS MPs, Milan Mazurek, with particularly vocal anti-minority sentiments, was charged with defamation of nation, race, and belief. Mazurek's subsequent conviction resulted in the first instance of a Slovak MP losing his mandate due to a criminal conviction for *hate speech*.

In this article, via engaging with the *Mazurek* case, I contribute to studying the role of expert witnesses in *hate speech* cases and the consequences of their involvement for the

experts themselves and for the dilemmas that their involvement is accompanied with. I conceptualise global legal pluralism as opening the space for a more dynamic view of the interaction between legal regulation and legal doctrine analysing it, and the social sciences that are the domain of the "non-legal experts". *Hate speech* cases, particularly those involving political elites, attract the public's attention, and as such represent a particularly useful case category for analysing the dilemmas of cultural expertise. Indeed, experts in these cases might get under increased public pressure and be vulnerable to charges of bias. Against this backdrop, I argue that, in Slovakia, where a comprehensive legal framework supporting specialised expert training and transparency about expert involvement in trials (cf. Petersen 2013, 317–18) is missing, far-right actors succeeded with weaponizing the legal process. In other words, they pursued their own political campaign by denouncing the expert witnesses, even at the expense of weakening their own legal positions as defendants.

I proceed as follows. Firstly, I review existing scholarship on expert witnessing focusing on the challenges of *hate speech* cases. Secondly, I introduce the Slovak *Mazurek* case as central for assessing the consequences of expert witness involvement in *hate speech* cases, and the method of contextual analysis, based on the first-hand account of my involvement as expert witness in this case. Then, I discuss the motivations for and consequences of expert witness' involvement in *Mazurek*, during the pre-trial procedure and in the courtroom, demonstrating how the expert involvement itself was weaponized by the far-right actors. I conclude by outlining the avenues through which cultural expertise may mitigate the risk of the weaponization of the legal process.

The Scylla and Charybdis of Cultural Expertise in *Hate Speech* Cases

In democracies there is a need to adjudicate between various understandings of human rights as a core feature of legal pluralism, when understood as a descriptive concept capturing the

reality of how law often operates in contemporary societies (Tamanaha 2021, 188–91). Legal pluralism underscores the significance of studying local regulation and practices in a global context (Darian-Smith 2022, 912), as in the case of global controversies on defining and pinpointing *hate speech*.

Cambridge historian Richard Evans acknowledges that in cases affecting the state of democracy, experts often face a tension between their "two hats" – that of an unbiased reporter of facts and that of a citizen who is concerned about the danger of certain acts in a democracy. Still, he recognises a duty to provide the expert opinion which often brings scholarly discoveries in their own right (Evans 2002, 342–43). Evans speaks from experience: he prepared an expert testimony in *Irving v. Penguin Books Limited, Deborah E. Lipstadt* (see Lipstadt 1994), where Lipstadt and her publisher were accused of libelling Irving by claiming that he is a Holocaust denier. The court needed to adjudicate whether Irving distorted historical facts, and found that such distortion indeed occurred (Irving v. Penguin Books Limited, Deborah E. Lipstadt 2000).

In cases concerning restrictions on speech,[1] the tension between the expert striving for objectivity and the expert as a concerned citizen is apparent for two reasons. The first is their societal relevance. If a particular instance of *hate speech* in a jurisdiction criminalising such speech is not subject to prosecution, the law exerts a legitimising effect on the speech act; the speakers can claim that their speech passed legal scrutiny because no indictment was issued. Secondly, in these cases it is particularly complicated to establish a clear-cut distinction between the law and the facts. Invoked with quotation marks (Molnár 2012) or (in this article) *in italics* to highlight its ambiguity, scholarly controversies surrounding *hate speech* mirror the struggles of investigators, prosecutors and courts. Evaluating the contextual characteristics of speech requires the awareness of historical, sociological, political, and even psychological factors, which goes beyond the usual capacities of public institutions, often with limited

resources for specialised staff. If coupled with relatively scarce legal precedents, poor awareness of social diversity, changes in the regulatory framework governing *hate speech* cases and the general lack of its clarity (Belavusau 2013), and intensive media and public interest in cases involving societal elites, the challenge that these institutions face in delivering well-reasoned decisions, is apparent.

As per a standard account, expert testimonies must assist the courts on the appraisal of evidence, reserving the legal regulation to the judges, which could be interpreted as reaffirming the "ideology of legal centralism" (Griffiths 1986, 4). "Legal centralism" places state law and the state institutions enacting, implementing and applying it hierarchically above all other sources of law. Here, the judges, as representatives of the state in this context, have access to legal interpretation, in contrast to experts who may bring in perspectives from a wider range of disciplines. This discomfort with experts referring to legal regulation in their reports and testimonies may explain why experts with some background in law tend to explicitly avoid *engaging with the law* (Baker 1991, emphasis added).[2] In *hate speech* cases, however, I argue that the contextual analysis cannot ignore the positive law, as the extent of legal restrictions on speech gives rise to specific expectations from the constituency which is bound by these rules (Kniffka 2007, 140). For example, if the law prohibits certain kinds of expressions, society might expect that the authors of such expressions would face legal consequences, and is less motivated to engage in counter-speech as an alternative form of response. As a result, the analysis of the contexts of the speech requires the engagement with the law as one of several drivers of human behaviour (Friedman 2016). Such an engagement may help the quality of the justification of the decision of the public authority. At the same time, it blurs the distinction between "academic" and "legal" arguments (Burns 2008; Jasanoff 1997, 1–11) and increases the risks that the expertise will be challenged.

Expert witness' involvement in high-profile *hate speech* may place the expert witness between Scylla and Charybdis. By not getting involved in the case, the expert might decrease the quality of the decision-making process, whereas their involvement might result in the exploitation of the expert testimony for partisan purposes. High-profile cases are particularly challenging for cultural experts due to the risk of unwillingly boost partisan actors, as discussed in existing literature. Some prominent politicians, such as Turkish President Erdoğan (Heper and Toktaş 2003, 169–73) or the leader of the Dutch Freedom Party Geert Wilders (Noorloos 2014, 256–58) have a history of prosecutions for *hate speech* in their respective jurisdictions. Rekker and van Spanje (2022) showed how such prosecutions may lead to undermining the support for the democratic system. However, they did not consider whether and how the expert witness' involvement might influence the reception of such prosecutions by the society. Wilson (2016, 742) examined expert witness' involvement in international criminal trials, discovering that "in speech-crimes trials, interpretive approaches to language and cultural meaning are preferred over statistical analyses", and explained this preference with the threatening effect that quantitative approaches have to judicial authority.[3] Wilson's claim underscores the importance of studying cultural expertise in *hate speech* cases involving prominent public figures.

The impact of *hate speech* trials and the role of cultural experts therein is particularly important in Central Europe. Spearheaded by Hungary and followed (at least until the 2023 elections) by Poland, democracy is under pressure in the region (e.g. Ágh 2022; Pech and Scheppele 2017), which might encourage illiberal actors in other countries such as Slovakia to follow suit. Ineffective responses to *hate speech* in general, and the manipulation of cultural expertise, in particular, are both likely to further erode democracy. My interdisciplinary socio-legal analysis (Banakar and Travers 2005, 2–6) unpacks the dilemmas of expert involvement and its consequences in high-profile *hate speech* trials. It highlights how, from the perspective

of far-right actors, the reward in the form of increased electoral support gained via weaponization of the legal process, might outweigh the perspective of an acquittal. I argue for an increased awareness of the potential risks of the involvement of social scientists with law, which should nevertheless not translate into abstention but rather into the adoption of measures for risk mitigation.

Selecting and Studying the Slovak *Mazurek* Case

Slovakia has a history of anti-minority stances presented by its political elites, some of which have persisted after its accession to the European Union (see Malová and Dolný 2016). The Roma, who are underrepresented in the public discourse and in politics, are a typical target of discrimination and even violence (e.g. Donert 2017; Holt 2020). Thus, statements highlighting their "otherness" or "subordinate status" in the society feed into ingrained societal prejudices and may have particularly denigrating effects.

Far-right actors have used these sentiments strategically to gain electoral support. In 2013, Marian Kotleba was elected as chairman of one of the eight Slovak higher administrative districts. Kotleba had previously been involved in a political movement banned by the Supreme Court of Slovakia (3Sž/79/2005 2006) as an organisation attempting to overthrow democracy. In another case concerning *hate speech* in his campaign in the 2013 elections for higher administrative districts, no expert testimony was included (4Tdo/49/2012 2013). Here, the Supreme Court mainly determined that it does not violate the content-based ban on *hate speech* in the Slovak criminal code's (2005) when Kotleba in his 2009 manifesto advocated for abolition of "unjust favoritism of not only Gypsy parasites". Despite the 2013 success, however, Kotleba remained on the margins of public attention until his unexpected success in the 2016 general elections, which coincided with the rise of electoral support for the far right during the 2015-2016 "refugee crisis" across Europe. While Slovakia remains a democracy, its

politics has become highly polarised (Mesežnikov and Gyárfášová 2018). Between 2016–2021, Kotleba's popularity was relatively high: he ranked fourth in the 2019 presidential elections, despite competing against another anti-establishment candidate (Haughton, Rybář, and Deegan-Krause 2019).

After the 2016 Slovak elections, new legislation reduced the burden of proof on the prosecution required to prove a *hate speech* offence. Furthermore, it empowered the National Criminal Agency (NCA) to investigate extremist offences instead of the regular police (Ministry of Interior of the Slovak Republic 2018). The parliamentary majority sent a clear signal that it considers *hate speech* a source of societal concern, and the law as an optimal cure for it (see Žitňanská 2016). The legal relevance of this signal was virtually unquestioned at least until the Constitutional Court of Slovakia (PL. ÚS 5/2017 2019) struck down some of the extensions of the grounds for prosecution of *hate speech* as incompatible with constitutional guarantees of free speech.

The investigators at the NCA resorted to cultural expertise in several of the post-2016 Slovak *hate speech* cases. Three high-profile prosecutions against Kotleba's MPs (including Kotleba himself) are particularly interesting since they originated after the legislative extension of criminal sanctions against *hate speech*. The change of the competence allocation of *hate speech* cases within the Slovak police was combined with the positive verbal signals towards prosecution sent by the parliamentary majority when approving the enhanced restrictions of *hate speech*. Both tendencies supported more prosecutions.

One of the cases concerns Marian Kotleba who issued cheques in the value of 1488 euros supporting selected families in need. The sum is composed of the symbols fourteen and eighty-eight that have a specific place in extreme right symbolic language (Virchow 2017, 635; see also Maková 2019). The prosecution and the court instructed several expert witnesses, respectively, including several historians and a political scientist. Kotleba questioned the

credibility of some of them in terms of their expertise (see Kyseľ 2020a). The Supreme Court affirmed Kotleba's conviction in April 2022, as a result of which Kotleba lost his mandate in the Slovak parliament (Steuer 2023, 161–62). In the second case, MP Stanislav Mizík was accused of publishing a statement on Facebook that denounced two recipients of presidential state honors because of their Jewish origin (Kyseľ 2017). The Supreme Court affirmed Mizík's acquittal as it was not proven without reasonable doubt that he personally authored the statement (2To/13/2018 2019). The prosecution instructed another historian as expert witness (Šnídl 2018) but this involvement was not even mentioned in the final verdict.

Mazurek was the third publicly well visible case after the 2016 elections. Here, for the first time in modern Slovak history, a far-right MP was convicted for *hate speech* and lost his seat due to the constitutional prohibition of convicted individuals to sit in parliament. Milan Mazurek, elected on the PPOS party list as the youngest MP in the 2016 election, presented anti-Roma statements in a regional broadcast that was subsequently published in an online archive. In this speech, Mazurek discussed the "solutions" to the "Gypsy question", highlighting the problem of the "Gypsy terror in Eastern Slovakia". He had asserted that "Gypsies who go to special schools […] were supposed to go to school with children *from normal, decent families*" (emphasis added). He also argued that "Gypsies" should not be taught computer skills or dance and that the investments in social housing "to people who will not bring us anything in the future" need to be reduced (see Ryšavý 2017; 4T/36/2017 2018, 36). The charges for these and other statements in the speech were brought despite the fact that, just a few months earlier, the authorities refused to proceed against Mazurek in relation to a statement published on his private Facebook account conveying: "I do not defend any regime but we only know lies and fairy tales about the Third Reich concerning the six million and the soaps made of Jews. Just lies are taught about Hitler". The justification by the police was that the phrase "I do not defend any regime" served as a sufficient proof that Mazurek had not

incited to discrimination, hatred or engaged in Holocaust denial (Dugovič 2016). This failed charge showed the limits of authorities investigating speech without contextual sensitivity, and fueled the far-right's activity.

I analyse the *Mazurek* case in which I was involved as expert witness. My own role as expert witness, as well as someone taking "an active part in the whole process of the construction of academic knowledge including the collection, analysis, and dissemination of findings" (Holden and Tortora 2017, 100), offers a unique perspective on the involvement of cultural expertise in *hate speech* cases. When analysing the *Mazurek* case, I go beyond surveying selected judicial decisions that, alone, face limitations in capturing the involvement of cultural expertise (Campbell 2020, 48), and include ethnographic data from my own involvement in the proceedings. This case provides empirical evidence of the troublesome implementation of content-based prohibitions of *hate speech* (Heinze 2016; Steuer 2019) and invite for the democratisation of cultural expertise: in high-profile cases, where the expert witness becomes a subject of public interest, it is beneficial to provide public access to the original products of their work instead of relying only on indirect interpretations of proceedings with limited transparency. Such transparency may offset the efforts towards weaponization of the legal process by the far right.

The recounting of my role as expert witness in the *Mazurek* case cannot aim for "objectivity" in the classic sociological sense (Weber 1978, 52). Nevertheless, it offers a reflection of an expert on "local" knowledge in a specific social setting (Lynch 1994, 131–33, 309–15).

Background and the Pre-Trial Procedure: The Role of the Police

The extension of grounds for prosecution of *hate speech* in Slovakia was accompanied by an operational change in the jurisdiction of law enforcement. Before the changes, the police was

criticised for its reluctance to press charges against politicians who had disseminated *hate speech* (e.g. Benčík 2017). The legal changes shifted the handling of these cases (see Table 1) to the competence of the NCA and the special prosecution. Furthermore, the Special Prosecution Office became responsible for indictments in cases where the investigators found sufficient evidence to proceed.

Table 1 Overview of crimes of extremism in Slovakia[1]

Year	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Total number of cases identified	78	66	30	58	145	159	85	115	78	68	68

Source: Ministry of Interior of the Slovak Republic (2023).

Endnote to Table 1: The numbers refer to the category of "extremist offences" that consist of *hate speech* (see the list of offences in Steuer 2019, 187). Incitement cases such as the one of Mazurek's are rather rare, they used to be treated under §424a ("incitement, defamation and threatening to persons because of their affiliation to race, nation, nationality, complexion, ethnic group or family origin") and have summarily been covered under §424(1). No separate statistics concerning cases involving candidates or members for the PPOS are available (see also European Commission against Racism and Intolerance (2020) on the lack of disaggregated statistics in the Slovak case). Most of the cases have not been reported by the media and can be considered as offences by private persons with low political salience. The 2023 statistics only consider data until the end of November. The focus on the cases involving MPs is justified by their high public visibility, which endows them with the potential to frame the public perception of the state authorities' responses to instances of *hate speech* in general.

The NCA started to use a new software to detect online *hate speech* (Pacherová and Vavrová 2017). A new expert witness subject area called "Social Sciences" was created, including the subfield of "political extremism" (Ministry of Justice of the Slovak Republic 2018). A combination of stringent requirements resulted in only two expert witnesses having

been registered in the official database of the Ministry of Justice (one more expert on "religious extremism" has been added in March 2021). Consequently, ad hoc expert witnesses were needed. They were likely chosen based on their public scholarship and media appearances.

This development resembles that in Czechia, the closest neighbouring jurisdiction to Slovakia due to historical (Kühn 2011, 21–64) and language affinities. In Czechia, as early as in 2007 there were discussions on dealing with *hate speech* cases with the help of cultural expertise, for example, pertaining to the performances of far right music bands (Mareš 2015, 77). Consequently, a specialised expert witness subfield was created. Miroslav Mareš, the first of these expert witnesses, recalls that requests for testimonies were frequently made in cases where there was not much an expert could add (Mareš 2015). The high demand for his services coupled with threats from the authors of the criminalised speech ultimately led Mareš (2015) to cease his activities as expert witness. In 2021, four expert witnesses were featured in a database run by the Ministry of Justice of the Czech Republic (2021); one formerly enlisted expert resigned due to discriminatory remarks in one case.[4] In 2016, a Czech expert witness argued that "in Slovakia expert witnessing is entirely absent, case law is almost non-existent and publications and scientific activities are rare" (Svoboda 2016, 95). The analogies between the institutional development in the two countries are hardly a coincidence: Czechia seems to have provided inspiration for Slovak policymakers.

Three months after the amendment of the Slovak criminal legislation took effect, I was approached by a police investigator to provide a written expert testimony in the *Mazurek* case. I was instructed as an ad hoc, unregistered expert witness (§ 15, Act No. 382/2004 Coll. 2019), and requested to deliver a report and later appear at the oral court hearing as well. I had written on *hate speech* in newspaper articles and reports available online (e.g. Steuer 2016) which the investigators might have read. These writings, developed in academic papers (Steuer 2017; 2019), were critical towards the extended restrictive framework in dealing with *hate*

speech in Slovakia. As such, they differed from some other experts' positions at the time (Bihariová 2016; Milo 2016), and indicated that I would be carefully considering the significance of the freedom of speech of the defendant, a far-right politician, in my analysis. My case articulates an individual dilemma, marked by the responsibility to provide expertise in the service of democracy (which may also manifest in the form of defending public discourse against pseudoscientific arguments) versus the risks of the testimony legitimising those who wish to undermine just that regime. However, I anticipated the risk that my position might be manipulated in a trial that was likely to be mediatised.

The letter of instruction consisted of four questions, linked to the debate with Mazurek from 2 October 2016 that unfolded in the "Frontinus" radio channel. The first question requested to "analyse thoughts and ideas (also from a historical point of view), which were disseminated during the live transmission of the ['Frontinus' debate], in relation to a group of persons of a particular ethnic background (in this case Roma background)". The second question requested to "comment, whether the speech or its part, in relation to a group of persons of [Roma background] was capable to trigger a particular mood, or decision, among the listeners, and specify, if so". The third question asked to "analyse the content and form of realisation of the speech with reference to the right of the 'speaker' to freedom of expression (for instance, according to Article 10 of the European Convention on Human Rights (ECHR))". The last question invited to note "other facts as discovered via the analysis". The third question explicitly established the connection between the factual circumstances of the case and the background of the legal regulation. In hindsight, however, this question can be seen as overstepping the boundaries between the "legal" and the "factual", and the contextual analysis could have been conducted without a reference to a legal provision in the question itself. Still, regardless of whether the questions contain references to regulation, when the expert statement includes references to legal regulation as part of the contextual analysis, the judge may perceive

it as encroaching on their role and lead them to discard the expertise on grounds that it touches at questions of law. I may have requested a reformulation of this question to reduce the risk of such challenges, though they cannot be eliminated completely in cultural expertise in *hate speech* cases.

My written statement (National Criminal Agency of Slovakia 2017b) was followed by the decision of the police to submit an indictment and, subsequently, a complaint by the defendant.[5] The engagement with questions of law was a prominent critique among those challenging the expert statement. Another claim disputed my expertise due to (1) my educational qualifications and (2) my specialisation. Among others, the defendant disputed my graduate degree[6] obtained at the Central European University in Budapest. The defendant did so despite the fact that the degree had been recognised in Slovakia, and noted that "[the] founder [of the CEU] is a Hungarian-American billionaire George Soros [and] Hungarian PM Viktor Orbán claims that George Soros wants to influence Hungarian politics through his foundation" (National Criminal Agency of Slovakia 2017a, 3–4). These positions of the Hungarian PM are known to be tied to conspiracy theories (Krekó and Enyedi 2018, 47–50). As it had become clear during the trial, this narrative was intended more to the supporters of MP Mazurek than to the judge, and were deployed even at the price of weakening the defendant's legal position. The public hearing which was covered by the media provided Mazurek for even more publicity and opportunity to strengthen electoral support.

At the Court: Allies, Adversaries, and the Campaign of the Far Right

Experts in courts are routinely accused to be hired guns by the party that receives the expertise as adverse to its hoped legal outcome. However, I argue that in the context of far-right communication strategists, cultural expertise finds itself in a Scylla-and-Charybdis-like situation. Regardless of the verdict of the expert testimony, extreme political actors can frame

it to boost their own elecoral support. If the expert testimony does not establish a causal determination between the speech and some detrimental effects on the society, far-right actors can use expert authority to emphasise the *normalcy* and even the *desirability* of that speech. Far-right actors can also de-legitimise the *procedure* as biased by alleging that the expert witness is a "servant" of the prosecution. This strategy is common in the legal process but is taken to the extreme by far-right politicians who are ready to even incur a higher sentence, because the length of the appeal process, combined with media attention, create an opportunity that is strategically worth pursuing.

During the *Mazurek* hearing held in front of a single judge of the Specialised Criminal Court on 26-27 February 2018, such an anti-expert narrative was brought into play by Kotleba's supporters. The PPOS argued that the trial has become a political one where, Kotleba as a martyr of democracy were sacrificed on the altar of a police state (Uhrík 2018). Moreover, they compared it to the manipulated trials of authoritarian Czechoslovakia (1948–1989), in which dissident voices were prosecuted (see Pešek 2013). The PPOS presented me as a friend of the special prosecutor (whom I had never met before the hearing). They also claimed that the label of extreme right, a term that was routinely used in relation to the PPOS (Mesežnikov and Gyárfášová 2018),[7] indicates my personal bias. At the end of the hearing, Mazurek himself, assuming my Jewish origin based on my (in Slovakia uncommon) surname, alleged my bias due to a supposedly increased sensitivity to critical statements.[8] While the objection was rejected by the judge upon the special prosecutor's request, and weakened the position of the defendant for being discriminatory,[9] it was featured prominently in the reporting about the hearing (SITA 2018). Given the requirement of confidentiality, I felt compelled to decline to provide my perspective to the media (including an interview request on the case I had received from a journalist), and so I could not help shift the public attention more to the content of the expert report and testimony.

The discreditation of the expert allowed the PPOS to shift the discussion away from the content and impact of the MP's statements. The effort to accomplish this shift could also explain why the defendant did not publicise the instruction of their own expert witness who opposed my responses but, according to the Specialised Criminal Court as reported in the judgment of the Supreme Court, justified his position "only at a general level", as a result of which the Specialised Criminal Court "was not convinced by [this] report" (2To/10/2018 2019, 4).

Mazurek lost the case. In September 2019, the Supreme Court of Slovakia (2To/10/2018 2019, 23) confirmed the first-instance judgment of the Specialised Criminal Court. It even increased the financial sanction from 5000 € (imposed by the Specialised Criminal Court) to 10000 €. The Court stressed that my expert statement was relevant in terms of the legal-philosophical, sociological, ethical and political science analysis. Yet, the judgement also argued that Mazurek's statement were obviously insulting, rancorous and inciting hatred, and hence the conclusion so evident that it did not did not even require expertise (2To/10/2018 2019, 22). Thus, the judgement did not fully acknowledge the investigators' claim that expert testimony was necessary.

Despite losing in court, the case proved beneficial to Mazurek's public profile among his followers and helped him to gain recognition for a while as one of the prime Slovak far-right politicians.[10] Mazurek made it clear immediately after the ruling that the only real punishment for him is the expulsion from parliament (Ľudová strana Naše Slovensko 2019a). In February 2020, Mazurek regained his seat as the PPOS received 7.97 % of the popular vote and Mazurek personally gained 65,921 preferential votes of the 229,660 votes for PPOS. His campaign slogans entailed "Fired from parliament for expressing an opinion" (German Sirotnikova 2020). In January 2021, PPOS experienced a split, with some of its prominent MPs forming a competing movement which outperformed PPOS in the polls by 2022. While the

new party narrowly failed to cross the five per cent threshold in the September 2023 elections, especially due to the move of the dominant party (Smer-SD of Robert Fico) to the far right, MP Mazurek has remained the Vice President of the movement (Republika 2023) and retained popularity. Also in 2021, after the *Mazurek* case was decided, the division of the special prosecution tasked specifically with crimes against extremism was merged with the one focusing on organised crime and terrorism, raising concerns over reduced attention to *hate speech* cases (Kováč 2022). Existing evidence does not suffice to evaluate the impact of this change. In 2020, before the change, a new investigation was launched against Mazurek, this time due to his (highly popular but later deleted) social media post in which he falsely claimed that a 22-year old armed attacker at a Slovak school who killed the deputy headmaster and injured several pupils and school employees was of Roma origin (Kyseľ 2020b).

While Mazurek appears to have partly succeeded to weaponize the legal process and undermine my involvement as expert witness to gain electoral support, in my view, expert witness involvement in *hate speech* cases with political elites remains useful, for two reasons. Firstly, when restrictions on speech are in place, prosecution is unavoidable, and expert involvement will provide specialised knowledge which assist the decision making authorities in the assessment of the evidence. Secondly, the expert testimony enables important observations pertaining to local contexts to be made public. In *Mazurek,* these were (1) the mechanism of othering[11] at work in the MP's statements, (2) the analogies to anti-pluralist ideologies of the twentieth century such as Nazism or communism, and (3) the pseudo-scientific nature of claims presented in a publication by Mazurek's parliamentary assistant (Surmánek 2014), to which Mazurek had referred as a scientific authority. In sum, expert testimonies have the potential to critically engage with *hate speech* while being attentive to local specificities, even though the media did not focus on the insights brought about by the testimony and personalised the expert witness involvement on this occasion.

In my view, in this case it was impossible to escape both Scylla and Charybdis of cultural expertise without compromising the goal of an analytical perspective that enhances the quality of judicial deliberation. My refusal to act as expert witness in the *Mazurek* case would have been unlikely to prevent MP Mazurek from boosting electoral support, because he was ready to sacrifice the outcome of the trial for increasing his political success. Other expert witnesses with longer experience, as well as some prosecutors, faced similar attacks in Slovakia. In contrast, when the Supreme Court declined the attorney general's petition to dissolve the PPOS (4Volpp/1/2017 2019; see also Steuer 2022), Kotleba portrayed the judges deciding on the petition as showing an "act of personal bravery" by deciding "exclusively on the basis of the law" (Ľudová strana Naše Slovensko 2019b), underscoring the flexibility with which the far right can frame various actors from the proceedings as enemies or allies for their electoral base.

I argue that, given the inevitable publicity in *hate speech* cases with prominent political actors, pro-democratic stakeholders should, instead of trying to escape it, work towards the development of a more transparent institutional framework that maximises critical engagement with cultural expertise by multiple actors. This could be facilitated by allowing the expert to speak publicly about the case, at the level of summarising their involvement (report, testimony) from their perspective, to the extent the materials are publicly available in any case (e.g. through public court proceedings). Furthermore, training in the interdisciplinary and cross-jurisdictional legal framework of cultural expertise should be available to maximise the impact of the specialised knowledge experts contribute with in the proceedings. Training can benefit also from being enhanced by experiences from other jurisdictions, thus exposing learners to a richer set of experiences from varied local contexts. Last but not least, experts themselves should not be "reluctant to talk about" their experience in public (Kniffka 2007, 141), while being mindful of the local legal regulation on confidentiality and privacy.

Discussion: Trade-offs of Cultural Expertise in *Hate Speech* Cases

As illustrated by the Slovak *Mazurek* case, cultural experts may have a difficult time communicating about the cases due to the requirement of confidentiality. Once the parties start to question the experts' credibility, media attention easily shifts away from the content of the expert testimony to the profiles of the expert witnesses, without utilising the potential of the expert testimony to counter the delegitimisation efforts by the far-right political actors with evidence-based arguments. Expert witnesses may find themselves in between Scylla and Charybdis, between refusing to provide expertise and their testimony having unintended consequences including shifting the attention from the content of the speech to the profile of the expert and be manipulated to the support for the extreme political actors. This is the paradox of, on the one hand, exclusion of specialised knowledge, and a likely impoverished understanding of the speech act detrimental to democracy in the longer term; and, on the other hand, the risk that cultural expertise might give indirect ammunition to the originators of *hate speech* and cement their narrative as "true democrats" fighting against an oppressive regime (cf. Cammaerts 2009, 570). There are no ideal options in such a situation.

Furthermore, the *Mazurek* case indicates the following trade-off of cultural expertise in *hate speech* cases in transitional regimes. The weaponization of the legal process by extreme political actors begets the role of expert witnesses beyond the court case. The requirement of confidentiality limits the expert witnesses' public engagement. Expert witnesses become subject of public interest nonetheless, and since the results of their analysis cannot be divulged, able manipulators can shift the attention to their personal background and away from the case at hand. This is undesirable since the distinctive contribution of the expert witness in *hate speech* cases rests precisely in the analysis of the discursive constructions of *hate speech* with the help of interpretive social science, thereby explaining whether and if so, why the speech

act amounted to incitement in the given context. Through shifting public attention to the personal background of the expert, the effort to shed light on the often complex and subtle narratives constructed in *hate speech* by anti-pluralist political actors is sidelined. Holden (2022) argues that experts who position themselves as procedurally neutral whilst maintaining a degree of critical affirmation can secure an authoritative role within the legal process. This article suggests that in the context of *hate speech* in transitional regimes, a position of critical affirmation might require that when cultural experts become a subject of public interest and there is a risk of undue manipulation of their expertise in the public sphere, to the point of unduly impacting the legal process, to mitigate this phenomenon, the content of the testimony and its discussion need to become public too and this transparency will assist the decision-making process. Hence, there is a need for decision-makers to work towards the development of a more transparent institutional framework that maximises critical engagement with cultural expertise by multiple stakeholders. Of course, this does not mean that all requirements of confidentiality should be altogether removed. For example, if the expert gets access to some sensitive information from the personal life of the far-right political actor during the proceeding, that has no bearing on the report and testimony, confidentiality still applies in relation to that information.

The dilemmas of expert witness involvement in the *Mazurek* case give rise to several questions for further research. One pertains to the identification of the expert in *hate speech* cases. There is no specialised discipline that would be required to be focused on by expert witnesses on "political extremism" or "religious extremism"; the subject area of focus matters. Thus, experts hail from history, sociology, political science, linguistics, psychology or related disciplines. If they engage with the "social science of hate", even a legal background might be suitable for building expertise on the subject. The expectation here is that the expert has engaged with and produced scholarship on questions pertaining to extremism and is familiar

with its local developments. Inter- and multi-disciplinarity helps develop sensitivity towards a contextual assessment of speech when competing narratives prevail in the public sphere and the effects of particular content on diverse individuals and groups may differ (Temperman 2011). In other words, global legal pluralism invites litigators and adjudicators to advance their openness towards interdisciplinarity as well.

Secondly, the case underscores the dilemma of expert involvement in *hate speech* cases. The legitimisation of far-right politics unfolds through narrative constructions in which expertise epitomises an ideological position going against the "ordinary people", among them supporters of the far right. Experts have only limited options to counter these narratives. Ethnomethodological studies of interactions between different legal professions have recognised the importance of language and narratives (Dupret 2016, 1–4; Garfinkel 2003, 105; Manzo 2016). Berard's study of hate crime litigation in the US (as a "socio-legal construct") focuses more narrowly on *hate speech*, but cultural expertise is not at the center of its attention.[12] Studying further expert testimonies in *hate speech* may contribute to identifying effective mitigation strategies towards the far right's attempts to gain support for their actions through selective referencing to expert testimonies. Such studies benefit from gaining the experience of expert witnesses, who operate "from within the cultivated system of competency that is particular ('unique')" (Dupret, Lynch, and Berard 2015, 10 referring to Garfinkel). More cases could also uncover whether the demand for cultural expertise in politically salient *hate speech* cases has been met with the appointment of expert witnesses.

Conclusion

Determining what counts as *hate speech* requires an inherently contextual assessment. Cultural experts can offer such an assessment, while paying due regard to the norms of the targeted as well as receiving communities of the speech act (Renteln 2004, 211–19). Such an application

focuses scholarly attention on the complex relationship between the norms of democracy, the rights of minorities targeted by *hate speech*, and the strategies of antidemocratic actors operating within the system used to boost their electoral support (also) via campaigning against cultural expertise via presenting competing interpretations of human rights. In this article, the concept of cultural expertise was applied to the Slovak legal process for the first time, capturing the dynamics surrounding the inclusion of cultural expertise and discussing the consequences of expert witness involvement in the first Slovak case of an MP expelled from parliament for *hate speech*.

I have shown that global legal pluralism, when understood as the blurring of boundaries between the legal doctrine and the social sciences in legal proceedings, underscores the need for cultural experts to adopt an interdisciplinary, contextual approach in analysing speech acts. This way, cultural expertise provides specialised information to assist the decision-making process with a more rigorous evaluation of evidence, that allow the case outcomes to be better received by the society. However, global legal pluralism amplifies challenges regarding the positionality of the expert, in particular the traditional requirement for the expert not to address questions of law, and may facilitate the weaponization of the legal process in which expert witness involvement is easily undermined for partisan purposes. In the Slovak *Mazurek* case, a battle for the societal perceptions of criminal legal regulation and its application ensued, with cultural expertise and cultural experts centre-stage in it.

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Notes

[1] See Lobba (2015) on the approach of the European Court of Human Rights.

[2] For advice on how lawyers should work with expert witnesses including the need to recognise the non-adversarial nature of scientific evidence see Rose (1955).

[3] When explaining this preference of the judges, Wilson (2016, 738) writes of "the divergent understandings of causation held by lawyers and social scientists", whereby only the former need to demonstrate an unambiguous causal nexus between the "accused's act" and the "offence".

[4] In particular, the defendant's attorney questioned the unbiasedness of the expert Michal Mazel due to his allegedly Jewish origin (Czech Bar Association nd).

[5] I have not had access to the text of the indictment, so I cannot state with certainty whether there was a causal link between my report and the indictment.

[6] MA in International Relations and European Studies.

[7] Rupnik (2016, 79) even called them neo-fascists and Drábik (2022) used the label of "neo-Nazi".

[8] Mazurek's move had its predecessor in Czechia, where the question was posed to an expert witness by the defendant's attorney who was subsequently sanctioned by the Czech Bar Association. The sanction was reversed by a court in 2016 (ČTK 2016).

[9] Moreover, an earlier Czech case pointed to the costs entailed in such an association of bias with ethnic or religious origin. An attorney of a Czech far right politician accused one of the expert witnesses of bias due to his Jewish origin. The attorney was fined and temporarily stripped of his license to practice law (Horák 2016). Still, the expert witness who was targeted ceased his activity shortly after this incident, referring to it as a major reason for his refusal to engage in cultural expertise (ibid.).

[10] In the European Parliament elections in May 2019, Mazurek became the party's first substitute for a seat.

[11] In this case the exclusion of the Roma from the category of the Slovak nation. My expert testimony has been recorded in the minutes, including on this point (4T/36/2017 2018, 10–12).

[12] The effect of framing in oral expert testimony and the subsequent possibility for both parties to draw on the arguments of the expert witness is examined in one case by Lynch (2015).