

# THE ROLE OF SOCIAL MEDIA IN SHAPING SOCIETY



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## 1. Social Media and Freedom of Speech

The vast majority of citizens, and therefore voters, use social media as their primary source of information and news. The Internet and social media in particular are shaping our democratic dialog. Czech legal environment's concept of freedom of speech is that everyone has the right to publish what they see as proper, and to forbid them from doing so would destroy freedom of speech. Freedom of speech is one of the basic features of a democratic society and one of the basic conditions for human development and personal fulfillment.<sup>1</sup>

This is not applicable only to information and opinions that are favorably received and rated as non-offensive or neutral, but also to those that attack or shock.<sup>2</sup> Therefore, this also applies to those that some online platforms describe as harmful. There is no reason to have freedom of speech that allows only speech that is not harmful. These are the needs of pluralism, tolerance, and free-thinking, without which there is no democratic society.

The view that absolute protection of freedom of speech is necessary does not lie in the naive notion that words cannot do harm, but in the belief that society benefits from the free flow and exchange of ideas, which outweighs the negatives caused by

1 Rozehnal, 2020.

2 Burto and, Jirák, 2001.

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harmful ideas.<sup>3</sup> Any censorship is counterproductive because the truth will come to light only when conflicting ideas clash. Deleting posts or blocking users will not eliminate racism, xenophobia, indecency, or hatred, as this is ingrained in some people, and they also have the right to freedom of speech.

At first sight, the issue of freedom of speech appears trivial in the sense that it is either given or not. However, the situation is not that simple, because the freedom of speech has external limits, that is, those stipulated by regulations, and internal limits, which are immanent with the freedom, as it contains the liability for speech—not liability as a moral or philosophical category but liability as a category of law.

The external limits<sup>4</sup> of the freedom of speech in the Czech Republic include the provisions of the Criminal Code and the Rules of Criminal Procedure, the regulations providing for the protection of personal rights, the provisions regulating the content of advertisements, and a number of rules relating to electronic and digital media, such as the duty to refrain from jeopardizing the ethical, physical, and mental development of children and minors, and the duty to carry out impartial and balanced broadcasting.<sup>5</sup>

A huge public dispute arose when the Czech Parliament adopted a law restricting the freedom of expression in sensitive issues. Media named this act the *Muzzle Act*. The Muzzle Act was an amendment to the Rules of Criminal Procedure and the Personal Data Protection Act that prohibited the media from publishing any information that might serve to disclose the identity of an aggrieved person younger than 18 years of age, or the identity of a victim of murder, manslaughter, or certain other criminal acts causing grave harm to the victim's health, distribution of sexually transmitted diseases, certain criminal offenses aimed against woman's pregnancy, human trafficking, certain criminal offenses against human dignity in sexual life, and the criminal offenses of abandoning a child or person entrusted to one's care, battering a person entrusted to one's care, battering a person living in one's dwelling, kidnapping a child or a mentally handicapped person, and stalking. In addition, it was prohibited to publish images, video and audio records, or other information during court hearings or public sessions that would enable the disclosure of identity of the party aggrieved by the aforesaid criminal offenses.<sup>6</sup>

Another ban imposed upon the media, including social media, concerned the publication of information about any ordered or carried out wiretapping and recording of telecommunication operations, or the information retrieved there from, data on telecommunication operations or information obtained through surveillance of persons and items, provided that they allow the disclosure of identity of the person concerned, and provided that they were not used as evidence in court proceedings.

3 Ruling of the European Court of Human Rights in the case *Grinberg v. Russia*, Application No. 23472/03 dated 21 Oct. 2005.

4 Rozehnal, 2015.

5 Rozehnal, 2008b.

6 Rozehnal, 2020.

This information may be published only on the grounds of public interest if it prevails over the right to enjoy the protection of privacy of the person concerned.

A breach of this prohibition is subject to strict sanctions. The Criminal Code stipulates that a person who through negligence and without being authorized to do so publishes, advises, makes accessible, otherwise processes, or appropriates personal data of another person collected in connection with the execution of public authority (e.g., via wiretapping), and causes serious harm to the rights or legitimate interests of the person concerned, may be sentenced up to three years in prison or to a prohibition on undertaking professional activities. The qualified merits of this offense consist of the perpetration thereof via press, film, radio, television, and publicly accessible computer networks, such as social media, or via any other similarly effective manner.

Although the Muzzle Act has been reasonably modified, conformity with the Convention on the Protection of Human Rights and Fundamental Freedoms has been established only by reference to public interest. Worth mentioning is the provision of the Criminal Code that stipulates that whoever intentionally violates the protections of data, text, voice, audio, or video messages sent via an electronic communication network attributable to an identified subscriber or user who receives the message shall be sentenced up to two years in prison or punishment by disqualification.

Freedom of speech is a manifestation of will secured by all rights against slander, insult, abuse, etc. This means that the freedom is regulated by the law.<sup>7</sup> Social media cannot stand above the law, but they should have the right to publish what they want, even if they risk consecutive sanctions if any of them crosses the limits set forth. Social media users do not stand above the law.

Social media users are persons with the capacity to monitor suspicious behavior and instinctively gather information about things and topics that are not what they seem to be. Sometimes, they may be biased or in error, but this is a necessary consequence of the freedom of speech.

Observation of the limits of freedom of speech is supervised by the courts; however, it is not up to them to supplement the social media users' opinions and determine what techniques they should use. Judges must resist the temptation to become editors of social media posts. The court must not act as a censor.

Another pillar of freedom of speech is the fact that the government has no control over the media. The freedom of speech currently protects efforts to publish unpleasant information against the will of governments, multinational corporations, and public entities.

Multinational corporations often create more products and influence than many UN member states. More than half of the one hundred richest entities are corporations, not states. Some have breached the law or profited from such a breach.

The first limit of freedom of speech in social media thus rests on the definition of what is private and cannot be published. However, this issue may be a key subject in

<sup>7</sup> Zelezny, 2001.

much litigation.<sup>8</sup> Certain matters in human life are considered private by nearly everyone, such as health conditions, marital issues, and crimes committed by children.

Another definition of privacy is that privacy is required wherever it may be reasonably assumed. The zone of privacy may be described locally as a crib, a school, a hospital, a toilet, a bedroom, and a grave. A democratic society must protect the privacy at least of those who do not commit any wrongful or immoral acts as part of their personal freedom and must offer them a choice of what aspects of their private life they wish to share with others.<sup>9</sup>

This freedom arises from the same source as the freedom of speech. Both the communist and Nazi regimes restricted the privacy of citizens in favor of the state through an apparatus of informants, agents, and censors. It is a task of democratic legal states to protect privacy. It is obvious, however, that not all states share this legal concept, even those we define as democratic.

Another limit of freedom of speech is the conflict of this right with the right to protect universal personal rights. Social media will always stand on the other side of the protection of personal rights, as many posts give a critical account of certain people, thus interfering with their personal rights. Therefore, it is important to find a balance between the two counter poles. In the event of a conflict between the fundamental political right to information and the distribution thereof, and the right to protect one's personal rights and privacy, that is, fundamental rights standing on an equal level, it will always be up to the independent courts to weigh the circumstances of each case and thoroughly consider whether one right was given unreasonable priority over the other.<sup>10</sup>

This is also stipulated under Article 4 Clause 4 of the Czech Charter of the Fundamental Rights and Freedoms, which imposes a duty on the bodies exercising the right to always consider the nature and meaning of the fundamental rights. The form, scope, and manner of interference with personal rights must always correspond with the purpose thereof, and the human dignity of the person concerned must always be treated with care; otherwise, it would constitute an unauthorized encroachment on the personality of an individual.

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## 2. Democratic Censorship

In the Czech intellectual environment, the truth presented by social media is the truth that matters. If the social media says that an event or statement is true, it will be established as the truth, even if it is not. Therefore, the truth is what social media

<sup>8</sup> Rozehnal, 2020.

<sup>9</sup> Crone, 2002.

<sup>10</sup> Judgment of the Constitutional Court of the CR, Case No. II. ÚS 2048/09 dated 2 Nov. 2009.

recognizes as the truth. The freedom of speech and the right to obtain information thus become imaginary because the only space for public discourse is in social media. The social media decides on the topics of the discourse as well as on the arguments and participants thereof. As opposed to autocratic censorship, democratic censorship is no longer based on omitting and deleting data but on the gathering, saturation, and surfeit of information. The information is now distorted by volume.<sup>11</sup>

Information is hidden or garbled because there is too much information, and the recipient does not even notice what is missing. One of the great differences between the world in which we have been living in the past decade and the world immediately preceding it is that information is no longer scarce.

In pre-modern times, whoever had information had power, which was understood as an instrument serving to control the circulation of information. Currently, the preponderant power is not in the hands of those who create the information but in the hands of those who distribute it, such as social media. The censorship in today's world looks different and has different intentions than in the past. It is based on more complex financial and commercial criteria, contrary to authoritative censorship. The flood of information masks the lack of relevant information and obscures the fact that the images are often false and actually conceal reality.

This came after enchantment with the media in the 1970s and the 1980s when the media, being the "fourth power," were presented as a prospective refuge from the misuse of the other three powers (executive, legislative, and judicial) and as a civic guarantee of true democratic control. Journalism was adored as independent, fair, honest, and strict. It defied general decline and seemed to be an authentic knight of the truth and a loyal ally of the helpless citizen.<sup>12</sup>

Thus, the media were defined as the fourth power. For us to speak of the "fourth power," the three other powers would have to exist, along with the hierarchy according to which Montesquieu classified them. At present, the state is becoming somewhat emptied, as it leaves some of its functions to influential and economic entities. In fact, the premiere power today is the entrepreneurial segment. The second power (which seems to be strongly associated with the first one) is certainly the power of social media as a tool of influence. Political power stands third. Therefore, the state is no longer the greatest power in society, which is manifested by the fact that corporations have a higher rating than the state itself.

Until now, the news relationship was based on a triangle of three poles: an event, a journalist, and a citizen. The event was passed on to the journalist for verification, re-filtering, and analysis, and then passed on to the citizen. Now, the triangle becomes a line segment with an event on one end and a citizen on the other.

The journalists' functions have disappeared. There is no longer a filter or sifter in the middle. Social media tries to bring citizens into direct contact with the event through a camera or written news coverage. These principles of the news function

11 Rozehnal, 2015.

12 McLuhan, 2003.

make it very difficult to realize the fact that the information means freedom, which means democracy.

Another auto-censorship element is the unilateral orientation of the social media toward negative news. This trend is somewhat understandable, as it is closely tied to the critical nature of the media, which is imminent. On the other hand, if social media creates a negative image of the world, this image becomes a tool of indoctrination and manipulation of the public because of its natural desire to find a Messiah who would change the negative world for the better.

Therefore, a confrontational style is the only form through which social media operates. The principle of discussion and dialog is thus entirely abandoned, as social media believes that the escalation of a dispute is much more attractive. This tendency establishes a certain model of communication that politicians consider necessary.

Another source of problems is the continuous acceleration of the circulation of information and the great demand for more information. That is, the basic criterion of the news should be veracity, impartiality, and balance, as well as the speed of the news transmission from the social media to the recipient.<sup>13</sup> The speed then places a great demand on social media, which has no time left to verify the information for truthfulness, completeness, impartiality, and balance. News is a commodity that spoils fast, and any delay in the publication thereof may reduce its value and public interest. Therefore, a certain error in the presentation of the news caused by speed must be permitted, as well as exaggeration or provocation.

It is necessary to respect certain specific features of the social media designated for the distribution of information to the broad public (as opposed to traditional media or professional publications, for example), which in certain cases must simplify, namely with respect to the scope of individual social media users' interest.

It cannot be stated without explanation that each simplification (or distortion) must necessarily lead to interference with the personal rights of the persons concerned. We could hardly insist on the absolute accuracy of facts and thus impose impossible demands on social media. It is always important that the overall impression is that the information corresponds with the truth.<sup>14</sup> To review whether the right to human dignity and honor was infringed, the information published on social media concerned should be examined based on the following aspects:

- (a) The seriousness of the assault, with respect to the fact that the greater the impact of the false assault of dignity and honor, the more misinformed the public.
- (b) The nature of the information and scope of public interest.
- (c) The source of the information, namely with respect to whether the sources do have direct knowledge of the event and whether a mere personal animosity or an attempt to gain profit is involved (such information may be true, but if the provision thereof is based on personal animosity, the social media

<sup>13</sup> Rozehnal, 2020.

<sup>14</sup> Pember, 2001.

- user is more obliged to verify the information. Social media users may also sometimes trust a source who wishes to remain anonymous for fear of harm, that is, if the source is based in a country ruled by a repressive regime);
- (d) The status of information, namely with respect to whether it is provided by a bearer of public power or authority.
  - (e) The steps taken to verify the information
  - (f) The urgency of a given matter.
  - (g) The overall impression made by the post, namely with respect to the fact that the information presented in the post should not be overstated or sensationalized, that speculation, and rumors should not be presented as facts, and guilt should not be presumed in advance.
  - (h) The circumstances under which the news is published, including the timing thereof.

Social media users' conduct must also be judged in the context of their post-publication acts, that is, whether they remove an error, explain an issue, or offer an excuse. It should also be kept in mind that opinions on virtue and dignity change. Is it defaming these days to say that someone is gay? Is it offensive to say that somebody is ugly? An offense is judged according to an average reader or a viewer who can tell and understand irony.

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### **3. Conception of the Presumption of Innocence in Social Media**

The greatest burden in terms of the protection of personality lies in the coverage of criminal cases. A criminal case is usually an issue of legitimate public interest; on the other hand, it is necessary to be mindful of the personal rights of individuals. Coverage should always be consistent in distinguishing the individual stages of a criminal procedure and pre-hearing stages, and should always take into account the presumption of innocence.

If somebody is sentenced for a criminal offense and the judgment is not final and conclusive, the coverage should inform readers of this fact, pointing to the fact that the judgment may still be appealed. In such a case, the social media should also report the result of the appeal to the same extent as it reported the preceding stages of the criminal procedure.

Therefore, an individual who has not been sentenced by a final and conclusive judgment should always be referred to as a suspect, defendant, or accused person, not as a perpetrator, murderer, thief, swindler, or rapist.

The presumption of innocence is breached when a court ruling, or another decision of a public body, condemns an individual as guilty without culpability being

proved by legitimate means. The presumption of innocence may also be breached by a statement from which it can be deduced that a court or another public body considers an individual concerned guilty.<sup>15</sup>

What is absolutely unacceptable are speculations in the social media about the culpability of an individual who has not been sentenced by a final and conclusive judgment, as such a judgment falls under the exclusive competence of the court and any speculations of the media concerning culpability prior to the conclusion of the proceedings are not only unlawful or unconstitutional but also unethical and unprofessional.

However, respect for the principle of the presumption of innocence is much more difficult for media than for the justice system, as they have a much wider scope of expression than the courts that only find guilt or innocence.

In contrast, media works with images and emotions and can therefore evoke the idea of guilt or innocence even with the use of relatively correct verbal means. A criminal charge means a great interference in everyone's personal integrity, professional, family, and social life, but often also in their health.<sup>16</sup>

We interpret the principle of the presumption of innocence as meaning that everyone should be deemed innocent until convicted of a criminal offense. For media, the interpretation of the principle should be somewhat shifted so that everyone should be seen as to have been eventually acquitted.

This holds not only in terms of criminal law, but also in terms of morality, society, and general reputation. The only harm that the person in question must tolerate is that which is imposed upon him/her after the crime has been committed.

If a criminal case is of interest to the media, the person concerned is often convicted in the eyes of the public before it is established that the crime has actually been committed. The person is *de facto* condemned regardless of whether he/she has committed the crime or not.

The question arises whether it is the duty of a civilized society to deprive a person of his/her position, employment, and ability to discharge offices and make it more difficult for him/her to succeed in society or endanger his/her family life as soon as charges are brought against him/her.

The ostracism associated with this is a punishment on a moral as well as a legal level, despite the fact that so far no punishment has been imposed by law. It is much more difficult then for defendants to find employment, establish themselves in society, and establish interpersonal relationships.

The principles of the rule of law should not only be applied in court proceedings, but should permeate society as a whole and all social relations, including the activities of media. Values such as correctness, trustworthiness, respect for human personality, and the presumption of innocence should not be confined solely to a courtroom. In this respect, however, our media are failing.

15 Rozehnal, 2020.

16 Knap et al., 2004.



There are opinions that social media should be banned from reporting criminal cases at the pre-trial stage. However, criminal cases are mostly a matter of legitimate public interest. It is thus necessary to find a kind of *modus operandi* to protect the rights of the persons concerned.

We are witnessing a growing appetite by the repressive forces of a state for power. This is not surprising, as it is a natural feature. Whenever repressive forces have the opportunity to seize more power, they will do so. This is also the reason for the existence of the division of power, the system of checks and balances, and control of power.

There should also be control over social media power. However, social media in the Czech Republic seems to have completely lost its democratic instincts and is essentially becoming an extended hand of repressive forces.

The situation is in many ways reminiscent of the period of McCarthyism in the 1950s in the United States, when there were certainly Soviet spies in the United States and some media outlets made a good effort to draw attention to their work. However, the result of this activity was shameful, and the country subsequently came to the brink of a Cold Social War.

There are several non-verbal media elements that run counter to the principle of the presumption of innocence, but these are widely used by our media. This is even though the media mostly adhere to the principle of the presumption of innocence, and some, especially public ones, even have it embedded in their code of ethics, in practice it violates this principle.

Here, I believe that if self-regulation fails, regulations should be imposed. For example, it is incompatible with the presumption of innocence to take pictures of detainees with handcuffs, because such a presentation of people has the same goal as centuries ago—to show a person enslaved, degraded, broken, defeated. However, this practice does not belong to a civilized society.<sup>17</sup>

The presumption of innocence is violated even if social media presents the opinion of a certain state authority on the guilt of the person concerned, although his/her guilt has not yet been legally established. This also applies if the opinion of the police or the public prosecutor's office is presented in this way, regardless of whether their subjective beliefs are different.

Another phenomenon that undermines the presumption of innocence is information asymmetry. It is based on the media's dependence on a single source, which is inherently biased. This source is usually the police or the prosecutor's office, which submits its version of the story. The defendant, on the other hand, is often prohibited by law enforcement authorities from reporting on the case, which further weakens the possibility of making at least a lay judgment on what actually happened.

We are certainly aware of the dangers of spectacular social media pseudo-judgments. In them, the nation acts as a jury, before which, however, the accused or

<sup>17</sup> Rozehnal, 2020.

charged person does not have the opportunity to defend himself/herself or bring evidence regarding what he/she is accused of.

The principle of the presumption of innocence is not easily copied into the work of social media, as there could be virtually no investigative shows. However, this criminal law principle must be applied, because otherwise the repressive elements of the state will end up deciding which people are *de facto* enjoying full legal protection and who is to receive only semi-legal protection; media will multiply this interpretation until, as a result, everyone will be lawless.

It is also characteristic of our society that there is a kind of deification of criminal law, as if perhaps all the problems of society could be solved by criminal law. However, if society cannot cope with its day-to-day operations other than with the help of the police and criminal law, it is a sick society.

If social media supports the extension of this criminalization, it leads to social tensions, the suppression of human rights and freedoms, and the stigmatization of a wide range of people for whom the criminalization of their actions can be socially and humanly destructive.

One of the functions of the state in ensuring justice should also be to protect the individual from the mood of the masses. The masses are often not interested in the administration of justice but in the satisfaction of its baser instincts, which, however, are very far from the principle of justice.

If a viewer sees on television or reads in the newspaper about a defendant or an accused person who does not have the opportunity to defend himself/herself, he or she will convict the accused person, regardless of how the case will actually turn out. The person concerned is socially condemned, whether he/she is guilty or not. The concept of the presumption of innocence is replaced by the concept of inquisitorial instruments.

Social media plays a key role in shaping attitudes, opinions, beliefs, and values in society. However, if the public does not learn to understand the true nature of the presumption of innocence, then the criminal justice system alone cannot fulfill its purpose and cannot protect society from the real perpetrators of crime.

It is quite natural that the mood of society, including social media, is always directed against the accused and that the public and media have a greater tendency to trust the police and public prosecutors' offices than accused or charged persons.

It is dangerous if social media stirs up these tendencies even more and takes acquittal as a failure of the justice system. This is again a question of information asymmetry. We are always influenced by one side of the story by one source of information (law enforcement authorities), and the accused or charged person is usually forbidden from providing information or comments on the case.

If there is an acquittal, there is a huge difference between what society was informed about at the beginning and how the case itself turned out. This causes frustration within society and, at the same time, the feeling that justice is weak in the most serious cases of crime.

If society is convinced that there are criminals among us who are caught by the police but not punished by the judiciary because they cannot do so, are corrupt, or

succumb to criminal-minded lawyers who are involved in criminal proceedings, then they will lose faith in the criminal justice system itself.

At the same time, social media play a very important role in maintaining social cohesion. However, this cannot exist without a functioning justice system or its positive perception. The justice system must have the trust of society; otherwise, it cannot function properly and becomes illegitimate to some extent.

All undemocratic regimes, states, and governments have always used criminal law as a tool to enforce their will, even if the rule of law has been maintained. Democratic states are also taking these steps if they want to punish their (albeit often supposed) enemies.

Therefore, sufficient guarantees and means of protection for individuals in criminal proceedings must be provided. However, legal guarantees are only a necessary minimum. The superstructure is control by the public through social media over how the principles of criminal law are implemented. Public scrutiny is a prerequisite for fair justice and is exerted through the media. Therefore, for social media to perform control, these principles must be adopted.

So, in my view, although it is not very popular, even enforcing respect for the principle of the presumption of innocence in the social media should be a matter of legal regulation.

Before the final ruling is passed, social media users should refrain from any comments or deliberations because they could influence the decision-making of the court. It should also be prohibited for the media to challenge or question the final verdict of not guilty.

However, if a certain rule of law or a method of its application results in a gross discrepancy with the general understanding of justice, the critical evaluation of such a fact or such an application is acceptable.

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## 4. Hate Speech

Most democrats are supporters of the widest possible freedom of speech because democracy cannot exist without freedom of speech. However, supporters of absolute freedom of speech are, paradoxically, most often recruited from racists or propagators of pornography, whom we can hardly call democrats.<sup>18</sup>

Many rules apply to the right to express facts and opinions in public debate, so their expression will never be completely free. Certain information, in fact, can cause irreparable damage, such as disclosing military classified information, influencing courts of law, or inciting racial hatred.

<sup>18</sup> Rozehnal, 2020.

Thought must always be free, but communication of one's own ideas and interpreting them to someone else may be subject to restrictions. However, such restrictions must always be law-based, and every restriction must be clear, specific, and predictable.

Therefore, the formulation of laws has a precondition that the laws be adequate or comprehensible so that citizens may follow them. Although society urgently needs legal restrictions, they must always be adequate and satisfactorily justified by public authorities.

Freedom of speech, which is essential for a free state, means that public authorities do not put any preliminary obstacles in the media. However, this does not mean that they cannot apply any relevant restrictions or sanctions.

Everyone has the right to publish whatever they consider appropriate; this is the essence of freedom of speech. However, if they publish anything against the law, they must accept responsibility for their actions. Freedom of speech is one of the basic pillars of a democratic society and one of the main conditions for self-development and self-fulfillment. This applies not only to information and opinions that are well-received and judged as non-aggressive or neutral, but also to those that are aggressive, shocking, or irritating.<sup>19</sup>

The view that the greatest possible protection of freedom of speech is necessary does not lie in the vague idea that words cannot cause harm, but in the common belief that the free flow and exchange of ideas is beneficial to society, outweighing negative issues caused by "harmful" ideas.

Therefore, it is not appropriate to consider whether a strident activist should be allowed to protest abortions in front of abortion clinics. It is also wrong if a court of law punishes someone who has simply drawn tentacles on a politician's poster because it is an expression of a political opinion that is not harmful to society, even though it is a bit childish.

Freedom of speech and expression is the free market of ideas, where false, criminal, and harmful doctrines will be overcome by true statements and right opinions. This freedom of the free market of ideas and the defeat of false ideas is beneficial to society as a whole.<sup>20</sup>

However, the issue is not so simply resolved because freedom of speech has its limits, and not only the outer limits of legal regulation, but also inner limits immanent to this freedom, because freedom of speech also includes responsibility for the speech, which does not mean moral or philosophical responsibility but legal responsibility.

Internet use has brought a new dimension to the expression of freedom of speech. Easy dissemination of information in cyberspace is such a change in the amount of information as to constitute a change in quality, and thus a change in the understanding of freedom of speech. Anyone can speak to a large number of people

19 Rozehnal, 2011.

20 Drgonec, 2013.

with no physical or mental effort while receiving immediate responses. Moreover, this is fully or partially anonymous and, in contrast to the publication of articles in standard media that are highly elitist, extremely plebeian.

At first sight, free and universal access to the Internet has enabled as many people as possible to place their own ideas before the social consciousness; for the first time in history, everyone has the same opportunity to both accept and disseminate their points of view, and thus to participate in free civil society life. Thus, the Internet is a highly democratizing media environment, which is supposed to strengthen human rights and civil liberties.

Instead, we witness a mass of hate speech on the Internet, which is mainly posted in Internet discussions related to published issues, especially on news and journalistic servers. This hate speech is usually so severe that it interferes with the personal rights of other people in discussions or people discussed in the main issue, or it is so rude and vulgar that it violates the basic rules for civil coexistence. Its creators are often racist and xenophobic, proclaiming intolerance and contempt for democratic systems and other people's rights.<sup>21</sup>

The question is whether the organizer of the discussion, which is mostly an information service provider, should filter, delete, or otherwise interfere with such hate speech. It is evident that such interference is a limitation to the freedom of expression.<sup>22</sup> As mentioned above, a restriction of freedom of speech is possible only if it is permitted by law, if necessary, in a democratic society and if done in order to protect the values of a democratic society, that is, to protect the rights and freedoms of other people, eventually in order to maintain morale.<sup>23</sup>

Therefore, the question is whether we should fight hate speech on social media on a basis different from the legal basis, particularly on an educational basis. It is possible that the criminalization of a certain expression only hides the true nature of a problem to which society cannot respond. At the same time, such a restriction on hate speech initiators may increase their radicalization and drive them into a ghetto, which may result in social riots. Additionally, restrictions on freedom of speech lead to the distortion of democracy, which should not resolve conflicts by violence but through debate and persuasion.

As for the above-mentioned considerations, it is essential to the form of democracy we prefer. It is obvious that most of those initiating hate speech on the Internet are opponents of democracy. In the past, it often happened that opponents of democracy were able to use democratic means to gain power and subsequently destroy it, which democracy was not able to prevent in any way.

On the other hand, there is a philosophical and legal model of democracy fighting back, which entails the protection of democracy from its opponents, even at the cost of suppressing the basic principles that it is based on. Such defense must be as strong

21 Rozehnal, 2015.

22 Drgonec, 2008.

23 Rozehnal, 2020.

as its enemies, who are ready to destroy democracy. Our Constitutional Court agreed with this concept, stating that its *“legal use is legitimate considering the historical experience with Nazi and communist totalitarianism not only in our state, but also in the European context. If opponents of democracy and the values that democracy is based on are prepared to attack it, then the democratic system must also be prepared to defend itself against such attacks, including, if necessary, restrictions of fundamental rights.”* The European Court of Human Rights has also accepted this concept as the principle of European democracies.<sup>24</sup>

Therefore, if organizers of discussions on the Internet want to contribute to the development of a democratic society and thus fulfill one of the main tasks of the media, they must remove hate speech. Irrespective of the somewhat dogmatic interpretations of the Information Society Services Act, some people believe that they should not do so.<sup>25</sup>

The fight against hate speech should take place at a level other than the repressive.

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## 5. Fake News

The first failing of the law regarding the media environment is that the law did not respond to the problem of fake news. The problem of fake news is perhaps even greater than we realize, essentially constituting an information war.

The most read fake news articles on Facebook were read and shared more than any articles from mainstream media. At the same time, Facebook is the most common source of information about the government and political situation among millennials.

The possibilities of the Internet have brought a new dimension to the expression of freedom of speech. The ease of disseminating information in cyberspace represents such a change in the quantity of information that, in its consequences, it has led to a qualitative change, and thus to a change in the understanding of freedom of speech.

At first glance, free and universal access to the Internet has made it possible to promote as many people’s opinions as possible to social consciousness; for the first time in history, everyone has been given the same opportunity not only to accept but also to disseminate their views and thus actively engage freely in civic society’s life. The Internet is therefore a highly democratizing media environment, which should increase the level of human rights and civil liberties.

However, reality is different. Instead of democratization, the Internet has made it easier to spread hate speech and fake news. The law is helpless in the face of

<sup>24</sup> Radbruch, 1999.

<sup>25</sup> Rozehnal, 2008a.

fake news, and that helplessness begins with the fact that we cannot define what fake news really is. Fake news is different from biased, unbalanced, or inaccurate news.<sup>26</sup>

These include cases where the title does not correspond to the text of the article, cases where true content is disseminated with false contextual information, and cases where false or misleading content is disseminated. Fake news has so many different meanings that the term is becoming worthless.

It is very difficult to determine the line between fake news and an alternative point of view. The argument that most people can figure out fake news when they read it can disarm us in face of a threat to freedom of speech.

The danger of fake news is that it devalues and delegitimizes the information and views of real authorities and the concept of objective data, and weakens society's ability to make rational, fact-based decisions that contribute to social chaos. "Fake news" weakens trust in social institutions and, moreover, it is almost irrefutable by true information.

The spread of fake news has consequences. Democracy is based on people making decisions and choices based on information. People do not have to be experts, but they must have basic knowledge of the world in which they live. If their knowledge is twisted, they make bad decisions.

The exchange of information is democratized thanks to social networking platforms and digital content production technologies, such that everyone can create seemingly credible information waste that is difficult to distinguish it from quality information. Demand for "fake news" is a natural by-product of a faster news cycle and greater demand for short-format content.

Some jurisdictions have taken the path of labeling sources of fake news. Distinguishing between traditional and respected journalism and "fake news" sources is not very effective. Creating blacklists of websites can be even more dangerous than blacklisting scientific predatory journals, as it could lead to only government-approved sources of information being on the right list.

People now trust more personally communicated information than that provided by authoritative sources, often referred to as the guardians of the gateway through which information was released to the public in the past. Traditional gate keepers are less effective and visible. In addition, "fake news" is often presented as traditional journalism, the importance of which diminishes.

The current guardians of the gate are perceived not as providers of public service, but rather as entrepreneurs with information whose main goal is profit. Fake news is a symptom of deeper structural problems in the media environment. People believe more in what others in their circles promote or share. If a crowd starts running, one instinctively starts running as well. Historically, humans to protect themselves against predators in this way, but in today's digital age, contrariwise, it makes humans vulnerable.

<sup>26</sup> Rozehnal, 2015.

Blocking fake news sources is also not an answer. In addition, blocking creates polarization. One can also be of the opinion that the law provides protection against fake news through the right to protection of personality, because fake news is mostly offensive and defamatory.

Suing for personality protection is not very effective. It is expensive and exhausting, with very uncertain results. It is often not even clear whom to sue. Actions against platforms that disseminate fake news are ineffective because of the legislation contained in the Act on Certain Information Society Services.

Earlier efforts to influence the public with one-to-many content-based technologies have been replaced by social networking technologies that allow propaganda to be aimed at targets who are more likely to adopt and further disseminate the propaganda content.

Fake news is sometimes disseminated without malicious intent, forwarded via social networks without the user checking the content. Sometimes they are taken over by journalists who are under pressure from social networks that disseminate information in real time.

Everyone plays a key role in the fake news system. Whenever a user receives or shares information without verifying it, this contributes to contaminating the media space. This space is now so polluted that everyone has a responsibility for what they receive and spread through cyberspace.

The law should focus on methods of distributing information, rather than content. However, such regulation will still interfere with freedom of speech. Restriction of freedom of speech is possible only if it is permitted by law, if it is necessary in a democratic society, and if it is done in the interest of protecting the values of a democratic society, that is, in the interest of protecting the rights and freedoms of others or maintaining morale.

At the same time, protecting a democratic system of law against those who would threaten it cannot be allowed to narrow the limits of freedom of expression too much. No legal norm will eliminate racism, xenophobia, indecency, or hatred, because they are rooted in some people who also have the right to freedom of speech. If the courts make rules regarding what speech is still acceptable and determine what is already in conflict with law, they favor the majority opinion and ostracize the opinion of minorities.

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## **6. The Concentration of Social Media Ownership**

Another problem to which the law has not provided a satisfactory answer is the concentration of media and political power.

The Czech Constitution is based on the classical division of power into legislative, judicial, and executive branches, among which it seeks to create a system of checks



and balances. However, this tripartite power is supplemented by the Constitution, as well as by other laws regarding bodies with other powers that do not fall under the standard triad. These other powers include, for example, the power exercised by the Czech National Bank, the Supreme Audit Office, and the Public Defender of Rights.

The Constitution also sets out the legal framework for the functioning of the so-called fourth power of the media. Social media is not only one of the other products on the market, but it also has constitutional value. The Czech Republic is defined as a democratic state. Democracy can survive long social and economic difficulties, but it will not survive without free and independent media.

Social media plays a key role in shaping the attitudes, opinions, beliefs, and values of society, playing a political role and exerting political effects. Social media influences politics, political processes, and the electorate. Social media content has a significant impact on people who consume media content.

Using social media is a practical exercise of the freedom of speech of every citizen. Citizens have the right to comment on matters of public interest through social media. Publicity is the soul of democracy, guaranteeing that democracy can exist. Freedom of speech is one of the basic features of a democratic society and one of the basic conditions for human development and personal fulfillment.

Free and diversified ideas in social media are a vital component of a healthy democracy, because only the media are able to convey the opinions of citizens to those who will rule on their behalf, that is, the political elites they elect. Media ownership and control have implications for the nature of public debate, people's attitudes toward social issues, and social conflicts. The problem of who controls social media is, therefore, a fundamental problem in a democratic society.

Social media ownership can affect its content and, therefore, the political development of the country. This development is then conditioned by the existing political and regulatory institutions in the country. If there are strong democratic institutions in the country, the tendency to concentrate media power is obviated by these institutions, often non-governmental ones. If an oligopolistic media environment is created, there is less chance that the media will approach social problems independently. In extreme cases, an oligopoly can prevent the control or criticism of state power by independent media.<sup>27</sup>

The constitutional value of social media goes far beyond the financial interests of individuals and societies. Social media is not just one of the other products in the market. Democracy can exist without 15 different types of margarines; it can survive long social and economic difficulties; but it will not survive without a free and independent press. The press cannot be replaced by anything. If the media were to be controlled by individuals involved in political power, especially the executive branch, this would have a devastating effect on media pluralism. The combination of political and media power is at odds with our perception of the democratic functioning of the media.

<sup>27</sup> Rozehnal, 2015.

At the same time, the importance of Internet news servers is equal to that of television news, and for citizens, the Internet is becoming one of the main sources of information. This trend is likely to intensify in the future, as the ever-growing digital world affects almost every aspect of our lives. A growing number of digital communication platforms, such as social media, blogs, and websites, is quickly and easily accessible. We are starting to depend on them not only in business, education, and personal life, but also in other areas.

Local media now compete globally, and domestic consumers have access to international content and services. Convergence is changing established investment patterns, competition, and the structure of the media market. Media distribution is no longer tied to a specific network, thus increasing the availability of these services and products.

This changes the relationship between the content creator and the content distributor. Content creators have more options to distribute their content and can reach readers or viewers through a variety of platforms. Distribution thus ceases to be a barrier for content creators. Traditional distributors have less influence on the habits of media consumers, as they can choose between different distribution methods. The way content is created is also changing. Audio-visual content is no longer produced by large professional media companies. Platforms such as YouTube or Stream are gaining popularity, which means that everyone can create and share content very easily and quickly.

Another change is that jurisdictional boundaries also play an ever smaller role, as digital data is potentially available anywhere. For a long time, there was the idea that the Internet is an extra-*lege* environment and thus a kind of shield against legal regulation. Cyberspace is a social space, and the same rules apply there as in any other social space, including the rule of law. However, actions in cyberspace are not different from the actions we know from other media. There is no reason why cyberspace should be immune to classical regulations.<sup>28</sup>

Before trying to find an answer to the question of whether the concentration of social media power, or more precisely, the concentration of media ownership is dangerous, it is necessary to answer the question of what the role of the social media actually is.

Whenever we discuss democracy, we pay attention to the state's institutions, how elections are organized, the structure of state authorities, and the form of the government. However, democracy does not simply mean what happens in a state. It includes a wide range of issues concentrated in the public sphere of life. It is the sphere of social life outside the state where people come together to discuss various issues, such as political views. The key question of such a social life is the question of information.

Social media produces content, which is called a public good in economics terminology. A public good is considered a non-competitive good in economics, the use

28 Rozehnal, 2015.

of which by a person does not exclude other people from using it. Public goods are offered collectively, and they are mostly funded through taxation. Financially, the media have some specific characteristics that are different from those of other public goods.<sup>29</sup>

Social media plays a significant role in forming attitudes, opinions, beliefs, and values in our society, as well as having a political role and exerting a political influence. Social media influences politics, political processes, and the electorate. Social media content has a significant impact on the people who consume media content. In economics terminology, we call this influence an externality, which can be positive or negative.

Perhaps the social media would not be successful in telling people what they should think, but they are in fact successful in doing so. The agenda-setting of social media means that social media allocates different levels of public attention to news topics. If social media ignores a topic, it is considered less important by the public, and if social media pays more attention to a topic, it is considered more important.

Social media allows citizens to come together and compare their political views with those of others. The media are also mediators between citizens' political and private spheres. To the extent that citizens are well-informed, they can judge and fit into different parts of the political spectrum. Social media also plays an important role in maintaining social cohesion as a mirror of society as a whole; they not only affect what we think about things overall but also what topic we think about.

Communication is the main source of human interaction. While small groups of people can communicate face-to-face with each other, society itself depends on free and independent media to ensure the exercise of the freedom of expression and information. Media freedom includes the right of the public to a media freedom system that offers balanced, complex, and diverse information. Such a system of media freedom is a basic necessity for an effective democratic system. Without free media, there would be neither free and unbiased information nor a public debate on social life issues.<sup>30</sup>

Society is becoming increasingly dependent on information. There is therefore a special responsibility and power of social media. The free market of ideas serves the public interest by maximizing the chances that lies, and misinterpretations will be revealed and that citizens will hear both sides of arguments and form their own well-informed opinions. If there is no free market of ideas and information, the public will not receive the necessary information important for their self-government.

However, this view has several limitations. While it is very unlikely that the political views of an electric kettle manufacturer will influence the political views of

29 Rozehnal, 2020.

30 Rozehnal, 2008a.

his or her consumers, it is highly likely that political views of social media operators will influence the nature of the information that the social media produces. Typically, social media operators influence neglected spheres, for example, by choosing banned posts.

Another problem is that the social media market is highly competitive, and barriers to entry exist. The Internet is full of new blogs and sites, some of which are very popular. Sometimes, the web plays an important role in discovering information of current importance. The Internet may be a counterweight to big news organizations. It is extremely expensive to gather information, online news portals are connected to large media companies, and those that do not lack the resources to fund news.

A very important role of social media is its watchdog role in democracy. Through this role, they are irreplaceable and represent the public in the supervision of state power. The media business is not like other businesses because of the nature of the media's product, and journalism is unlike other areas of business.

Media communication, ownership, and control affect the nature of public debate and people's attitudes toward social issues and conflicts. How the media are controlled is therefore a crucial problem for a democratic society. Therefore, social media control is a key problem in media and democracy.

Although everyone agrees that free media are utterly necessary to a free society, there are relatively many ambiguities in what the word "free" means. Generally, it means that the media should be free of government regulation, which means free market media. However, free media must be free not only from state power but also from ownership power.

One of the main problems with the media in relation to their ownership is whether they will serve the ideas of democracy or their owners' interests. Social media production can be considered a business, but successful business metrics are different from metrics of successful democracy. The conflict of interest is inherent in private media ownership, which can lead to a situation where the social media will stop playing the role of a democracy's watchdog or become a watchdog that does not bark.<sup>31</sup>

Thus, there exists an essential conflict between the economic nature of social media as a business and the social and political roles that social media is supposed to play. Of course, social media operators have their own, often different interests, which take the form of political or economic motivation. This motivation determines the content of social media. If the motivation is political, the social media support a specific political agenda; if it is economic, then the main goal is to raise funds. Thus, there exists a latent conflict between corporate and private media ownership and the principles of democracy.

Such a permanent conflict between the right of a social media operator to act opportunistically in response to changing market conditions and freedom of social media users is premised on the concept of the human right to freedom of expression.

31 Rozehnal, 2015.

This contradiction is a basic dilemma in the social media business. Various attempts have been made to solve this dilemma, but there has been little success. In the end, the right of a social media operator to determine the line of social media has always prevailed through the right of ownership. However, if social media serve commercial or political interests, they often forget their roles of monitoring and controlling the elected representatives of society.

Social media ownership can affect the content and, thus, political development in a country. Development is conditioned by the existing political and regulatory institutions in the country. If there are strong democratic institutions in a country, then tendencies to concentrate media power are controlled by democratic institutions.

Democracy is an endless process of cognition and education. The risk of censorship is still raised in Western democratic countries without any significant political changes, such as, for example, in Czechoslovakia in February 1948.

The concentration of social media ownership has long since been considered a major threat to media pluralism and diversity. The concentration of social media power is unequal and therefore undemocratic, uncontrolled, and potentially irresponsible.

The Czech constitutional system has approved the separation of powers to prevent the possibility of abuse of executive power. The same rules should apply to the fourth power, that is, the media, including social media. The greatest possible dispersion of the media means a lower risk of the abuse of media power when selecting and controlling other types of power.

Social media ownership concentration is a threat to the basic function of the media, which serves the public interest, because the greater the concentration of the media, the less the possibility for citizens to get a broad range of information. Reducing the number of independent media sources decreases the number of views that the media provides to the public.

It is evident that there is a clear connection between the reduction of media pluralism and the reduction of media coverage of matters of public interest. There also exists a connection between a lower quality of media coverage and public opinion levels and government policy. A lower level of media pluralism impairs the respect of human rights by the executive power. If there is little media competition, the media are less likely to report human rights violations and, on the other hand, executive power is more likely to implement repressive policies.

Generally speaking, in a non-competitive media environment, consumers are less able to see whether the goods offered to them have value. Additionally, they have a reduced ability to assess the quality of information they receive due to the reduction of media system pluralism.<sup>32</sup> The connection between the free competition of ideas on social media and the quality of the information they provide is not strictly linear. This relationship can be described using a curve, such that state-controlled media only provide information in favor of the government.

<sup>32</sup> Rozehnal, 2015.

Another extreme is the full commercialization of social media, which would lead to content being provided solely on the principles of profitability. State-controlled media would only provide one-sided information, and the content would be propagandistic. However, if media content was only provided on a commercial basis, and additionally by an oligopoly or monopoly, the media would only try to maximize profits and provide information of poor quality.

The theoretical justification for social media diversification is based on normative democratic theory, according to which political power should be distributed equally. In practice, this means one person, one vote. Social media power should be distributed in a similar way.

Of course, this is literally impossible, but the concept of the media should be close to such a conception. Another reason for media diversification is Marquis de Condorcet's theorem, called Condorcet's jury theorem. According to this theorem, the more people who make decisions, the more likely they are to make a better choice.<sup>33</sup>

In the context of social media and the electorate, we can assume that the more voters know about a matter through a sufficient number of independent media sources, the more probable it is that a good decision on the matter will be made, especially in elections. Moreover, if there is enough media choice, consumers have the opportunity to check the information provided by different sources.

Efforts to harmonize the regulation of media pluralism and ownership in the EU failed, showing how politically sensitive the matter was. Social media cannot be conducive to democracy without a plurality of media voices and opinions. Pluralism is a basic general rule of European media policy.

Therefore, media power concentration is considered an adverse phenomenon. The European Union upholds media pluralism as the essential pillar of the right to information and freedom of expression guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

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## 7. The Product of Social Media as a Public Good

Production of a public good, such as social media production, has a positive effect on society beyond the sphere of a person who consumes the public good. The existence of healthy social media free from government or owner control is a public good, which is a benefit to the majority, even of those who are not interested in the news, do not use social media, and are passive in political matters. The capitalist market usually does not work well in creating a public good because profit maximization corporations cannot give enough weight to positive, universal benefits.

<sup>33</sup> Rozehnal, 2020.

Public goods must thus be supported by the public. I realize the problematic nature of public support. Many such discussions have been conducted in the past. In 1792, there was a debate in the American Congress that resulted in paying postage to publishers by the state to deliver newspapers to readers. This was the federal government's largest expense for a long time. Similarly, in the 1970s, intensive preparations were made in Germany to start publishing public newspapers. The other option is to introduce restrictions on media concentration, which might be the first step in restoring the freedom of the press.

Is such a process non-conservative or illiberal? However, what is conservative in the concentration of power—political, corporate, media, and cultural? This is the opposite of both conservatism and liberalism. Media power diffusion encourages citizens to become involved in public life; it is a manifestation of democracy.

It is reasonable to be skeptical about whether the free market itself can offer an optimal amount of information produced by a sufficient number of ideas on social media that are necessary for good corporate governance. Similarly, an economic preference for independent social media is unrealistic. Probably far more realistic is the development of Internet-independent media that can offer a variety of perspectives spread across the web, especially across websites that are run directly by journalists, which is probably the task of the next generation of journalists.

As no boundaries have been set for technology corporations, digital monopolies have emerged, which, by removing posts, blocking users, and using algorithms for recommending content, can affect election results and thus the state of democracy in a country. Social media, especially those with a large number of users, is not only a business but also has a social and political role, like all media.

Unfortunately, there is a permanent conflict between the right of a social network operator to act opportunistically in response to various market conditions and the concept of the human right to free speech. Social media already has such an impact that it can influence political development in a country.<sup>34</sup> This development is then conditioned by the existing political and regulatory institutions in the country. If these institutions fail, digital companies will gain uncontrollable, and therefore abusive, influence and power. If a social media operator has political interests in addition to commercial ones, it can easily gain control of society.<sup>35</sup>

These corporations have created their own rules for removing posts and users themselves, but these rules have nothing to do with the systems of law of the countries in which the users are citizens. They were adopted without public debate and transparency, and they do not allow any remedies. They derive their legitimacy only from their ownership rights, that is, from the right of the relevant platform operator. Various surveys show that they have nothing to do even with the systems of law of

34 Rozehnal, 2015.

35 Rozehnal, 2020.

the countries from which these operators come and to which the acquirers of the platforms subscribe.

We do not know anything about this process. To a large extent, these rules seem to be applied by automatic filters, probably based on keywords and algorithms that are mysterious to us. However, removing content or blocking a platform user cannot be entrusted to computers; it must be a transparent process that is controlled by humans. The online platform operator cannot assume the role of a court, and its decision to remove any content must be reviewed by an independent body. It must then be possible to remove the content only if it is unlawful, and the unlawfulness can only be declared by a court.

This only shows the absolute and uncontrollable, and therefore, easily abused power that digital societies have. The possibility of restricting freedom of speech, which the removal of a post or blocking a user truly is, must be formulated in such a way that this wording is sufficiently precise and predictable to allow citizens to regulate their behavior. If there is an urgent social need for a ban, the ban must be adequate to the legitimate means, and sufficient grounds for intervention must be substantiated.

Several such disputes have already taken place, especially in the United States, although there have not been many. However, the grounds for these decisions are inspiring. For example, the U.S. Federal Court has ruled that an open public official's Facebook page is a public forum and that its founder must not block other users or their posts because of the content of those posts. In the case that I am talking about, it involved a representative of a local government, where FB would delete posts of its Facebook page visitors criticizing the ' management of funds by her colleagues. The lawsuit was based on the fact that this removal from the public forum violates the First Amendment of the Constitution, because it is a place where people should and can express their opinions. The grounds of the judgment further state that it is not possible to prevent people from joining public debates because of their views. The court also explicitly stated that the fact that the website is operated by a business corporation is not a consideration. The right to criticize is at the heart of the First Amendment.

The fact that the founder of the site does not agree with the opinions of other users does not mean that he can silence them. It is just as impossible to silence a person, for example, during his speech in a public park. On the other hand, there is a known case in which a court upheld a blockade of the FB page of the Sikhs for Justice, which is a human rights organization fighting for Sikh independence in the Indian state of Punjab. However, other court decisions have approved this blockade.

Individual countries are too weak to fight large social media platforms, even the world's only superpower, the United States of America. In addition, cyberspace has no borders, while national jurisdictions have them. However, if the European Union properly grabs the opportunity that now lies on the ground, it could be the party



that brings some order to the monopolistic and undemocratic environment of social media.

The argument that social media companies can set rules at their discretion is odd. These corporations provide a service, and each service must be provided on a non-discriminatory basis. Therefore, it is not possible to restrict users simply because they publish a post that is classified as harmful according to the rules of the company providing the digital service.

It is the same as if an electricity distribution company refuses to supply electricity to a house on a street where it otherwise supplies it, pointing out that the occupants of the house are racists who have a negative attitude toward minorities or condemn immigration. Online platforms cannot play by different rules.

While the world is digital, legal regulation is still analog. We regulate political agitation on radio or television, but digital media, which is becoming increasingly important, is still outside our purview. For 20 years, the Internet has evolved with minimal rules to become a truly digital Wild West. Freedom of speech on the Internet must be guaranteed to all, not just to some strong information service providers. Their procedures must be transparent and they must be accountable for their actions. It is time to set some basic rules so that online democracy remains a real democracy.

The purpose should be the creation of a safer and more open digital space centered on values such as freedom, democracy, and respect for the rights of the individual. The huge development of digital services has changed the world. It has changed the way we communicate, our access to information, and the way we buy and use services. European legislation must keep up with this issue.

The digitalization of the world has brought undisputed benefits, but it has also caused some problems, such as the sale of illegal goods and services or the distribution of illegal content, as well as the silencing of so-called harmful views. In addition, online services can be exploited by using manipulative algorithms. This affects our fundamental rights and freedoms. The digitization of society and the economy has caused several major platforms to control an important part of our lives, including the economy and the distribution of information.<sup>36</sup> Social media platforms became rulers of the digital market with the rule-making power of an absolute ruler, creating rules that are unfair to users. All of this should be corrected by the aforementioned law. However, the devil lies in the details, and the result of the regulation will depend greatly on its final form and implementation.

If we do not want to become obedient payers supporting large digital companies and sooner or later following their political preferences, this is definitely a necessary step. What is free about the concentration of power—political, corporate, media, and cultural? This is the exact opposite of freedom and liberalism. On the contrary, the diffusion of power encourages citizens to participate in public life, and it is indeed a

<sup>36</sup> Duspiva, 2004.

feature of democracy. Freedom does not consist of a life without rules, but in a life with rules that guarantee equal opportunities for all, respect their rights, and stand on the side of the individual and not powerful corporations. However, it is necessary to be careful about over-regulation.<sup>37</sup>

<sup>37</sup> Weiler, 2002.

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