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DOCTORAL SCHOOL OF LAW AND POLITICAL STUDIES

**REGULATION OF SOCIAL MEDIA PLATFORMS IN
PROTECTION OF DEMOCRATIC DISCOURSES**

SUMMARY OF THE DOCTORAL THESIS

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Budapest

2021

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1. A brief summary of the research task set out

By the 21st century, mass media had undergone huge changes: compared to the one-way flow of information and content to the masses in the twentieth century, we can talk about a huge step forward.¹ In the early 2000s, the static flow of information from creator to reader was replaced by social media sites that transferred user-generated content from many points to many points, which later took over almost the entire Internet. Social media provides a platform where the user can not only read, but also shape the content through his posts and comments, and in fact he or she is the content provider.² The process started with web 2.0 resulted in the creation of pages whose primary purpose is to share content among users. Compared to the various technical changes so far, this revolutionary change in the Internet is a completely new phenomenon unlike any other.³ Social media have become an indispensable factor in the Internet, they have actually completed the Internet, and they are now increasingly functioning as a giant virtual state in which they define the standards to be followed, interpret their content, make decisions on it, and then carry out a subsequent review of the measures.⁴

Social media is clearly the defining communication tool of the 21st century. Their development is progressing at a rapid pace, both technically and in terms of the number of users, so it is difficult not only to predict the direction in which this process is going, but also to make a great effort to keep up with the mere pace. Legislation is usually characterised by a few steps behind changes in life, and it is highly true in the area of rapidly changing media. In other words, social media extends users' freedoms of communication and the law tries to catch up. This is even more so in the case of social media regulatory issues, as millions of people (now billions) have started using it every day in a very short period of time, and as a result, problems that are difficult to deal with at national and international level have quickly come to light.⁵

Over the past decade, three major U.S. companies, Facebook, Google and Twitter, have become the most dominant platforms for online discourse.⁶ In fact, this process has privatised the public spaces available on the Internet and the definition of the rules for the expressions allowed on these platforms. And with the popularity of platforms, the responsibilities and influences of

¹ Denis MCQUAIL: Theory of mass communication. Budapest Wolters Kluwer, 2015. 160.

² Megan POORE: Using Social Media in the classroom. New York Sage, 2013. 4.

³ Andrew TUTT: The New Speech. 41 *Hastings Constitutional Law Quarterly* (2014) 235, 236.

⁴ Anita BERNSTEIN: Abuse and Harassment Diminish Free Speech. 5 *Pace Law Review* 1, 2015. 4.

⁵ Gene POLICINSKI: Technology takes freedoms forward, law catches Up. <http://www.firstamendmentcenter.org/technology-takes-freedoms-forward-law-catches-up>

⁶ Kate KLONICK: The New Governors: The People, Rules, and Processes Governing online Speech. 131 *Harvard Law Review* 1598, 2018. 1617.

their operators have increased in direct proportion. Platforms, while undoubtedly broadening the individual's speaking potential, simultaneously distort the public and fundamentally redral the structure of the public,⁷ having a decisive impact on the development of social dialogue.⁸

However, given that these platforms are so new and their influence has grown so sharply, legislation is only now beginning to look for the right answer as to how it could properly deal with the situation. That is why I have chosen the impact of social media on the democratic discourses, because I think there are a lot of exciting questions in this area that we cannot easily find the right answers to.

In conclusion, in my dissertation, I am looking for answers to the question of the impact of social media's private regulation on democratic publicity, freedom of expression and to find current and future regulatory solutions to address the legal problems that arise in this area.

⁷ KOLTAY András: Trump elnök Twitter-fiókja és a szabadság halványodó amerikai álma. https://index.hu/velemen/2021/01/18/trump_elnok_twitter-fioekja_es_a_szabadsag_halvanyodo_amerikai_alma/

⁸ TÖRÖK Bernát: Donald Trump különös esete a szólásszabadsággal. <https://telex.hu/velemen/2021/01/16/szolasszabadsag-es-kozossegi-media>

2. Brief description of the studies carried out, methodology for research and data collection

The functioning of social media and its impact on our daily lives already raise a lot of legal problems and complex regulatory issues. Dozens of doctoral dissertations could be filled with analyses in each area of law, in which we could examine, for example, the impact of platforms on data protection, criminal law, labour law, copyright and new regulatory challenges in these areas. Although some aspects of these branches are also reflected tangentially in my paper, I am mainly examining the constitutional law and the contractual areas of civil law. This paper deals with the relationship between content regulation and freedom of expression developed and applied by social media platforms, focusing on the impact of this phenomenon on democratic publicity. The dissertation is mainly based on the relationship between users and the platforms and mainly examines the legal effects of arbitrary action against users' content, presteening that private contractual regulation applied by social media platforms has a serious impact on the development of democratic discourses.

Given the global challenge to freedom of expression, I have tried to look at the issue on a comprehensive basis, especially at European Union level, sometimes with regard to domestic legislation. However, since the headquarters and management of the dominant social media sites are almost without exception located in the United States, I found it important to present the American legal areatures of the subject. Given that the 'borderless' Internet usually confronts the same issues, the solution is often different and I think it is important to present both approaches. However, my paper is not of a comparative legal nature, but merely seeks to present the comprehensive legislation and jurisprudence of these two major legal systems.

As far as the methodology of my research is concerned, I have tried to provide a comprehensive, summary picture of each of the sub-questions of the subject, mainly using sources of law, related judicial practice and scientific publications by authors dealing with the subject. My thesis is therefore mainly a problem-oriented summary work. In each chapter, I describe and arate the sources, cases and examples processed in my research in a descriptive way, and at the end of each chapter I draw short conclusions on the subject. Given that the development of technology and the Internet is taking a new turn every day, my dissertation can only provide a snapshot of the current situation. The world of social media is such a fast-growing discipline that parts of this paper may soon become obsolete, but that's exactly what makes the subject so exciting and riveting.

3. Brief presentation of the doctoral thesis, summary of scientific results

There are many definitions and categorisations for social media platforms, so I will first start by clearing up the concepts on the subject, introducing the different types of social media and the definition of the social media platform I use. In chapter three, I deal with the role of social media in the democratic public. In this section, I will present in general and through some typical examples the importance of social media, its impact on social and media market conditions, and how these online platforms redraact the structure of the public and shape the social dialogue process. Through some of its key decisions, I briefly demonstrate that this social impact has already been recognised by the ECHR, and then, through various examples, demonstrate the influence of platforms on public debates by disordering information through algorithms.

I will then present the current European Union legislation on social media in chapter 4. In this part of my paper, I cover four main areas. Firstly, I will examine the extent to which social media can actually be regarded as 'media' and what its links with media regulation may be. Then I'll introduce you to Directive 2004/11/EC, which applies to social media sites that are hosting service providers, and then show what other soft law tools the European Union uses to regulate social media. Finally, I present the legislation of the United States of America in this area, namely the creation of Section 230, its purpose and the practical problems that the use of this decades-old legislation poses today with regard to online platforms.

In Chapter 5, I would like to show how the main European judicial forums have decided in cases where they have had to rule on content regulation on online platforms. Firstly, I will look at the two most significant decisions, the ECHR's judgments on comments, and then I will present the perception of infringements of privacy on online platforms in the case law of the courts. As the ECHR's practice has not yet taken a decision directly on the democratic role of social media, it is through these cases that the most effective way to demonstrate how the rules of responsibility for online discourse are evolving and the role that online platforms can play in the exercise of freedom of expression. At the end of this chapter, I will also present the decisions of the EuB on social media, in particular how the court interprets relevant provisions of the Directive for social media.

Chapter 6 examines the contractual nature of the social media terms of use, i.e. the private obligations between users and platforms that are created by the conditions adopted at the time of registration. In the chapter, I examine the issues of the creation and acceptance of the contract,

and then examine what kind of contract the terms of use may constitute under domestic civil law. This topic is closely linked to Chapter 7, in which I examine the extent to which the contractual relationship empowers platforms to restrict users' freedom of expression. The private regulation applied by social media has a direct impact on users' freedom of expression, but the question is to what extent constitutional guarantees, which are essentially binding on the State, can be enforced in relation to private partners. In the chapter, I will look for answers to this question, presenting possible solutions.

Chapter 8 deals with fake news. The issue of fake news, fake news and disinformation is, in my opinion, one of the most tangible examples of how social media has become a major shaper of social discourse related to democratic processes. The chapter examines the impact of fake news on democratic publicity and the challenges that disinformation poses to the law on social media. In this chapter, I will deal in detail with the definitional difficulties of the concept of fake news, the effect of social media on these, and then examine the constitutional protection of fake news on the basis of the case law of the US Supreme Court, the ECHR and the Hungarian Constitutional Court. I will then review the possibility of specific legislation on fake news and, finally, describe the European Union's activities in this area.

At the end of my paper, I will look at the issue of possible social media regulations in Chapter 9, using legislation from recent years as a starting point. In this chapter, I will discuss in detail the presentation of the draft DSA regulation, one of the European Union's most important legislative activities in the field of social media regulation. I will then present the operation of the Oversight Board set up by Facebook and some of its decisions, which could serve as a kind of independent supreme court for the decisions of the largest social network. Finally, at the end of my paper, in chapter 10, I summarise the results of my research and present my conclusions.

In my dissertation, I sought to answer the question of the impact of private social media on democratic publicity, on the effectiveness of freedom of expression and on the current and future regulatory solutions to address the legal problems that arise in this area.

Social media has a significant impact on the development of democratic publicity and has become one of the most important social forums. However, the rules of this forum may be determined arbitrarily by itself, on the basis of the contractual nature of the terms of use. However, in my opinion, this legitimacy of freedom of expression 'privatised' by social media platforms with contractual relations is not a valid position. A significant number of social

discourses take place on these platforms around the world and there can be no reference for defining the range of opinions that appear in or are banned from social dialogue. These platforms can have a major impact on the fundamental rights of users and should therefore have a horizontal effect on fundamental rights. In my opinion, it would be necessary by law to incorporate constitutional guarantees of freedom of expression into the private legal relationship between the user and the platform by means of public law. This would ensure not only that the saids prohibited in the country can be clearly identified and removed, but also that constitutionally protected opinions cannot be removed from one of the most important areas of public discourse.

In the context of social media, there is both a need in professional and lay society to preserve their freedom and to allow as little public influence as possible, as well as the need to regulate and reduce in a reassuring and sufficiently broad manner the power they currently hold, with which they exert such influence over democratic publicity. It is very difficult to find the right balance between the two 'competing' interests. If we accept the premise that the Internet is an unregulated, free virtual world, then any attempt at regulation from this point of view would mean the loss of some of our freedoms. Regulating internet infrastructure can be considered a restriction on freedom of expression, even if it is not aimed at specific content regulation and does not directly control what can and cannot be said. At present, it seems that not only the legislators, but also the platforms themselves, are moving towards regulation, but it is another matter of what kind of direction. If we put aside undemocratic motivations that are not at all compatible with the ideas of free speech, which want to limit citizens' freedom of expression online, then we can say that most serious regulatory initiatives have been created to make the Internet a safer, better place for either minors or adult citizens. Although it can be assumed that platforms do not think differently, the primary motive for their turning to regulation is likely to be of a more economic nature, since it is much more cost-effective to comply with a general set of rules than to comply with different legislation in each country individually.

The various regulatory models outlined in my paper share a common view that they try to shape the private regulation of platforms to the doctrines of freedom of expression that have evolved over decades. The question, however, is to what extent these doctrines have been altered by social media. Significantly, in my opinion. The rules on freedom of expression and democratic publicity are first and foremost over the state's fear of free expression and, to that end, they express rights and obligations in relation to the state and press and media services that have

traditionally "dominated" the public. However, the influence of the Internet and social media has led to the transfer of the role of gatekeeper to some large global companies, who, in the traditional sense, are not private operators of either the public or the media service providers, so that they can act as a specific new player without more serious special obligations, despite the fact that they are increasingly "in control" of the public. At the same time, the previously limited opportunities for mass communication for the few have become available to almost anyone, thus ingending an unimaginable amount of voice in daily circulation. In 2019, more than 500 hours of video per minute were uploaded to YouTube only. This is an unprocessable and uncontrollable amount of information for a mortal human being, so even the forms of responsibility defined by traditional doctrines cannot deal with the resulting problems. In my view, therefore, there is a mutual mechanism of action in the relationship between social media and freedom of expression, with the result that both sides are undergoing a major change. As a result, a situation will be created where traditional doctrines of freedom of expression will be transformed, while social media will operate in a much stricter regulatory environment, where the constitutional protection of the public interest will be much more enforced in the course of their operation.⁹

The social media regulatory system will therefore, in my view, not be implemented in an easily delineated, isolated or in the same way as the current forms of regulation. In practice, state regulation will play a greater role, but it will not only be purely so. The importance of private regulation will remain, and they will only be close to the minimum level of guarantees of state freedom of expression. Moreover, in my opinion, a kind of hybrid of state regulation, co-regulation and private regulation will be created, where minimum standards will be set by the State, which will thus be enforceable by state means, and platforms will continue to retain their autonomy under private law contracts and will take decisions in addition to the 'lowest common multiple' regulation. With regard to the review of decisions and certain issues (e.g. fake news), I consider it possible to have a model of co-regulation where platforms and public actors will cooperate on content regulation issues along their own agreements. In terms of the level of regulation, I also see a dual system in which the European Union lays down certain basic rules for effective action and advocacy, where appropriate where member states can further tighten up or clarify their sovereignty, taking into account the specific national specificities. This will create a model where the state protects users from platforms by law, and platforms will maintain

⁹ Hours of video uploaded To YouTube every Minute as of May 2019
<https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/>

their independence by guaranteeing basic guarantees of free speech, thereby protecting users from state authoritarianism.

4. List of previous publications by the author

- PAPP János Tamás: A hamis hírek alkotmányos helyzete és szerepe a demokratikus nyilvánosság befolyásolásában. *In Medias Res* 2020/1. pp. 141-164.
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