[DE] Facebook should not have deleted comment

IRIS 2018-6:1/12

Christina Etteldorf

According to media reports, the Landgericht Berlin (Berlin Regional Court - LG Berlin) decided in an interim procedure on 23 March 2018 (Case no. 31 O 21/18) that Facebook had acted unlawfully by deleting a user's comment on the grounds of alleged breaches of its guidelines. The decision is significant, not least because it is the first time since the Netzwerkdurchsetzungsgesetz (Network Enforcement Act - NetzDG) entered into force that a court has ruled on Facebook's deletion strategy in a real-life case.

The decision concerns events that took place in January 2018. A Facebook user had posted the following comment on an article from the Basler Zeitung which included quotes from the Hungarian Prime Minister concerning Germany's refugee policy: "The Germans are becoming ever more stupid. No wonder, since every day they are littered with fake news from the left-wing system media about 'skilled workers', declining unemployment figures or Trump." Facebook reacted by deleting the comment and blocking the user for 30 days. After a written warning was sent by the user, his account was unblocked, but the comment was not reinstated. However, the user applied for a preliminary injunction, which the LG Berlin granted.

According to the media, the court did not explain its reasoning, which is very common for decisions issued in injunction proceedings on account of their urgent nature. However, since such proceedings include a weighing up of the opposing interests of both the applicant and the respondent, taking into account the lawfulness or otherwise of the disputed measure, the ruling at least suggests that the court found that there was at least a possibility that the deletion of the comment had been illegal and that, in any case, the user's interests were predominant.

This decision will serve to heighten the fears of those who had warned that the introduction of strict deletion obligations under the NetzDG would threaten freedom of expression. However, it should be acknowledged that, while this is a decision relating to an individual case, statistics will emerge over the coming months that are sure to provide an insight into deletion practices as a whole and their impact on freedom of expression and diversity of opinion. A final decision on the lawfulness of the comment and, therefore, of its deletion will, however, be taken as part of the principal proceedings.

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Landgericht Berlin, Beschluss vom 23. März 2018 (Az. 31 O 21/18)

Berlin Regional Court (interim procedure), case no. 31 O 21/18, 23 March 2018

http://www.faz.net/aktuell/wirtschaft/diginomics/lg-berlin-az-31-o-21-18-facebook-darf-kommentar-nicht-sperren-15538158.html

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