Beyond Räsänen: Hate Speech, Religious Liberty, and the Transnationalization of Conservative Legal Argument

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The Päivi Räsänen case is likely to become a landmark in Finnish and European hate-speech jurisprudence. This case also serves as a remarkable example of the legal politics surrounding worldwide populist movements, illustrating not only a clash between hate speech and religious speech but also highlighting how conservative legal networks strategically reframe European equality-focused speech regulations as "censorship." This case could help us to reconsider what remains in the third wave of legal globalization and what is on the edge of the end,

as well as what perspectives have been conflicting with each other. At stake, therefore, is not only the doctrinal boundary between freedom of expression, religious liberty, and protection from discriminatory speech, but also a broader struggle over the vocabulary of rights, constitutionalism, and legal globalization itself.

1. Introduction

The clash of arguments overweighing either hate speech or freedom of speech and religion has become one of the crucial legal-political debates of contemporary societies. In this regard, for example, Päivi Räsänen, a Christian Democratic (*Suomen Kristillisdemokraatit*) MP and former Interior Minister, was prosecuted under Chapter 11, Section 10 of the Finnish Penal Code, translated as "incitement against a population group." The relevant protected characteristic of a population group in this case was the prohibition of discrimination based on sexual orientation. During the trial, Räsänen, authorized the Alliance Defending Freedom (ADF) International, an international Christian organization which provides legal aid and expertise regarding religious liberty and free speech cases, to identify the legal grounds of her defense before courts. Moreover, American legal and political conservatives, who consider the First Amendment Clause superior to almost all other legal arguments, have closely monitored the lawsuits. She was thoroughly interviewed by the Hungarian Conservative magazine, which closely aligns with the policies of the former Viktor Orbán government – an ambitious pioneer of the transnationalization of populism – of Hungary.

The significance of the Räsänen case is double-faced. First, it raises the question of the extent to which liberal democracies should bear the political figure's misleading and even provocative speeches. Second, it demonstrates the extent to which the values of free speech and religious liberty should be disseminated at the expense of identity politics. Taking a broader perspective, the case forges a struggle over the vocabulary of rights and legal globalization in a time of populism. The post answers the timely research question of how the Päivi Räsänen litigation became a site for transnational conservative legal mobilization around free speech, religious liberty, sexuality, and anti-"censorship" rhetoric.

On 26 March 2026, the Supreme Court of Finland issued its verdict that a pamphlet, published by the Luther Foundation Finland, in which Päivi Räsänen claimed homosexuality to be a psychosexual disorder, had incited hatred against a population group based on the group's sexual orientation. In a 3-2 decision, the Court differentiated two distinct acts of the defendant. On the non-punishable side of the

case, Räsänen criticized the Finnish Evangelical Lutheran Church to which she belongs after its bishops decided to sponsor a pride event. By quoting a passage from the Bible that homosexuality is a sinful conduct, she condemned the leadership of the church, claiming that approving homosexuality is contradictory to the very foundation of the religion. The Court unanimously dismissed this factual ground, whether it would constitute the elements of the offence, since her social media post had not directly approached homosexuals but reflected the interpretive disagreement over her church's understanding of the religion.

However, the Court convicted her and the Internet publisher because her pamphlet containing hate speech was not reconcilable with the principles of freedom of expression and freedom of religion as enshrined in the Finnish Constitution (Articles 11 and 12) and the European Convention on Human Rights (Articles 9 and 10). In that short polemical text, which was written by Räsänen while she was serving as an MP at the request of the Finnish Lutheran Foundation and published by them in hard copy format in 2004, and then made and kept available online since 2019, Räsänen challenged the tendency that homosexuality becomes normalized in contemporary society and denounced the phenomenon that equal rights and dignity of gay people have been recognized by both public and religious authorities. The Court found that she consciously deceived her readers using outdated scientific data that labels homosexuality as a medical disorder. Then, the Court decided to forbid the misleading and hate-filled parts of this pamphlet.

This essay does not primarily concern how the conceptual and normative distinction between hate speech and free speech can be determined in the context of penal law. Neither is this text about the balancing test between two conflicting principles, which are conceived from the perspectives of constitutional law and human rights. Instead, it examines how Trumpist legal politics operates transnationally by exporting U.S.-style conservative arguments on free speech and religious liberty, while aligning them with European right-wing attacks on what is portrayed as liberal cosmopolitan legalism.

For this purpose, this essay consists of three steps. First, depicting the interplay between Trump's populist governance and populist arguments in the Räsänen case, I will explore the transnational vision of populism. In this context, populism is meant by the three constitutive pillars, which are hostility towards a pluralistic view of society, demonizing the so-called globalist established elites, and redefining democracy as a unified picture of the leader, the homogenous society, and their intertwined collective ethno-cultural/-religious aspirations. Then, after presenting the transnational vision and arguments for populism, I will briefly examine the background theories and justificatory

claims of these free speech and religious liberty arguments at the expense of prohibiting hate speech. Lastly, applying Duncan Kennedy's analysis of legal globalization, I will argue that both sides of the legal dispute in the Räsänen case have partly agreed and partly disagreed with the institutions and arguments of the third wave of legal globalization.

2. The Transnational Conservative Frame

Even though mainstream scholarship tends to situate populism as a deeply anti-internationalist movement, populists are in alliance to promote their nativist and conventional moral agendas against the plural ethical values of societies. Populist discourse, means, and strategies are contagious, but this contagion is not merely coincidental. It is therefore the paradoxical combination of anti-globalist rhetoric with transnational legal coordination. Conservative actors criticize "globalist" ideologies of liberal rights institutions while themselves relying on cross-border advocacy networks, U.S. congressional hearings, think-tank commentary, and strategic litigation frames. This phenomenon has resurfaced since Trump's return to the office in 2025.

The emergence of right-wing populism in the late 2000s and early 2010s was a backlash against the established norms of the liberal international order; whereas the advanced version of populism, led by U.S. conservatives, has now become a transnational governmental project to build an illiberal international legal order. To this end, they have promoted far-right candidates in elections across Europe. Elon Musk, for instance, was part of the German elections in 2025, supporting the far-right party AfD (Alternative für Deutschland). As a more recent example, Vice President J.D. Vance visited Hungary in April 2026 to support Orbán's campaign. Upon closer examination, the National Security Strategy of the Trump Administration declares that the U.S. will resist "*elite-driven, anti-democratic restrictions on core liberties in Europe*." Thus, the European countries, in the view of Trumpism, encounter "*undermining political liberty and sovereignty, (...) censorship of free speech and suppression of political opposition*." Against this backdrop, I explain how this transnational rhetoric shapes the legal argumentation in the Räsänen case.

Räsänen, testifying before the U.S. House Judiciary Committee, offered two reasons to convince her audience that her case deserves attention. The first one, aligned with the National Security Strategy, underscores the close relationship between democracy and free speech: "*Censorship is one of the greatest existential threats to today's democracies in Europe*." She continues, "*when the state controls which ideas and beliefs may be expressed, democracy becomes fragile*." The second emphasis is about the

potential transnational impacts of her case: "*Recent developments from the European Union, like the Digital Services Act, make European censorship a worldwide concern*." According to Räsänen, due to this Act, "*censorship measures adopted in Europe do not remain confined to Europe*." Accordingly, the interconnected nature of social, economic, political, and legal institutions prevents a decision or practice from remaining isolated within only a community.

Paul Marshall, a commentator at the Hudson Institute – a leading conservative think tank that proposes policies to the conservative administration in the U.S., has questioned the effects of the Räsänen case beyond the jurisdiction of Finland. The first concern, like Räsänen, relates to the European Union's Digital Services Act, which requires social media platforms to comply with each member country's legal decisions on content removal. The Act establishes a general rule: if the content is found illegal in a jurisdiction, it would only be removed within that territory. Yet, Marshall is suspicious about the implementation of this general rule since "*social media platforms can be pressured to conform to the Finnish court's restrictive definition of hate speech, at least until another European state enacts an even more repressive rule*." Apparently, this argument does not go through legislative or adjudicative practices but rather concerns their broad interpretations or applications by non-juridical authorities and private entities.

The latter and general concern is more abstract. Drawing upon J.D. Vance's argument about European public law order, Marshall argues that European public authorities apply the so-called "Soviet-era words" like "misinformation" and "disinformation" to repress different worldviews, and thus, values of free speech and religious liberties have declined. This is due, in part, to the concern that the "dangerous" European jurisprudence might be extended across the Atlantic. Insofar as following this post-liberal populist argumentation, "religious liberty" and "identity liberty" would unavoidably come into collision, and religious liberty should prevail in accordance with a U.S.-style constitutional framework. Paul Coleman, the Director of ADF International, which provided legal assistance to Räsänen, also argues that hate speech jurisprudence can create a chilling effect for those who want to express their beliefs and religious convictions, regardless of fear of punishment. This argument is hand in hand with the populist strategy that feeds off collective fears. To unite people around populists and their movements and prevent the formation of strong coalitions against them, populists often create artificial fears or exaggerate realities. As Martti Koskenniemi claims, "*Freedom of speech and religion became key parts of far-right agitation*".

3. The U.S./European Constitutional Contrast

As the antithesis of the so-called liberal-elitist or progressive jurisprudence, transnational populism urges the imitation of the U.S. Supreme Court's First Amendment precedents. The U.S. Supreme Court considers free speech both an end and a means to a democratic society. As an end, the government must treat each member of a just political society as an equal and responsible moral agent. Ronald Dworkin, the champion of this liberal democratic free speech argument in Anglo-American jurisprudence, argued that when a government bans certain dangerous or offensive expressions, it denies individuals the moral responsibility to evaluate the rightness or wrongness of speech. Therefore, according to him, there is no room for hate speech legislation in mature democracies since "*we must not endorse the principle that opinion may be banned when those in power are persuaded that it is false and that some group would be deeply and understandably wounded by its publication*." In this article, engaging in Germany's constitutional debate on the denial of the Holocaust, Dworkin defended that making hate speech a criminal offence does not mean anything but censorship.

Free speech as a means in a democratic society has two influential arguments: the Holmesian marketplace of ideas and the argument for tolerance. In Oliver Wendell Holmes' pragmatist judicial philosophy, the best test for reaching the truth or producing better arguments is to be allowed all views and ideas race in the uninhibited marketplace just as the ultimate good would be revealed through the free trade in the business market (*Abrams v. United States, 250 U.S. 616, 1919, Justice Holmes Dissenting Opinion, at. 630*). In other words, the value of free speech lies partly in allowing ideas to be tested through public contestation. Concerning the tolerance test, the U.S. Supreme Court states that everyone can encounter ideas that are misguided, or even hurtful; however, the government would not reserve any control to indicate or impose the right or better way of thinking and speaking or compel the speaker to alter their unsophisticated or unpleasant message (*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc., 515 U.S. 557, 1995, at. 574, 581*). The European Court of Human Rights has also shared this perspective: freedom of speech matters not only for ideas that are favorably received but also for those that offend, shock, or disturb democratic society (*Handyside v. the United Kingdom*).

Freedom of religion is a complementary component of populist legal argumentation. During the Trump Administration, the Supreme Court, increasingly dominated by the conservative justices with his appointments, has extended the scope of religious liberty at the expense of the equal citizenship rights of LGBTIQ+ people. More recently, in *Mahmoud v. Taylor*, the Court granted a preliminary injunction that a state's interest in integrating LGBTIQ+-inclusive texts into the public-school curriculum must be

outweighed by the religious rights claim of parents who wish to instill their children with a belief that homosexuality is wrongful conduct. Accordingly, denying parents the right to opt out, poses a serious threat to the free exercise clause. Similarly, the legislation of the Orbán government, which has been recently struck down by the European Court of Justice, banned minors from accessing LGBTIQ+ content on the grounds of preventing social harms of the propaganda of the so-called "gender ideology." After briefly revisiting the legal reasoning of populist conservatives, we can now move on to the claim of weakening of the U.S.-centered constitutionalization within the prevailing legal paradigm.

4. Duncan Kennedy and Legal Globalization

In his historical analysis, the leading critical legal scholar Duncan Kennedy portrays the globalization of legal thoughts between 1850 and the present in three waves, which are respectively classical legal thought, the paradigm of social, and the constitutionalization of legal thought. In the classical period (1850-1914), law was considered an autonomous, formalist order apart from politics, economics, and morality, with liberal individual and procedural rights belonging to members of nation-states. In the second globalization era (1900-1968), law as a purposive enterprise was defined by social justice, the reconciliation between social classes, and regulatory mechanisms that facilitate the evolution of social life. Since the end of the Second World War, legal scholarship has been dominated by a U.S.-influenced public-law neo-formalist paradigm, according to which law is a normative technique of balancing conflicting considerations between principles and policies (known as the third wave of globalization). Simultaneously, this approach keeps human rights, civil society, and constitutional courts at its center. In other words, in the third wave of legal globalization, legal systems increasingly translate social and political conflicts into the language of constitutional rights, human rights, proportionality, and anti-discrimination. Transnational judicial authorities, international law firms, and constitutional judges remove disputes from the domain of pure politics and place them in the domain of mere legal expertise.

In this third wave of globalization, legal systems are being approached to eliminate discrimination based on identity. The discourse of identity is employed to identify not for the majority or dominant culture but for subordinated, discriminated groups. Non-discrimination provides a general and abstract language, and every legal interpretive community determines which identities would be recognized and which would be stigmatized. It entails, on the one hand, applying some formal rules and principles that do not accommodate political bargains and compromises. On the other hand, it

requires weighing conflicting interests and worldviews, and thus constructing equilibrium and proportion between different understandings or conceptualizations of legal language. However, referring to Koskenniemi, one can hardly claim there is a non-political argument to identify the extent to which a speech would remain under the scope of freedom of expression and when a speech would be considered as an incident of hate speech.

Having outlined the U.S.-centered framework of constitutionalized legal thought, where does the Räsänen case stand? The Supreme Court of Finland constructs its argument dismantling discrimination based on sexual orientation. Accordingly, the Court tends to recognize the identity of LGBTIQ+ people and dismisses the U.S. Supreme Court's idea that gives priority to the arguments of freedom of speech and religion. By doing so, it resists the effort of illiberal populist legal arguments to extend their transnational hegemony. Therefore, conservative populism and its developed version of Trumpism represent the weakening of the hegemony of the third wave of legal globalization. However, the argumentation of the Räsänen case still aligns with the language of this understanding of legal thought. Both sides of the disagreement still operate through the language of the third globalization: rights, identity, courts, civil society, legal firms and advocacy networks, balancing, and proportionality. The rival projects endeavor to occupy the inherited grammar of constitutionalized legal globalization. This marks an internal fragmentation of legal discourse.

5. Conclusion

Conservative populism has been a backlash against liberal national and international orders. It has been widely argued that the liberal rule-based order is being demolished, and that merely realist power politics is surrounding us in international relations. We are witnessing the ascension of national sovereignty and the hierarchical order of political theology, and the descent of liberal individualistic identities and equal citizenship. Looking at the domain of national law, post-liberal populists have still adhered to the prescription that was inherited by their ancient regime, as the constitutional law centered, court-oriented, and including right/identity discourse. However, they strive to undermine its core assumptions and values in subtle ways. That is, populists strive to create new right schemes within the given legal language. It is hardly predictable whether they will move one step further and close the third phase of legal globalization by creating a new legal language, subjects, and values.

Likewise, liberal cosmopolitan right theorists oppose authoritarian populists' transnational legal arguments by rejecting (or, at least, weakening) the institutions and

conceptions of third globalization. However, in turn, while they resist hegemonic American legal thought, the way of thinking and some concepts of this approach, such as the balancing test of identity and rights, were not abandoned. Even though we cannot know if this liberal-egalitarian legal language would entirely lose its bond with U.S. legal-ideological dominance and turn into a new hegemonic paradigm of legal globalization. It is evident that how the European Court of Human Rights frame the disagreement between the U.S.-centered populist argument and the Finnish Supreme Court's counterargument will make the issue clearer and more apparent.

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