

Minutes of the meeting of the Digital Freedom Committee

14:30, 14 September 2020

Subject: realisation of the freedom of expression in the online space

Participants:

- **Ministry of Justice (IM):**
 - Dr. Judit Varga, Minister of Justice
 - Dr. László Péter Salgó, chairman of the Committee, deputy state secretary responsible for the coordination of draft legislation and for legislation in public law
- **Ministry of Innovation and Technology (ITM):**
 - Dr. Balázs Bartóki-Gönczi, expert
- **National Office for the Judiciary (OBH):**
 - Dr. Imola Benkő, head of department
- **University of Public Service (NKE):**
 - Dr. András Koltay, rector
- **Finance Ministry (PM):**
 - Dr. Péter Zoltán Jármái, deputy state secretary for legal and coordination affairs
- **Cabinet Office of the Prime Minister (MK):**
 - Balázs Szabó, head of unit
 - Miklós János Mód, chief government counsellor
- **National Media and Infocommunications Authority (NMHH):**
 - Dr. Levente Nyakas, head of the Institute for Media Studies
- **Office of the Ombudsman for Fundamental Rights (AJBH):**
 - Dr. Gergely Szabó, public law expert
- **National Authority for Data Protection and Freedom of Information (NAIH):**
 - Dr. Attila Péterfalvi, chairman
- **Hungarian Competition Authority (GVH):**
 - Csaba Balázs Rigó, chairman
- **National Council for Infocommunications and Information Technology (NHIT):**
 - Ferenc Vágújhelyi, chairman
- **National Election Office (NVI):**
 - Dr. Krisztián Gáva, general deputy chairman
 - Krisztián Szegedi

Meeting minutes:

1. Justice Minister Judit Varga opens the meeting by welcoming the participants, and thanks the Committee members for their input on the experiences of organisations applying the law concerning the realisation of the freedom of expression in the online space. The minister emphasises that the Committee does not aim to exercise censorship over social media but to create conditions that allow for the enforcement of the freedom of expression in the online space based on principles of the rule of law, in order to prevent unilateral and often inexplicable censorship by social media companies.

2. Committee chairman Dr. László Péter Salgó welcomes the participants and requests them to report on their experiences concerning the realisation of the freedom of expression in the online space.

Csaba Balázs Rigó: The Hungarian Competition Authority is not responsible for conducting audits focused on the limitation of the freedom of expression. Nevertheless, one form of unfair commercial practices involves the repression of online reviews, when merchants prevent consumers and review sites from publishing negative opinions on their business. The Competition Authority has analysed digital comparison tools, providing a guide to online platforms on user reviews and moderation rules.

GVH's upcoming comprehensive market analysis of online platforms will examine consumers' opinions on payment with data, and identify online news and content consumption habits. As to online moderation rules, guidelines by an international organisation (the International Consumer Protection and Enforcement Network) are available, among other information. Furthermore, the proposal of France should be noted: the operation of social media should be regulated *ex ante* in each member state instead of the country where the social media operator is registered. GVH levied a HUF 1.2 billion fine on Facebook in 2019 because the company had misled consumers by stating on its opening page that its service was free of charge. Germany's competition authority found in 2019 that Facebook had misused its dominant market position; this marked the first instance when an EU Member State's competition authority identified abuse by a dominant market player through data processing practices. Member states, or possibly the V4 countries, could take action concerning transnational companies together.

Dr. András Koltay describes the legal regulations regarding the obligation to remove illegal content in Germany and France. According to those regulations, certain content that constitutes a violation of the country's criminal code is deemed illegal. Other Western European countries have faced this problem as well, and have initiated national regulations that allow for the enforcement of procedural rules regarding the removal of illegal content by the social media provider.

The rector emphasises that it could be problematic to classify social media services as public services because the relationship between a user and a social media service provider is governed by a contract, which constitutes a legal relationship under civil law. So if the service provider arbitrarily removes content published by a user, then it should be possible to challenge that via civil law procedures.

Dr. Levente Nyakas: NMHH is not competent in issues related to the realisation of the freedom of expression in the online space, so the authority as an organisation applying the law has no relevant experience. However, an increasing amount of indirect information is available on how social media platforms handle users' complaints and reports. One information source is the Internet Hotline (IH) operated by NMHH as legal aid, where citizens' reports of illegal online content are received. The site is aimed at promoting the enforcement of rights. But the Internet Hotline serves as an intermediary only. Furthermore, the European Union's Commission approved a self-regulatory code of practice against disinformation in 2018, the implementation of

which is monitored by the Commission in cooperation with ERGA.¹ The review conducted in 2019 found that online platforms did not operate in a transparent manner, and that the companies had failed to provide data of sufficient quantity and quality for the verification of compliance with their obligations as defined in the code. One of the focal questions in this year's review will be how the platforms handle consumers' complaints and reports. Based on the review, ERGA is expected to formulate recommendations to online platforms.

Dr. Balázs Bartóki-Gönczi: The regulations in Germany, France and Britain define which content constitutes illegal, and social media providers must remove such content within a certain time. Germany's rules oblige social media service providers to submit annual reports for transparency. If any published content violates the General Contract Terms but not legal regulation, the issue may be brought before a civil court pursuant to Germany's Civil Code. As to the review of the Directive on e-commerce, the public consultation phase has ended. But concluding the EU-level legislative process will take more time.

Dr. Imola Benkő: No specific ruling has been passed regarding purported measures taken by social media service providers to limit the freedom of expression. But civil and administrative procedural decisions have already been made concerning social media content. Violating others' personality rights is the most frequent issue in connection with content published based on the freedom of expression. In such cases, courts compare a person's right to express their opinion with the infringement of personality rights, and levy a fine if the freedom of expression may be limited. The Debrecen Court of Appeal has ruled that a Hungarian court has jurisdiction to decide on compensation claims based on the infringement of personality rights, provided that the aggrieved party's interest is based in Hungary and the injurious television program broadcast from abroad can be viewed in Hungary, or the program can be viewed on a website with a foreign domain name. Hungary's Supreme Court has ruled that a party maintaining a Facebook profile is jointly responsible for any illegal statements in that profile. According to a ruling of the Budapest Court of Appeal, if content to be published on Youtube based on a registered member's consent is approved by an editorial board, then the operator of the site is responsible for the unlawful content published. And the Szeged Court of Appeal has ruled that the party operating a website allows people to know the published opinions and statements of others, so the operator is, besides the person actually making the comment, involved in the statement or opinion. Furthermore, the court ruled that the publication of a statement violating a personality right on a website is sufficient in itself to enforce the objective consequences of that violation (the retroactive moderation of a comment may be considered subject to the site operator's imputability). And the Supreme Court has ruled, in accordance with the Constitutional Court's practice, that the freedom of expression provides no protection from arbitrary statements beyond the discussion of public issues. If, during the election procedure, a value judgement remains within the discussion of public issues, its content must not be tested for evidencing. The Act on Election Procedures provides to the Supreme Court no tools for the qualification of such opinions in the election procedure which remain within the discussion of public issues. The

¹ *European Regulators Group for Audiovisual Media Services*: the Commission's advisory body in connection with the implementation of the Directive on audio-visual media services.

purported illegality of campaign statements in the election procedure cannot be assessed based on the considerations of libel cases in civil or criminal law.

Dr. Attila Péterfalvi repeats that the Civil Code has not been reviewed since the introduction of the GDPR. The chairman notes NAIH's decision against Forbes Magazine, in which the authority ruled that the magazine needed a satisfactory legal basis for handling the data of the 50 richest Hungarians listed in the publication. National authorities often receive complaints about affected persons not having been informed of the deletion of their profiles or comments. Mr Péterfalvi notes that Member States, when they wish to extend their legal authority to social media and treat those tech companies subject to their national laws, find that the lack of notification is often blamed on data protection limitations. In such issues, the GDPR identifies the Irish data protection authority as the main supervisory authority, also in the case of Facebook.

Dr. Gergely Szabó confirms that AJBH as an organisation applying the law lacks wide-ranging experience concerning the realisation of the freedom of expression in the online space, as the Act on the Ombudsman for Fundamental Rights stipulates an abuse by an authority as a precondition to launching a procedure.² A person filing a complaint to AJBH is directed to the above-mentioned Internet Hotline, and is usually notified of the activities and contact data of the Digital Freedom Committee.

Dr. Krisztián Gáva: NVI is not among the Committee's members, but the minutes of the last meeting (published on the Committee's website) refer to important issues that affect NVI's competences, as well. Hence the request to attend the Committee's meeting. The general deputy chairman emphasises that, based on the Constitutional Court's practice, the freedom of expression is specifically protected in campaign periods. Election authorities learn about few cases of legal violation by social media platforms during election procedures; and even fewer cases are brought before a court. Nevertheless, several problems can be identified despite the latent nature of these issues; but it is often difficult to prove such violations because of frequent website updates.

Ferenc Vágújhelyi: content is often removed from social media platforms because of the application of artificial intelligence. How these algorithms are programmed can be based on political considerations; thus such considerations can significantly affect what content is removed. A significant level of latency is expected when it comes to the violation of the freedom of expression in the online space, because many citizens are unable to adequately enforce their rights. For that reason, measurements should be made, data should be requested from associated Hungarian and foreign authorities, and international examples should be examined.

² According to section 18 (1) of Act CXI of 2011, anyone may turn to the Commissioner for Fundamental Rights if, in his/her judgment, the activity or omission of an authority infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto, provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him/her.

Minister of Justice Judit Varga thanks for the comments of Committee members about the freedom of expression, and concludes that a high level of latency is visible in connection with the operation of social media platforms. If these issues are to be addressed, it is indispensable to know the opinions of society and users; the Committee members are requested to help gather those opinions.

The chairman of the Committee notes that the Committee will next convene in October, thanks for the input, and closes the meeting.