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# Regulation of social media's public law liability in the Visegrad States

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**Abstract:** Social media and media platforms have fundamentally changed the traditional ways of social communication, expression and declaration, as well as access to information. The novelty and social significance of social media poses challenges that legislation can only follow after some delay. The speed of technological development outpaces the improvement of legal regulation, which, in the most necessary cases, tries to deal with the situation in a reactive manner. This study examines the trends and tendencies in the regulation of social media, focusing mainly on its responsibility and liability for user-uploaded content, for content removal and possible administrative or other interventions in the Visegrad states.

**Keywords:** social media, media regulation, social media liability, public law responsibility

## 1. INTRODUCTION

Given the technological capabilities of internet communication and the constitutional foundations of social media, the question of whether state regulation or self-regulation, national or global regulation is appropriate for social networks is not yet clear. State action is limited by the system of jurisdictions, and in the case of global self-regulation of service providers, there are no rule-of-law guarantees for the restriction of fundamental rights, while in many cases they are arbitrary.[1]

In the state regulation of social media, it is worth distinguishing between two problems: *one is the assessment of disputes and the legal liability between users, while the other is the issue of the legal liability of platforms.* When settling disputes between users, it is typical for the examined countries that users can sue each other in the usual way, offline, or they can make an accusation in the conventional way if they suspect that a crime has been committed. The legal procedures are the same, but the specifics of communication on the social media platform must be considered when investigating an infringement.[2] *The regulation of the liability regime for content on social media platforms is described below.*

## 2. THE EUROPEAN UNION FRAMEWORK

The European Union's rules have attempted to regulate the internet from two directions: *regulating certain internet-based services*, and *regulating*

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*the internet in general*. Beyond the areas harmonised by EU law, Member States may adopt national rules, but this should not be an unjustified obstacle to the free movement of services within the Union.

The European Union regulatory framework is based on Directive 2010/13/EU on audiovisual media services (hereinafter referred to as: AVMSD),[3] the primary objectives of which are the functioning of the single European market for audiovisual media services and consumer protection. The AVMSD was amended based on Directive 2018/1808/EU,[4] *extending the scope of the AVMSD to "video-sharing platforms"* and *audiovisual content shared on social media services*. Based on the amendment, the regulation of audiovisual content shared via social media was extended. Rules on the content of audiovisual advertisements, the protection of children and, in accordance with Article 21 of the Charter of Fundamental Rights, the content against which service providers are obliged to act are enshrined: hate speech, support for terrorism, denial of genocide, child pornography. This Directive *still does not impose an obligation on platform providers to filter general content, but it obliges them to establish effective procedures for reporting and handling incoming complaints*.

In addition to the AVMSD, Directive 2000/31/EC of the European Parliament and of the Council on electronic commerce (hereinafter referred to as: e-Commerce Directive)[5] contains provisions on e-services. The *purpose* of this Directive is to ensure the free movement of information society services, in particular electronic commerce services, between Member States in the internal market. The e-Commerce Directive *does not impose a monitoring obligation* on hosting providers. Under Article 14, which governs the liability of hosting providers for content, the liability of the provider *cannot be established* if it does not have actual knowledge of the illegal activity or information and is not aware of facts or circumstances from which the illegal activity or information is apparent, or the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. Action against hosting providers is available to consumers under the e-Commerce Directive and they can take legal action in the courts of their own country to remove offensive content. However, the e-Commerce Directive also states that the courts or administrative authorities of the Member States may, in accordance with the legal systems of the Member States, oblige the provider to terminate or prevent the infringement and that Member States may adopt rules on the removal of information or termination of access. Significant progress has been made in applying the two directives and in the liability for the content of global service providers with a code of conduct against online racial and xenophobic manifestations, as established by the *Commission and the four major companies (Facebook, Microsoft, Twitter, YouTube)* in May 2016. The purpose of the *Code of Conduct is to deal quickly with requests for cancellation*. Under the Code of Conduct, companies remove illegal content from their platforms that they consider to be in breach of their internal rules, Community guidelines and national legislation transposing EU law on racism and xenophobia. *Applications will be reviewed and removed within 24 hours, but in compliance with the principle of freedom of speech. Instagram, Dailymotion, Snapchat and Jeuxvideo have meanwhile joined the code.*

## 3. REGULATION IN HUNGARY

In Hungary, there is no law in force regulating social media explicitly and exclusively. In the system of regulation, the classical regulatory elements that are independent of the specifics of social media can be identified and can be properly applied to the platforms of social media as well. *General legislation therefore applies to communication on social media platforms, including, in particular, the common rules on data protection, copyright, protection of the right to privacy, public policy and criminal law.* The 2018 amendment to the AVMSD (see above) was implemented in the Hungarian legal system.

As in the other countries examined in this study – in terms of legal theory – *two areas can be distinguished* in the special state regulations on so-

cial media: one is to *settle disputes between users of social media interfaces*, and the other is the *issue of the legal liability of platforms*. An important issue for the regulation of the latter is that the platform is not the primary provider of the infringing opinion, but only gives an opportunity for others to communicate. However, in line with the European legal approach, they must be involved in the removal of infringing content, failing which they will be held liable for that content. State regulation this way also involves platform providers in the redress system, which thus have to decide on the legality of the content in question, and with this step, platform providers become important actors in the application of law and enforcement, as well as having a significant influence on the freedom of expression on the platform. Accordingly, a central element in the Hungarian regulation on social media is that the service provider establishes an interface for user content, i.e. it does not operate as a content provider or media service provider.[6]

The Hungarian regulation makes a distinction between *media content providers* (e.g. media service providers or publishers of media products which produce their own content and their responsibilities[7] are regulated by media administration rules[8]), *video-sharing platform providers* (for which the AVMSD – as transposed into national law – applies) and *social media platforms* (see below). With regard to social media, the *provisions of Act No. 108 of 2001 on certain issues of electronic commerce services and information society services*[9] *apply* (hereinafter referred to as: e-Services Act Hungary), which follow the regulatory principles of the e-Commerce Directive.

According to the Hungarian regulations, *social media platforms qualify as intermediary service providers*, more specifically hosting providers, and they can also be classified as search service providers based on their additional functions.[10] Accordingly, the service provider is responsible for the illegal content it provides, but in the case of social media platforms, this is a liability rule that applies to their own content. *Intermediary service providers are not responsible for the content and information communicated by others in the presence of the conditions provided by law*, and are not obliged to check the information stored, transmitted or made available.[11]

*Among the rules applicable to social media platform operators as hosting providers, the provisions aimed at ensuring the removal of infringing information as soon as possible and the prevention of access should be highlighted.* As part of this, the procedure and conditions of the notification removal procedures are regulated in particular detail, on the basis of which the copyright owner or the legal representative of the minor may take action to remove copyright infringements and content infringing upon the personal rights of minors. The purpose of this type of procedure is to offer those concerned an alternative to lengthy, cumbersome court proceedings to determine the infringement and (typically) put an end to the infringing situation, which enables right-holders to restrict access to the infringing information and remove the infringing content. It is important that this form of procedure merely precedes, but does not preclude, the possibility of recourse to the courts, and that the relevant rules apply only to the relationship between the service provider and the injured party, not in any court proceedings.

*Exemption from liability for infringing content on social media is subject to a notice-removal procedure.*[12] *If the intermediary service provider acts in connection with the removal, making it inaccessible, it shall not be liable for the infringement caused by the removal of the information or failure to provide access.*[13] Hungarian law regulates in detail the conditions for exemption from liability for each type of intermediary service provider. *The service provider shall not be liable for the information provided by the recipient if a) it is not aware of any unlawful conduct in connection with the information or that the information infringes the rights or legitimate interests of anyone; b) as soon as it becomes aware of it, it shall immediately take action to remove the information or refuse access.*[14] The provisions governing the exemption of intermediary service providers from liability for information held, transmitted or made available are therefore based on the fact that, on the one hand, intermediary service providers are

not liable if their activities involve the technical, automatic and passive dissemination of information to the public, and on the other hand, if the service providers become aware of the infringing nature of the content and take immediate action to remove it. *In this respect, the Hungarian legislation provides a similar exemption from liability for service providers offering search services and application services.*

# 4. REGULATION OF THE CZECH REPUBLIC AND SLOVAKIA

## 4.1. FUNDAMENTAL PRINCIPLES

The fundamental principles of the liability of social media providers in both the Czech Republic and Slovakia are based on essentially the same philosophy. The starting point is freedom of expression and constitutional rules on access to information.[15] With regard to the system of legal sources, the 2018 amendment to the AVMSD has not been implemented in the legal order of either country yet.

The general rule of the liability regime in both countries is to distinguish between online and offline "forums", i.e. *the medium through which the expression of opinion takes place is not relevant.* In a general approach, several aspects of the legal responsibility for expressing an opinion can be distinguished on online interfaces. In the case of the *private law aspect* of an infringement, a right of privacy is typically violated: it may be an interference with personal data, a violation of human dignity, privacy or defamation. These cases are typically disputes between individuals that are ultimately decided by a court. *From a public law point of view*, we can distinguish between administrative-type violations and related administrative sanctions, and in more serious cases, criminal acts and penalties. Administrative-type infringements in the Czech Republic and Slovakia typically include personal data protection and conflicts of expression, in which case the data protection authority acts in public proceedings and may impose administrative measures and fines. The subject of these proceedings is the protection of personal data, but it does not exclude the possibility of enforcing damages in a civil law procedure. Similarly, in other administrative sectors, the conflict of freedom of expression with other rules and prohibitions may appear. Examples include *restrictions on election campaigns* or *restrictions related to media law.* A further public-law restriction on freedom of expression is the framework established by criminal law, in particular the facts that fall into the category of "hate speech". Czech and Slovak law do not use the term hate speech, the current criminal law rules place it under other criminal acts (incitement against the community, use of an authoritarian symbol, incitement to violence, etc.). *In summary, in Czech and Slovak law, in the case of legal liability, it is necessary to examine what infringement it is for, what legal entity is liable for it, and what regulatory area it affects.*

*Czech and Slovak legislation* do not define the concept of illegality or infringement, either in relation to e-services or social media. According to this, an infringement is considered to be an infringement under Czech – and Slovak – law. To remove infringing content and an infringement suffered online, an individual can, as a general rule, *go to court.*

In some branches, such as the protection of personal data and the protection of copyright, there is an administrative supervisory body, so administrative intervention is also conceivable under sectoral legislation. In the event of a suspected criminal offence, the *investigating authorities may act*. The regulations do not differentiate between infringements committed in the 'online' and 'offline' space, i.e. the nature of the medium is irrelevant in relation to the legal means available. There is *no special government body set up in any of the two countries* to control or monitor content on the internet. There are *no special fines*, or other types of sanction, for the operation of social media providers.

Social media liability is *not specifically regulated* in the Czech and Slovak legal systems. The

Czech Republic *regulates* the internet and social media *only tangentially*, this issue is *regulated by Act No. 480 of 2004 on certain information society services* (hereinafter referred to as: Czech e-Services Act).[16] The Slovak regulation is based on *Act No. 22 of 2004 on electronic commerce* (hereinafter referred to as: Slovak e-Services Act).[17] Both laws transposed the rules of the e-Commerce Directive into national law – *i.e. these laws were not created specifically to regulate social media.*

## 4.2. CHARACTERISTICS OF THE CZECH REGULATION

Under Czech law, a *"service provider"*[18] is *liable for content that is displayed or transmitted by it if* a) the service provider was aware or became aware of the infringement and at the same time, b) the service provider did not remove the infringing content. *As a general rule, the service provider can thus be held liable if it has not acted after becoming aware of the infringement.* However, a special rule differing from this one is that the service provider is liable in all cases if the content is produced directly by it, or it has a significant influence on the content, i.e. if it *directly or indirectly has a decisive influence on the user's activities*.[19] This is typically the case for news portals and online newspapers or magazines, which, as publishers, are responsible for the content of the news they publish.

The service provider has *no obligation to search for active content (content tracking)*,[20] in this regard the regulation contains an explicit provision guaranteeing that service providers *cannot be held liable* for active content tracking – except in the case of online news portals or newspapers. *The Czech law does not contain any public law incentives regarding the non-removal of illegal content*, it is a provision without sanctions.

*In the Czech Republic, two trends have emerged* in recent years regarding the obligation of social platforms to intervene. *This calls for the accountability and responsibility of social media* on the grounds that service providers (i.e. social platforms) are able to control the source of the threat (i.e. the situation is under their control) and at the same time easily remedy the threat of harm to the best of their ability.[21] With regard to the legal liability of social media, in addition to the provisions of the Czech e-Services Act, the provisions of the Civil Code on liability can also be applied in principle.[22] According to the general rule of the latter, given that it is a system based on private law, the 'enforcement' of liability presupposes that the conduct in question causes actual (real) damage. In addition, § 2900 of the Czech Civil Code regulates the so-called obligation to prevent *(prevenční povinnost)*, according to which, if the circumstances of the case or private habits so dictate, everyone must act in such a way as to avoid unreasonable damage to the liberty, life, health or property of another person. Furthermore, pursuant to § 2091 of the Czech Civil Code, in the protection of others, anyone who has created a dangerous situation or is in control of the situation or is otherwise justified by another relationship between legal entities is obliged to intervene to eliminate the emergency. In addition, the same general duty of prevention applies to a person who, to the best of their opportunity or ability, can easily remedy a situation threatening damage. This is what Czech law calls the obligation to intervene *(zakročování povinnost)*, which is intended to prevent future damage.[23]

*According to the other approach, service providers* (and also social media) cannot be obliged by regulation of certain information society services to *actively monitor content*,[24] which, as a special rule *(lex specialis)*, precedes the general provisions of the civil code *(lex generalis)*.[25] Consequently, the obligation to prevent and intervene should apply to service providers differently from the general one.[26]

## 4.3. CHARACTERISTICS OF THE SLOVAK REGULATION

Under Slovak law, the service provider's liability for content is significantly limited and practically

excluded. According to the law, the *service provider is not responsible for transmitted information if the provision of the service consists only of the transmission of information in the electronic communications network or the provision of access to the electronic communications network*, and at the same time the service provider has not: a) initiated the transmission, b) selected the recipient of the information; and c) compiled or modified the information. Furthermore, the service provider *shall not be liable* for information stored in the memory of the electronic devices used for information retrieval at the request of the user, *provided that the service provider is not aware of the illegal content of the stored information and it takes immediate action to put an end to the user's unlawful conduct;* in the case of such information, the service provider shall be liable only if the user acts on its instructions. To summarise, *the service provider is responsible for the content it stores or transmits: a) if it has become aware of its illegality and has not acted against it, or b) if the service provider has had a significant influence on the compilation of the information.* With these provisions, the legislator transposes Article 14 of the e-Commerce Directive into Slovak law with virtually no substantive changes.

It follows from the above that the largest group of service providers cannot be held liable – or only in a very cumbersome way – for the information it stores or transmits. Exceptions to this are news portals (online newspapers, magazines), online radios and "televisions", i.e. all service providers who produce their own information or news or have a significant influence on it. In the case of such providers, the forums are moderated – that is, posts that violate rights or public morality are removed following the rulings of the European Court of Human Rights of 10 October 2013 in Delfi AS v. Estonia's[27] verdict.

According to the Slovak regulations, a *service provider has no obligation to monitor content, moreover the regulations explicitly prohibit the service provider from searching in data transmitted or saved by the users.* Nevertheless, if it becomes aware of the illegality of such information, it shall remove such or at least prevent access to it; the court may order the service provider to remove the information even if the service provider is not aware of the illegality. Thus, searching in user information is generally excluded, so the service provider *has no obligation to actively search for content (content tracking).*

Apart from political statements and newspaper reports,[28] there is *no common legal or scientific position* on the *obligation for social platforms to intervene in Slovakia*, with the exception of the Slovak e-Services Act mentioned above. In the literature, a court case, *Stacho v. Klub Strážov*,[29] appears in this regard, in which a comment on a website that violates the human dignity of a specific individual (i.e. not an article, but a reader's post) was disputed. The plaintiff sought an *apology from the operator of the website, the removal of the post and damages of EUR 5,000*; the court in the second instance ruled in favour of the plaintiff only regarding the removal of the post, and dismissed the remainder of the action (in accordance with the provisions of the Slovak e-Services Act).

## 5. REGULATION IN POLAND

The issue of social media regulation in Poland has been on the agenda for years. Many journalists have complained[30] that Facebook, in their view, has arbitrarily blocked their profiles or deleted content they shared. On 23 September 2019, the President of the National Media Council filed a lawsuit in the Warsaw District Court *(Sąd Okręgowego w Warszawie)* against Facebook,[31] alleging that the social media provider violated its constitutionally guaranteed freedom of expression by restricting the accessibility of the content it posted. With this lawsuit, the difficulties of handling disputes and objections against Facebook became clear. The Warsaw District Court had to serve the action in Ireland, as their subsidiary there is responsible for its European operations.

In December 2020, the Polish Ministry of Justice announced its intention[32] to regulate social media service providers, which it complied with initially with a Draft on the protection of freedom

of speech on online social networks[33] from February 2021 (hereinafter referred to as: the Draft). The purpose of this Draft is to protect freedom of expression in online social media, so it basically focuses on *ensuring freedom of expression*.

The Draft regulates social (internet) media services with *at least 1 million registered users*, for the purpose of strengthening the protection of human rights on these platforms[34] and the supervision of social media services.[35] The *personal scope* of the regulation is thus explicit and 'narrow', *in contrast to*, for example, *Ireland or the United Kingdom*, which is planning to regulate, where social media regulation also covers a much wider range of internet services. Article 3 of the Bill includes the social media service *(internetowy serwis społecznościowy)* and the service provider *(usługodawca)* among the definitions. According to this, a *social media service* is an electronic service within the meaning of the Electronic Services Act that allows users to share content that is intended for another user or the public (and has at least 1 million registered users).[36] A *provider* is a social media provider that provides an interface for information posted by users (and has at least 1 million registered users).[37]

The *planned regulation introduces* the *supervision* of service providers, their *responsibility for content*; obligations of service providers to guarantee freedom of expression and access to accurate information; the rules for a user-initiated *complaint handling mechanism* to be operated by service providers. The *complaint handling mechanism* should cover both the reporting of illegal content (content control) and the reporting of violations of freedom of expression (censorship). A negative decision on *content control* can be challenged by the user in civil or criminal *court* (the user must be notified of the possibility by the service provider). In the event of a negative decision related to *censorship*, *within 7 days* of the decision the user may appeal to a *new body* envisaged by the Bill, the *Freedom of Speech Council* (see below) for the supervision of social media.

The Draft establishes a *new administrative body*, called the *Freedom of Speech Council (Rada Wolności Słowa)* (hereinafter referred to as: the Council),[38] *for the supervision of social media service providers*. According to Article 4, *the Council shall respect freedom of expression, the right to information, the right to disseminate information, the freedom of expression of religious views, belief and philosophical views, and free communication with regard to social media*. The Council consists of a President with the status of Secretary of State and four members. The term of office of the members of the Council is 6 years (renewable for another 6 years), they are elected by the National Assembly with 3/5 of the votes (at least half of the deputies must be present).[39] The President of the Council directs its work, represents the Council, and performs other tasks specified by law and the rules of procedure *(regulaminie działania)*. On a proposal from the President, the Council may appoint a Vice-President or delegate certain presidential tasks to a member.[40] The Council takes decisions and issues resolutions (including on organisational matters), which are signed by the President of the Council, and the President of the Council may issue a regulation.[41] Decisions of the Council are taken by open simple majority voting with at least 3 members present (the presence of the President is obligatory). In the event of a tie, the chairman shall have the casting vote. *The decisions and resolutions of the Council are final.*

*A service provider and a service provider's representative who fail to implement a decision of the Council or fail to comply with other obligations prescribed by law may be fined between 50,000 and 50,000,000 zlotys (11,000 – 11,000,000 euros)*. In the case of fines, the Council considers *five* aspects: the gravity of the service provider's involvement (influence) in spreading (making) fake news, the *extent* of the breach of the public interest, the frequency of past defaults, and the *amount of fines* imposed for similar infringements.

The obligations of service providers are set out in detail, of which the *general reporting obligations* should be emphasised, which are aimed at enhancing transparency. Under this general reporting obligation[42] a service provider who receives more than 100 notifications (complaints) in a calendar

year for making illegal content available, restricting content or user profiles, has to make a report *(sprawozdania)* in Polish every six months (within 1 month of the end of each semester) on how to handle notifications. The report should be made available in a *visible, direct and permanent manner* on the social media interface. Furthermore, the Draft does *not* impose a general content monitoring obligation on service providers, but upon the *notification* of *illegal content (treści o charakterze bezprawnym)* and upon the instructions of the prosecutor, content that constitutes a criminal offence *(treści o charakterze przestępnym)* must be removed.

The Polish Draft *contains specific social media regulation*, which has a specific subject-matter and material scope (for social media providers only), precise definitions, clearly defined procedures and creates a *new administrative body* for the supervision of social media and introduces several new legal institutions to protect personal rights. However, it does not address the issue of the *enforceability of legal provisions and possible fines*, and it imposes an obligation by requiring the service provider to appoint a representative *domiciled* or with an *established place of business in Poland*, which may infringe EU law. According to the critics[43] of the draft regulation, the Draft as an instrument of social media regulation in this form is pointless: it is not the task of the state to intervene in public debates at this level, freedom of expression requires the least invasive legal means and should focus on violating individual rights in individual cases.

## 6. CONCLUSIONS

Legislation and state administration need to respond to the new challenges of social media and media platforms through continuous innovation, covering all regulatory areas concerning online platforms, in particular in the area of freedom of expression and speech. It is also questionable to what extent and in what way this issue can be regulated exclusively within Member States legislation. As part of the European Digital Strategy,[44] the Commission announced a reform of *European rules for the Internet* in December 2020, presenting two packages of legislation, the *Digital Services Act (DSA)*,[45] and the *Digital Markets Act (DMA)* amending the e-Commerce Directive.

The draft of the DSA submitted by the Commission, including representatives of the companies concerned, regulates in detail the liability of service providers, maintaining the principle set out in the e-Commerce Directive that *service providers are not subject to monitoring, and that content is primarily the responsibility of the uploader.* The draft regulates the concept of *illegal content* as well as the *concept of online platform* as an innovation. The DSA also regulates the *procedure for reporting illegal content* and the complaint-handling process for content removed by service providers, allowing for court proceedings too. The draft also includes the possibility for national courts / authorities in the Member States to request the removal of offensive content from service providers. A separate chapter also regulates the rules for *very large online platforms*.

The future regulation of Community platforms is difficult to predict with certainty in advance, given that, in addition to the issues outlined above, other operational aspects of Community platforms may raise regulatory needs. One such important issue could be, for example, the *profiling of users*,[46] on the basis of which a user behaviour profile is created, or the comparison of these profiles with the statistics of other users. One of the consequences of this may be the *"filter bubble"*,[47] which can enclose the user in a consumer (or even belief) circle, significantly reducing the amount of information that is easily accessible or available to the user, thereby affecting "freedom of opinion and the freedom to know and communicate information and ideas".[48] Another important issue, also in the context of profiling, is the *protection of personal data* (including, for example, consumer habits, beliefs, sexual preferences, etc.), more specifically the fact that the free use of social platforms is apparent, as the users "pay" with their data.[49] Such use of data is currently not specifically regulated, although it is difficult to imagine a monitoring tool other than public action in this area

due to inequalities between social platforms and users. The need for regulation is also justified by the fact that social media wants to remain active in the data and information market, as this is its main source of revenue. In a briefing in February 2021,[50] Facebook wrote about the desire to reduce *political content* in the *news feed* of certain user groups, which also raises more questions than it answers: what counts as political content; what does the concept of "reduce" mean (more precisely, how much less); whether the reduction of political content only applies to certain political content, or equally to all political content; how many users are affected, etc.

The legal regulation of social media has become one of the main subjects – if not the main subject – of the information society in recent years, and it also represents a complex and mostly unresolved issue for the legal systems of the Visegrad states. As a closer examination shows, none of the V4 states have a complex or effective system of social media regulation. Aside from the Polish Draft on the protection of freedom of speech on online social networks, there is currently no publicly available draft regulation or other official regulation concept in the remaining Visegrad states, despite the regulation of social media seeming inevitable in the future.

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18 The regulation does not differentiate between separate types of service providers (e.g. social network operator, hosting provider, video sharing service). According to the regulation (Section 2 (1) (a)), a service provider is any person who provides any information society services that are provided electronically at the individual request of the user, usually for a fee; the service is provided elec-

tronically if it is sent over an electronic communications network and the user accesses it from an electronic data storage device.

19 § 5 para. (2), Czech e-Services Act.

20 § 6, Czech e-Services Act.

21 See more on this topic: Telec, Ivo: Zakázané těžení a nebezpečná situace na elektronických úložištích dat. In: Bulletin advokacie. 2015. 1-2. 20.

22 Zichová, Tereza: Odpovědnost poskytovatelů služeb informační společnosti za cizí obsah. 45-46. https://dspace.cuni.cz/bitstream/handle/20.500.11956/123881/150048566.pdf?sequence=1 [17.05.2021]

23 Švestka, Jiří - Dvořák, Jan - Fiala, Josef et al.: Občanský zákoník. Komentář. Svazek VI. Wolters Kluwer, 2014, Praha. ISBN 978-80-7478-630-3, 896-898.

24 See § 6 para. (2), Czech e-Services Act: service providers are not required to: a) monitor the content of the information they transmit or store, or b) actively seek out facts and circumstances that indicate the illegal content of the information.

25 *Lex specialis derogat legi generali:* a special rule of law degrades its general rules; if there is a special rule, the general rule does not have to be applied.

26 See more on this topic: Maisner, Martin: Snaha o zakázané těžení ze zdánlivé absence výslovné legislativní úpravy a nebezpečná situace pro poskytovatele služeb informační společnosti. Bulletin-advokacie.cz http://www.bulletin-advokacie.cz/snaha-o-zakazane-tezeni-ze-zdanlive-absence-vyslovne-legislativni-upravy [17.05.2021]

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https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-126635%22]} [17.05.2021]

28 See e.g. Sociálne siete musia na seba prebrať viac zodpovednosti, zhodli sa Bilčík a Šimečka, https://www.topky.sk/cl/10/2057857/VIDEO-Socialne-siete-musia-na-seba-prebrat-viac-zodpovednosti--zhodli-sa-Bilcik-a-Simecka; Podľa Klusa by mali sociálne siete prijať väčšiu zodpovednosť: Musíme bojovať proti dezinformáciám, https://www.cas.sk/clanok/1057096/podla-klusa-by-mali-socialne-siete-prijat-vacsiu-zodpovednost-musime-bojovat-proti-dezinformaciam/; Európsky parlament žiada jasnú legislatívu pri odstraňovaní obsahu na sociálnych sieťach, https://svet.sme.sk/c/22594829/europsky-parlament-ziada-jasnu-legislativu-pri-odstranovani-obsahu-na-socialnych-sietach.html [17.05.2021].

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35 Art 2, Draft.

36 Art. 3.1, Draft.

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38 Chapter 2, Art. 45, Draft.

39 Art. 7, par. 2-3, Draft

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