

Minutes of the online meeting of the Digital Freedom Committee
“Directions of protecting freedom of expression in the online space”
26 January 2021, 10:00

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
- **National Office for the Judiciary (OBH):**
 - Dr. György Barna Senyei, Chairman
- **University of Public Service (NKE):**
 - Dr. András Koltay, Rector
- **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. Balázs Könnnyid, Secretary General
- **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):**
 - Dr. Ádám Németh, Legal Counsel

Committee meeting:

1. Justice Minister Judit Varga opens the online meeting by welcoming the participants. She summarises recent events, specifically the European Commission’s proposal for a Digital Services Act, Poland’s bill for the protection of freedom of speech, and the ban of Donald Trump by social media platforms.

In view of the above, the Minister repeatedly emphasises that the rule of law and transparency must be enforced in the digital space, as well. At the same time, the events of recent months have clearly shown that online platforms are trying to assume a quasi-governmental role based on un-transparent pseudo rules, violating citizens’ freedom of expression through arbitrary censorship. Hungarian people must be protected from such unlawful practices through a framework that enforces transparent and auditable operations by the large technological companies present in the country. Creation of measures concerning online platforms are taking place in Poland, Germany, France and the European Union as a whole. Hungary is expected to make a similar bill in spring.

Dr. György Barna Senyei: Problems with the content regulation practices of online platforms are not new. One example is the case of Delfi related to Estonian comments. The Chairman emphasised that content moderation decisions by online platforms must not be arbitrary; they must be made subject to control by authorities and review by courts.

Dr. Balázs Könnnyid: The Digital Freedom Committee must continue to review the practices and activities of online platforms.

Csaba Balázs Rigó agrees that tech companies must be regulated at the level of Member States as soon as possible. At a meeting with Minister Varga last week, Mr. Rigó handed over GVH's proposals. The content moderation rules of tech corporations should be addressed; they must not adjudge freedom of speech. Data protection rules are often unknown to consumers; European research indicates that it may take up to 200 hours for a consumer to read all data protection information provided online. Business models are often not entirely clear to consumers. GVH has also proposed regulations concerning digital self-determination. According to studies conducted in Europe, two thirds of all users accept that online platforms may use their data free of charge, but they are not satisfied with the way tech corporations do that. Many consumers fear they will miss out unless they join an online platform. The content moderation practices of service providers are questionable; they often ban public figures and use complicated algorithms to limit the content to be published. Furthermore, complaint management and client service by online platforms are not satisfactory. Several states, such as the UK, the Netherlands, Denmark, France, the USA and Italy, are reviewing the competition aspects of online platforms. GVH has sent Minister Varga a summary table of the ongoing competition supervision procedures against tech corporations outside Hungary.

Judit Varga thanks for the proposals by the Competition Authority; these will be reviewed and taken into consideration when the concept is formulated. Online platforms cause “digital damage”, for example by deleting or limiting the account of an influencer who has hundreds of thousands of followers, which may cause real financial damage. And a similar decision by a public platform may have a negative impact on the income of a business. So a more stringent liability system should be considered, similarly to the treatment of public utilities.

Dr. Attila Péterfalvi: Pursuant to the GDPR, the Irish data protection authority is competent to handle cases related to unlawful data processing by online platforms. The Authority has received complaints by users about the operation of such platforms. According to their business regulations, only content that constitutes either a crime or an obvious legal violation (by general consensus) may be deleted; in other cases, the operator must assess the interests involved to determine whether the published content is in line with the relevant country's constitutional and judicial practices. Experience indicates that online platforms unfortunately do not cooperate with the Irish data protection authority.

Dr. Ádám Németh: The question arises what social media actually is: a press product, an electronic communication service, or a public utility? Some content is clear; but in the case of fake news or political opinions, neither an algorithm nor any single human can always decide what content is objectionable. Online platforms can limit any view; users are given no explanation for their banning, and they cannot create a new profile. They may feel excluded from society and cannot contact others, which constitutes a limitation of citizens' fundamental rights. Regarding the sanctions, the example of France is worth examining, where payments to online platforms are halted. Similarly, Hungarian banks would not transfer funds to online platforms that break the rules.

Dr. András Koltay refers to the deletion of Donald Trump's account. This may have been a watershed moment marking the ability of online platforms to silence ideologically or politically

non-conforming persons. He refers to the European Commission's draft regulation aimed at legal remedies and transparent decisions. According to the Polish plans, an online platform could only limit content that goes against the country's laws. This draft regulation can guarantee the protection of freedom of speech. The applicability of the E-commerce Directive and aspects of the free movement of services must also be reviewed when drafting the upcoming Hungarian regulations. However, one issue is not addressed by the Polish proposal: the case of "shadow banning", *i.e.* when a user is not deleted or limited but ranked lower so that the contents they publish can reach fewer people. It will take long before the regulation drafted by the European Commission is passed, so Member States should definitely introduce their own legislation now and hence Hungary's relevant legislation must be supported.

Dr. Levente Nyakas: NMHH is involved in the ongoing review of the draft Digital Services Act (DSA). Notably, the European Democracy Action Plan (EDAP) makes proposals concerning European publicity; one goal is to protect the integrity of parliamentary elections through more transparent political discourse (by regulating political advertisements and communications). Furthermore, the EDAP makes proposals for press freedom and media pluralism. The Plan also addresses disinformation. In view of proposals by the European Regulators Group for Audiovisual Media Services (ERGA) for the implementation of the self-regulation codes against disinformation, the EDAP points out that the accountability of online platforms can be ensured not through self-regulation but via a common regulatory framework and control by authorities. Dr. Nyakas **promises to forward ERGA's public report on this issue to the Digital Freedom Committee.** Two relevant services related to social media platforms and currently subject to media regulations should be noted. The first is video sharing subject to media regulations since 2020 and thus within the competence of NMHH. The second is the activity of influencers, which (if certain conditions are met) constitutes media on demand; so influencers' activities are subject to the current media regulations.

Minister Judit Varga thanks for the participation in and contributions to the online meeting. The Digital Freedom Committee has been consulting government agencies throughout the first year of its existence. Individuals and social entities have had an opportunity to report complaints and remarks about online platforms on the Committee's website. There are now international examples so the Ministry can work on a well-founded draft framework. The concept to be prepared by the Ministry will be sent to the members of the Committee for review, and Minister Varga also plans to consult tech corporations about it.