IRIS newsletter

IRIS 2024-6

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Web Design:

Coordination: Cyril Chaboisseau, European Audiovisual Observatory
ISSN 2078-6158

EDITORIAL

What is illegal offline is also illegal online... or so they say. It is also true that online activities present their own set of problems and require specific legislative intervention.

As a result, many countries in the European Union and beyond continue to work diligently on the regulation of cyberspace, and several legislative developments and decisions have been announced recently. As has been widely expected for some time, the Irish regulator has published an updated draft Online Safety Code and submitted it to the European Commission, slowly leading to full transposition of the AVMS Directive in all EU member states. In Spain, the Council of Ministers recently approved a bill on the protection of minors in the digital environment, which notably raises the minimum age for access to platforms from 14 to 16. Another example is France, where the law on the security and regulation of the digital space was promulgated in May. And at a more global level, both the Council of Europe and the EU finalised the long-awaited frameworks on artificial intelligence.

What is illegal offline is also illegal online ... but enforcement offline is not the same as enforcement online. Given the amount of legislation created specifically for the online world in recent years, it remains to be seen how feasible its enforcement will be. Small examples are already emerging, such as the recent actions in Italy in relation to gambling advertising.Time will tell.

Otherwise, let me tell you that the Observatory has recently published two new legal (and free) reports online: "Media Literacy and the Empowerment of Users " and “Curtains Up on Regulation and Support Measures for the Cinema Exhibition Sector ”.

Enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

GLOBAL ONLINE SAFETY REGULATORS NETWORK

Global Online Safety Regulators Network publishes second position statement

Eric Munch
European Audiovisual Observatory

In November 2022, the Global Online Safety Regulators Network (the Network) was launched, as the first dedicated forum for independent online safety regulators around the world. It aims to provide regulators with a network to share experience, expertise and evidence, to enable coherent international approaches to online safety regulation. Its members include ARCOM (France), Coimisiún na Meán (Ireland), the Council for Media Services (Slovakia) and Ofcom (United Kingdom, current chair) for Europe, as well as eSafety (Australia), OSC (Fiji), KCSC (Republic of Korea) and FPB (South Africa). It also has 10 observers, which are organisations with expertise and interest in online safety regulation.

On 24 May 2024, the Network published its second position statement on how regulators will work together to address the global nature of online safety regulation. Conscious of the differences between the regulatory regimes of its members, the Network has mapped similarities in its members' regulatory remits and identified opportunities in multiple areas.

One such area is the development of common metrics for risk assessment methodologies and evaluation approaches, to minimise unwarranted divergences. The sharing of experience and evidence between members with regard to collecting user complaints will also be valuable and may lead the Network to consider working more closely on investigations and enforcement action, if instances of systemic non-compliance across jurisdictions are discovered. The Network will participate in coordinating the types of questions its members ask of the industry as part of their regulatory activities, in order to produce comparable global data and improve trend analysis. Finally, the Network will aim to identify a common set of reasonable steps services can take to address specific harms and risk factors, based on the Network's experiences of good practice.

The Network had previously produced a position statement on human rights and online safety regulation.

Global online safety regulators map out vision to improve international coordination

https://www.cnam.ie/gosrn-regulatory-coherence/

Global Online Safety Regulators Network

https://www.ofcom.org.uk/about-ofcom/international-work/gosrn

COUNCIL OF EUROPE

COE: COMMITTEE OF MINISTERS

Council of Europe adopts Framework Convention on Artificial Intelligence

Justine Radel-Cormann
European Audiovisual Observatory

Adopted on 17 May 2024, the Council of Europe's Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law (Convention on AI) ensures that the development and deployment of AI respect fundamental human rights and democratic values. This Convention, set to open for signature on 5 September 2024, underscores the global dimension of AI governance and the need for international cooperation.

The Convention on AI will apply to those states that choose to sign it (signatories). The text contains general principles and obligations, setting standards with regard to AI systems, and requires from the signatories that they adopt or maintain measures to give effect to the Convention on AI. Those measures aim to ensure respect for human rights and democratic values in the activities within the lifecycle of AI systems.

The text defines an "artificial intelligence system" as "a machine-based system that for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment." (Article 2)

Signatories shall:

i) apply the Convention on AI to the activities within the lifecycle of AI systems undertaken by public authorities

ii) address risks and impacts arising from activities within the lifecycle of AI systems undertaken by private operators

Signatories shall, for activities within the lifecycle of AI systems, ensure various measures such as:

- The protection of human rights (Article 4)

- Respect for democratic processes (e.g. fair access to and participation in public debate) (Article 5)

- Respect for human dignity (Article 6)

- Transparent requirements tailored to the specific contexts and risks of the AI system, including with regard to the identification of content generated by AI (Article 8)

- The protection of privacy and personal data (Article 11)

The Convention includes exceptions for national security, research and development, and national defence.

Council of Europe's Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law

https://www.coe.int/en/web/artificial-intelligence/cai

HUNGARY

European Court of Human Rights: Mária Somogyi v. Hungary

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights (ECtHR) found a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) in a case concerning the sharing of a Facebook post criticising a municipality.

The case started in 2014 when K. published a post on his Facebook page calling on the inhabitants of Tata, a town in the northwest of Hungary, to participate in a demonstration as a protest against the sale of a building belonging to the Tata municipality. According to K. the building was sold for an unreasonably low price to a local businessman, who had then rented out the same building to municipal bodies for a "ridiculously high price". K. described that as "robbing the citizens of Tata". Mária Somogyi shared K.'s post on her Facebook wall, adding a critical comment of her own, on another issue about the high costs of the municipality's purchase of a new building. The Tata municipality and the Tata joint municipal office brought a civil action against Mária Somogyi, seeking compensation for non-pecuniary damage in the amount of EUR 1 400 for the violation of their right to reputation, and an injunction, ordering her to terminate her unlawful conduct and not to engage in further unlawful conduct. In 2015 in the civil proceedings, the Tatabánya High Court found for the plaintiff and ordered Mária Somogyi to post on her Facebook page an apology and the message that the allegation in her Facebook post was false, in combination with an order to pay the municipality compensation for non-pecuniary damage. The Court of Appeal upheld this decision, considering that legal entities were entitled to protection of their reputation, which in the case of public bodies corresponded to the public trust of citizens. It endorsed the first-instance court's finding that the case had not concerned the municipality's exercise of public power, but its property rights. It also held that the dissemination of untrue information was not protected by the right to freedom of expression. The order to pay non-pecuniary damages was reduced to EUR 28. That decision was upheld by the Kuria, while the Constitutional Court dismissed Mária Somogyi's constitutional complaint.

Mária Somogyi lodged an application with the ECtHR arguing that the domestic courts' decision to impose a penalty on her for sharing a Facebook post by a third party had breached Article 10 ECHR. She submitted that the municipality as a public authority could not rely on the right to privacy and the protection of its reputation under Article 8 ECHR and that paying non-pecuniary damages and the costs associated with legal proceedings lasting for several years had been disproportionate to the triviality of the Facebook post.

The judgment of the ECtHR focussed on the question whether the interference with Mária Somogyi's right to freedom of expression could be justified under the ambit of the "protection of the reputation of others" clause of paragraph 2 of Article 10 ECHR. It observed that this clause is not restricted to natural persons, notwithstanding a difference between the reputational interests of a legal entity and the reputation of an individual as a member of society. However, as regards public bodies seeking legal protection of their reputation, the ECtHR has noted that local authorities, government-owned corporations and political parties cannot sue in defamation, because of the public interest that a democratically elected organisation, or a body controlled by such an organisation, should be open to uninhibited public criticism. Shielding bodies of the executive branch of state power from media criticism by according them protection of their "business reputation" might seriously hamper the freedom of the media. That executive bodies be allowed to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their role as purveyors of information and as a public watchdog. The ECtHR also referred to its findings in OOO Memo v. Russia (IRIS 2022-5:1/19) where it considered that bodies of the executive vested with state powers were essentially different from legal entities, including public or state-owned corporations, engaged in competitive activities in the marketplace. The latter relied on their good reputation to attract customers with a view to making a profit in the marketplace, while bodies of the executive existed to serve the public and were funded by taxpayers. Civil defamation proceedings brought by a legal entity that exercised public power therefore cannot, as a general rule, be regarded to be in pursuance of the legitimate aim of the "protection of the reputation of others" under Article 10 paragraph 2 ECHR.

Finally, the ECtHR is not convinced that the Tata municipality had an interest in protecting its commercial success and viability, whether for the benefit of shareholders and employees or for the wider economic good, that would warrant legal protection. The Tata municipality was not a competitive actor in the immovable property market seeking to maximise their profits by attracting customers. Even in the exercise of their right to property, it was supposed to serve the public and was funded by taxpayers. Nor could it be said that its members were "easily identifiable" given that neither the original post shared by Mária Somogyi nor her own comment concerned alleged wrongdoing by any identified or identifiable employees. In any event, the defamation case was brought by the legal entities as such, not by their individual members. Accordingly, the ECtHR found that the civil defamation proceedings brought by the Tata municipality against Mária Somogyi did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 10 ECHR. Where it has been shown that the interference did not pursue a legitimate aim, it is not necessary to investigate whether it was "necessary in a democratic society". Therefore the ECtHR concluded unanimously that there has been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case Mária Somogyi v. Hungary, Application No. 15076/17, 16 May 2024

https://hudoc.echr.coe.int/eng?i=001-233633

MOLDOVA

European Court of Human Rights: Oleg Balan v. the Republic of Moldova

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights (ECtHR) found a violation of a high-ranked politician's right to reputation under Article 8 of the European Convention on Human Rights (ECHR) because the highest Moldovan court had refused to interfere with a defamatory Facebook post by another politician.

The Moldovan Supreme Court of Justice had found that the Facebook message, based on an unverified Note allegedly from the Security and Information Service (SIS), was posted by a politician of the opposition who, in a double capacity of "journalist", in the sense of informing the public via social media, and of a "public person", was entitled to a robust protection of freedom of expression under Article 10 ECHR.

The ECtHR, however, found that the Supreme Court of Justice had failed to strike a fair balance between the competing rights, as it did not carry out a careful analysis of the elements of the case file. The ECtHR referred in particular to the refusal to publish any follow-up information about the Note on the politician's Facebook page, even after both the SIS and the President's office had denied its authenticity and after having been informed of those denials.

In 2015 Renato Usatîi, the leader of an opposition political party in Moldova, published a statement on his personal Facebook page that contained serious allegations of misconduct by the then Minister of the Interior, Oleg Balan. The statement was based on a note with the letterhead of the SIS, and was addressed to the then-President of the Republic of Moldova.

The news of Usatîi's publication of the note, including its text or a summary of it, was published by several news portals and other media in Moldova. One such news portal noted that several months earlier it had also received by post a yellow envelope with a copy of the note inside. However, having been unsuccessful in verifying its authenticity, it had decided not to publish it.

The SIS promptly published a press release declaring that it did not produce such a note, nor did it send a letter with that content to the President. Also, the President's office published a press release in which it denied having received the note or any other information similar to that included in it. A few weeks later, Oleg Balan wrote to Usatîi and his party, informing them of the press releases of SIS and the President's office and asking them to formally declare that the information in the note was false. He also asked for a public apology and compensation for the non-pecuniary damage caused to him in the amount of EUR

23 280 . As he did not receive any reaction, Oleg Balan lodged a court action claiming compensation for the damage caused by the defamatory statements.

After proceedings in which the courts found in favour of Oleg Balan, finally the Supreme Court of Justice in 2019 quashed the lower courts' judgments and adopted a new one, rejecting Oleg Balan's claims. It found that publishing on the Internet could amount to journalistic activity, that there was a clear public interest in investigative journalism, especially when aimed at revealing acts of corruption and preventing crime, and that Usatîi by posting the Facebook message had acted as a "public watchdog".

According to the Supreme Court, the lower courts had focused on the note's authenticity, but had failed to take into account the approach of the ECtHR to freedom of expression cases. In particular, they had not weighed the extent of the "chilling effect" on the media and journalists. It noted that Usatîi had circulated information coming from a third party (the SIS), and that restricting the right to report on what others said gravely affected journalistic freedom.

The ECtHR, however, unanimously, disagreed with this finding by the Moldovan Supreme Court. The ECtHR first reiterated that, in instances where the interests of the "protection of the reputation or rights of others" bring Article 8 ECHR into play, it may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the ECHR, namely, on the one hand, freedom of expression as protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8. In such cases, the ECtHR applies the criteria and the general principles as developed in its earlier case law, especially since Von Hannover v. Germany (no. 2) and Axel Springer AG v. Germany (IRIS 2012-3:1/1). The relevant issues are the subject of the publication and its contribution to a debate of public interest; how well-known the person concerned is; the prior conduct of the person concerned; the content, form and consequences of the publication; and, where appropriate, the manner in which the relevant information was obtained.

The ECtHR confirmed that the Facebook post about the allegedly improper conduct by a minister concerned an issue of public interest and it referred to the importance of the freedom of political debate. It also considered Oleg Balan as a public figure, who as a politician had to submit to a high degree of criticism of his actions, and that Usatîi, as a politician and leader of an opposition party could claim a high level of freedom of expression. That the Supreme Court of Justice expressly treated Usatîi as an investigative journalist covering an issue of public interest was, however, not clearly explained according to the ECtHR. It noted that it was not substantiated how speech emanating from a leader of an opposition party, published on a social media platform, could be classified as investigative journalism attracting the special protection offered by the ECHR to journalists in the exercise of their activity. And while the Facebook-statement, based on the Note, contained serious allegations of misconduct on the part of Oleg Balan, it did not appear that Usatîi made the effort to corroborate in any manner the contents of the note and its authenticity. Instead of warning the readers of his Facebook page about the unknown source and the doubts concerning the authenticity of the

document, he presented it as being indisputably genuine. In such circumstances, warning potential readers can help them to decide whether to trust information obtained from an anonymous source about a topic of public interest. The ECtHR reiterated that politicians using social media are not released from their "duties and responsibilities" under Article 10 § 2 ECHR, and it observed that a news portal had also received the same Note but, failing to establish its authenticity, had decided not to publish it. Usatîi furthermore did not warn the readers on his Facebook page or elsewhere about the possibility that the Note was fake even after both the SIS and the President's office had denied its authenticity, or after he had been informed of those denials by Oleg Balan. The ECtHR concluded that although the Supreme Court of Justice relied on the applicable ECHR principles and the Court's case law, it was not convinced that the Supreme Court struck a fair balance between the competing rights involved under the ECHR. In particular, it treated Usatîi as an investigative journalist, and decided to apply the presumption of good faith applicable to investigative journalists in his case. An important factor was Usatîi's failure to warn the readers of his Facebook post of the unverified source and content of the note and his refusal to publish any follow-up information about the note. Therefore, the ECtHR found that dismissing Oleg Balan's claim by the Moldovan Supreme Court of Justice violated his rights under Article 8 ECHR.

Judgment by the European Court of Human Rights, Second Section, in the case Oleg Balan v. the Republic of Moldova, Application no. 25259/20, 14 May 2024

https://hudoc.echr.coe.int/eng?i=001-233631

EUROPEAN UNION

EU: COUNCIL OF THE EU

AI Act greenlighted by the Council of the EU

Justine Radel-Cormann
European Audiovisual Observatory

Following our recent article on the adoption by the European Parliament of the Artificial Intelligence Act (AI Act) in March 2024 (2024-3:1/3), the Council of the European Union greenlighted the text on 21 May 2024.

Article 50(4) imposes transparency obligations on deployers of AI systems when they generate or manipulate content (deep fake): the content shall be labelled as generated/manipulated. An exemption to the rule applies when said content forms part of an evidently artistic, creative, satirical or fictional work: the transparency obligation is then limited to the disclosure of the existence of the generation/manipulation in an appropriate manner that does not hamper the display or enjoyment of the content.

The transparency obligation applies to generated/manipulated content which is published for the purpose of informing the public on matters of public interest. An exception to this obligation takes place when the AI-generated content has undergone a process of human review or editorial control and where a natural or legal person holds editorial responsibility for the publication of the content.

Article 53(1)(c) and (d) require providers of general-purpose AI models to comply with the reservation of rights as established by Article 4(3) of the Copyright Directive 2019/790. The providers shall make publicly available detailed summaries of the input training the machine, according to a template the AI Office is expected to provide in the near future.

At the time of writing, the AI Act has not yet been published in the European Union's Official Journal. Once it is published in this official journal, it will enter into force 20 days later.

AI Act: Council gives final green light to the first worldwide rules on AI

https://www.consilium.europa.eu/en/press/press-releases/2024/05/21/artificial-intelligence-ai-act-council-gives-final-green-light-to-the-first-worldwide-rules-on-ai/

EU: EUROPEAN COMMISSION

European Commission and Ofcom sign administrative arrangement

Eric Munch
European Audiovisual Observatory

On 13 May 2024, the European Commission announced that DG CNECT, the Directorate-General responsible for the enforcement of the Digital Services Act (DSA), has signed an administrative arrangement with Ofcom, the United Kingdom's media regulator. Similar agreements had already been signed between the Commission and the French and Irish media regulators (respectively the *Autorité de regulation de la communication audiovisuelle et numérique* and *Coimisiún na Meán*).

The arrangement will support both actors' supervisory work with regard to online platforms; the DSA in the case of the Commission and the Online Safety Act in the case of Ofcom. The cooperation will come in the form of a dialogue between technical experts, joint training of technical staff, joint studies, coordinated research projects and the sharing of best practices. It will also reduce cross-border frictions for companies required to comply with both the DSA and the Online Safety Act. The two pieces of legislation share many common interests, such as the protection of minors online, age-appropriate design technologies, the transparency of online platforms, risk assessments and the impact of algorithms on systemic risks for society.

Under the DSA, the Commission is responsible for the supervision and enforcement of provisions applying to designated very large online platforms and search engines (platforms and search engines with more than 45 million monthly users in the EU). Since the DSA's entry into application, the Commission had already taken action to ensure that the DSA creates a safer online environment, through unprecedented transparency and by offering due process for the content moderation decisions of a platform, but also by offering access to a platform's public data for researchers and by opening proceedings where it suspects that these platforms may be in breach of the structural obligations of the DSA.

In the UK, Ofcom is still regulating VSPs falling under their jurisdiction under the VSP regime pre-dating the Online Safety Act – the date when the former will be repealed by the latter remaining to be decided by the UK Government. For instance, Ofcom has recently opened an investigation into whether OnlyFans is doing enough to prevent children accessing pornographic content on its site (IRIS 2024-5:1/8).

Commission services sign administrative arrangement with Ofcom to support the enforcement of social media regulation

https://digital-strategy.ec.europa.eu/en/news/commission-services-sign-administrative-arrangement-ofcom-support-enforcement-social-media#:~:text=Commission%20services%20sign%20administrative%20arrangement%20with%20Ofcom%20to,United%20Kingdom%20of%20Great%20Britain%20and%20Northern%20Ireland.

NATIONAL

BULGARIA

[BG] Ban on the advertising of gambling in radio and television programmes

Rayna Nikolova
New Bulgarian University

On 14 May 2024, amendments to the Gambling Act were published in issue 42 of the State Gazette. The amendments introduced a prohibition in paragraph 1 of Article 10 against gambiling advertising in radio and television programmes, except for the broadcast of the draws of the state-owned "Bulgarian Sports Totalisator" and the announcement of these draws (point 1), and in printed works and electronic media, including websites (point 3). The motives for this legislative decision are to prevent widespread solicitation of gambling and to protect the interests of minors.

The following additional competence has been conferred on the media supervisory authority in paragraph 8 of the same article. The provision stipulates that in exercising its powers under Article 32 paragraphs (1) and (10) of the Radio and Television Act (supervising the activities of media service providers in complying with the Media Act and referring infringements of regulations in the provision of media services to the competent authorities), the Council for Electronic Media shall supervise advertising content in the media space. In the event that the Council for Electronic Media finds facts and circumstances which infringe the legal provisions on advertising, it shall refer the matter to the National Revenue Agency for administrative proceedings. The Council for Electronic Media shall refer the matter to the National Revenue Agency, providing information on the facts and circumstances found, the legal provision possibly infringed, the offender, i.e. the specific media service provider, and any other relevant information.

A new definition has been inserted in paragraph 23 of section 1 of the additional provision of the Gambling Act: "gambling advertising" is information disseminated in any form, by any means, which directly invites consumers to participate in gambling games, including by giving the impression that by participating in the game consumers will be able to solve personal or financial problems or achieve financial well-being, or which invites citizens to participate in the game with promises of large winnings. Gambling advertising is also any form of commercial message, announcement, recommendation or action which uses a gambling operator's name or trademark or a gambling operator's company or trademark on products and goods.

The restrictions also provide for penalties in Article 105 of the law. A gambling organiser who advertises gambling in breach of Article 10 is liable to a fine of between BGN 30 000 (approximately EUR 15 000) and BGN 50 000 (approximately EUR 25 000). Persons who publish, broadcast or disseminate the advertising of gambling in breach of Article 10 shall be liable to a pecuniary sanction of between BGN 10 000 (approximately EUR 5 000) and BGN 30 000 (approximately EUR 15 000) or a fine of between BGN 5 000 (approximately EUR 2 500) and BGN 10 000 (approximately EUR 5 000).

Закон за изменение и допълнение на Закона за хазарта, обнародван в бр. 42 от 14 май 2024 г. на „Държавен вестник

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=214700

Act amending and supplementing the Gambling Act, published in issue 42 of 14 May 2024 of the Official Gazette

Закон за хазарта

https://lex.bg/laws/ldoc/2135783265

Gambling Act

GERMANY

[DE] Federal Constitutional Court rules on admissible social media criticism of the government

Sven Braun
Institute of European Media Law

On 11 April 2024, in a legal dispute concerning a tweet by journalist Julian Reichelt on the X social media platform, in which he claimed that the German federal government had paid millions of euros in development aid "to the Taliban", the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG) ruled that the lower court had wrongly classified the tweet as a false statement of fact without taking the context into account and that its decision should therefore be overturned. The lower court had ignored the importance of freedom of expression in relation to criticism of the government. The Constitutional Court's decision is particularly relevant because it contains fundamental provisions on the assessment of attention-grabbing headlines in social media, which should be viewed in their overall context, taking any linked content into account.

In August 2023, Julian Reichelt published the following tweet, criticising the government, on the X platform: "Germany has paid 370 MILLION EUROS (!!!) in development aid to the TALIBAN (!!!!!!) in the last two years. We live in a madhouse, in an absolute, complete, total, historically unique madhouse. What kind of government is this?!" The message ended with a link to an online news portal with the headline "Germany is again paying development aid to Afghanistan". Two federal ministers were also pictured in a cover photo displayed beneath the link. The federal government filed for an injunction against the tweet on the grounds that it was a false statement of fact likely to endanger public trust in the government. In the first instance, the *Landgericht Berlin* (Berlin Regional Court) considered that the tweet was not a statement of fact, but an exaggerated criticism of the government. In the second instance, however, the *Kammergericht Berlin* (Berlin Higher Regional Court) ruled that the tweet was a false statement of fact because the federal government supported non-governmental organisations such as the World Bank and UNICEF in Afghanistan rather than the country's rulers. In particular, the content of the linked article did not contradict this interpretation because it was not apparent to readers without further "research". According to the established case law of the Federal Constitutional Court, such false statements of fact did not merit the same level of protection under freedom of expression as value judgements, so when weighed against competing interests they should often – as in this case – carry less weight. Furthermore, the description of the federal government as a "madhouse" unlawfully harmed the government's public image. The Berlin Higher Regional Court therefore banned the disputed tweet. Believing that his fundamental right to freedom of expression, enshrined in Article 5(1) of the *Grundgesetz* (Basic Law) had been violated, Reichelt appealed to the Federal Constitutional Court.

However, the Federal Constitutional Court ruled that, taking into account the recognisable context of the tweet, it did not constitute a false statement of fact but an opinion. The Berlin Higher Regional Court had only based its decision on the wording of the statement, ignoring its linguistic context and other accompanying circumstances. The link to the article in the online news portal, including a photo, created a recognisable link between the tweet and the article. The Berlin Higher Regional Court had therefore wrongly failed to take other possible interpretations into account. For example, the article could be understood as meaning that, although the federal government had not made any payments directly to the Taliban, its payments could have indirectly benefited those in power in Afghanistan. The Berlin Higher Regional Court had also lost sight of the fact that statements were also protected if they mixed facts and opinions, in which case an overall assessment was required. On the basis of the Federal Constitutional Court decision, the Berlin Higher Regional Court, whose ruling was overturned, must now decide, after weighing up all the circumstances, whether or not the post on X is protected under Article 5(1) sentence 1 of the Basic Law. The Federal Constitutional Court stressed that it would need to bear in mind that the state had no fundamental right to protection of honour and that legal entities under public law only had limited legal protection against statements that diminished their reputation. In particular, the state must, in principle, be able to tolerate harsh, polemical criticism, while protection from verbal attacks must not lead to the state being shielded from public criticism.

The Federal Constitutional Court decision on the scope of lawful criticism of the government in social media sets an important precedent for the protection of freedom of speech, both in terms of the need to take into account the context of an expression of opinion and, in view of the democratic importance, of allowing governments to be criticised. The Federal Constitutional Court cannot itself decide whether a statement is lawful or not, since that is the task of the specialised courts. However, as it also stressed, a more intensive examination must be carried out in relation to the interpretation of freedom of expression in order to avoid incorrect weighting of rights and ensure the substance of fundamental rights is not affected.

Bundesverfassungsgericht , Beschluss vom 11. April 2024, Aktenzeichen 1 BvR 2290/23

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2024/04/rk20240411_1bvr229023.html

Federal Constitutional Court decision of 11 April 2024, case no. 1 BvR 2290/23

[DE] Media authorities publish accessibility monitoring report

Christina Etteldorf
Institute of European Media Law

On 30 April 2024, the *Landesmedienanstalten* (state media authorities) published its 11th monitoring report on private media accessibility in Germany. The report notes a rise in the number of accessible services. Particular progress has been made in the area of subtitling, while the use of audio description, sign language and plain language remains less common. The report also looks ahead at broadcasters' plans to improve accessibility in the future.

Both the expansion of accessible services and their monitoring by the state media authorities are based on provisions of the *Medienstaatsvertrag* (state media treaty – MStV), which deals with and implements the corresponding rules contained in the Audiovisual Media Services Directive (Article 7) and Directive (EU) 2019/882 on the accessibility requirements for products and services. According to Article 7 MStV, both public broadcasters and national private broadcasters must offer and continuously expand accessible services. They are also required, every three years, to report to the respective state media authority or the supervisory bodies of public broadcasters on the measures they have taken. As the first reports were not submitted until 2023, they were covered for the first time in the 11th monitoring report (instead of information that had previously been given voluntarily). Accessibility requirements and reporting and information obligations also apply to services that provide access to audiovisual media services in accordance with Articles 99a *et seq*. MStV.

Around 190 national television broadcasters and streaming platforms took part in the survey that was conducted as part of the reporting process. The monitoring report examines in detail the measures taken by Germany's two most popular private broadcasting groups, RTL Deutschland GmbH (RTL) and ProSiebenSat.1 Media SE (P7S1). In 2023, RTL's provision of subtitles was at the same level as in the previous report, i.e. 23% on average across its main channels (linear), and rose from 3% to 8% on RTL+ (non-linear). At present, the majority of its subtitled programmes are its most popular fictional programmes, but RTL plans to expand its use of subtitles with the help of AI from the end of 2024. RTL did not provide sign language or plain language services, although some of its channels offered audio description, which is set to be expanded in the future, especially for live sports broadcasts. Meanwhile, P7S1 provided subtitles for 37% of programmes on its most popular channels, a 4% increase on the previous year. Two of its channels also increased their use of audio description and sign language compared with the previous year. The group also offers advertisers the opportunity to book accessible advertising. For 2024, P7S1 wants to increase the number of subtitled programmes by 10% and programmes with audio description and sign language by 30%. It also plans to double the number of plain-language programmes (currently 12). Regarding online services (apps, media libraries, etc.), both broadcasting groups say they follow subtitle display standards and

provide feedback mechanisms. P7S1 already promotes accessible online content, while RTL plans to follow suit. In future, online services will also offer adjustable playback speeds and screen readers (RTL) as well as keyboard shortcuts and contrast adjustment (P7S1).

Away from the two largest broadcasting groups, the report concludes that the use of accessibility tools is much less widespread. Around 35% of the 175 broadcasters offer subtitles and 4% audio description. Only when they are watched via intermediary platforms such as YouTube or Twitch are subtitle rates much higher, reaching up to 100% on platforms that use automatic subtitling tools as standard.

In their concluding analysis, the state media authorities highlight the fact that the potential for AI to boost accessibility is recognised and already being used in some cases, with firm plans already in place to use it in others. AI could provide affordable solutions for smaller broadcasters in particular. All in all, accessibility is much more firmly established in media companies' offerings than it was even just a few years ago.

11. Monitoring-Bericht Barrierefreiheit

https://www.die-medienanstalten.de/aufgaben/aufsicht/barrierefreiheit/

11th accessibility monitoring report

[DE] State media authorities publish election advertising guidelines for private broadcasters

Sven Braun
Institute of European Media Law

On 23 April 2024, the *Landesmedienanstalten* (state media authorities) updated their guidelines on the key principles for election advertising in the form of political party election broadcasts by national private broadcasters. The guidelines contain information on broadcasters' obligation to allocate airtime for election broadcasts, the need to guarantee equal opportunities, authorised parties and other political organisations, admissible content of advertising spots, the calculation of appropriate airtime, broadcasting slots, labelling of election advertising and reimbursement of costs. The guidelines apply to European Parliament and German *Bundestag* elections.

As regulatory bodies, Germany's 14 state media authorities are responsible, *inter alia*, for safeguarding diversity of opinion in private broadcasting and telemedia. The jointly drafted guidelines contain practical advice on how broadcasters should meet their obligation to allocate airtime for election advertising on national private channels, laid down in Article 68(2) of the *Medienstaatsvertrag* (state media treaty). Election advertising slots must be allocated on the basis of constitutional principles, in particular that of graduated equal opportunities. Broadcasters can meet this obligation by drawing up a broadcasting schedule that gives suitable equal opportunities to the parties standing in the election and other election candidates. Election spots must contain election advertising, which should be interpreted broadly and includes any measure aimed at persuading citizens to vote for a particular party or other political organisation. Broadcasters are only allowed to check the content of election spots to see whether they clearly violate general or criminal laws, including laws on the protection of minors and human dignity. All election candidates must be offered "appropriate" airtime. The total amount of airtime to be made available is calculated based on the number of spots and their respective length. In principle, each spot lasts between 1 and 1.5 minutes. The number of spots allocated is based, among other things, on the result of the last election, the length of time the party has existed, the size of its membership, its presence in different parliaments (state parliaments, *Bundestag*, European Parliament), its participation in governments and its other political activities. These factors are especially important for parties taking part in elections for the first time. In terms of the minimum number of spots required, the principle of Article 5(1) sentence 2 of the *Parteiengesetz* (Political Parties Act) applies, i.e. the extent to which such facilities will be provided may be scaled back, in accordance with the respective importance of the various parties, to the minimum extent required for achieving the given party's purpose. In order to prevent small parties being swamped by large ones, they must be given at least two spots because only repetition can achieve any advertising effect. For the same reason, previous case law states that the strongest party should receive a

maximum of four to five times as much airtime as the smallest or weakest. Election advertising may only be broadcast for a limited period of time in the run-up to an election. It must be shown in prime time, i.e. between 6 a.m. and 7 p.m. for radio and between 5 p.m. and 11 p.m. for television. Broadcasting times must be allocated equally according to a previously established schedule. Election advertising must be labelled as such, and the party responsible for its content must be identified. Broadcasters who broadcast election advertising can only demand reimbursement of their own costs, which must follow the same standard for all parties. These costs are understood to mean the basic technical costs for broadcasting, but not programme design costs. They may not exceed 35% of the price per second applicable to commercial advertising.

Attached to the guidelines is an example calculation for a graduated, equal-opportunity weighted broadcasting schedule for the European Parliament election on 9 June 2024, which takes into account the lack of a 5% clause for this election and the growing importance of groups without parliamentary group status in the *Bundestag*.

Leitfaden der Medienanstalten zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk vom 23. April 2024

https://www.die-medienanstalten.de/service/merkblaetter-und-leitfaeden/leitfaden-wahlwerbung/

State media authority guidelines on election airtime allocated to political parties by national private broadcasters, 23 April 2024

DENMARK

[DK] Danish Act on Cultural Contribution now enacted after second round and some adjustments following the EU Commission's comments

Terese Foged
Legal expert

On 19 December 2023 the Danish Parliament passed a bill on the contribution of certain media service providers to the promotion of Danish culture (the Act on Cultural Contribution). However, due to a procedural irregularity, the EU Commission had not been notified of the legislation in time; the bill did not therefore receive royal assent, and the legislative process had to be repeated.

Consequently, a bill for the Act on Cultural Contribution was sent for a second round of public hearings with a deadline of 1 March 2024; it was presented in parliament on 12 April, then presented to the EU Commission who gave their comments on 2 May. It was adjusted to comply with these comments, presented again in parliament, and finally approved by parliament on 30 May.

The purpose of the act is to introduce an obligation for VOD service providers to pay a cultural contribution to promote Danish culture.

According to the act, providers of on-demand audiovisual media services must make an annual payment to the Danish state of 2% of their turnover in Denmark stemming from the on-demand service and an additional 3% if the provider's investment in new Danish content is below 5%.

An investment is regarded to be in Danish content when 75% of the production material for films, series and documentaries produced in Europe is in Danish – and more than 50% of the production budget is spent in Denmark or more than 50% of the production recordings take place physically in Denmark. The EU Commission found these last territorial demands problematic in relation to the free exchange of services in the internal market. Therefore, the territorial demands were removed from the bill in May before its enactment.

Thus, the demands as to where the production budget should be spent and where the production should take place were left out.

The EU Commission also criticised the demand for 75% Danish production material and the demand that investment should be in "new" content, but this was not changed in the bill. According to the Danish Ministry of Culture's evaluation, the cultural contribution is not illegal state aid under TFEU Article 107(1).

Thus, the EU Commission has not formally accepted the Danish Act on Cultural Contribution in its present form – which the Danish Minister for Culture referred to as an inherent risk in his letter to the parliamentary Culture Committee before enactment – but, as mentioned, the Act on Cultural Contribution was nevertheless passed by parliament on 30 May.

In the answers to the hearing and in the media, many expressed the opinion that it is not appropriate – and constitutes retrospective legislation – that payment of the cultural contribution has to be made for the turnover for the whole of 2024, i.e. dating back to 1 January 2024, when the act does not enter into force until 1 July 2024. However, this was not changed, as the Danish Ministry of Culture found that the media service providers concerned had had sufficient time and opportunity to adapt to the new rules, both via the legislative process in 2023 and the ministry's communication regarding the second round of the legislative process in preparation for enactment in 2024.

The net proceeds of the contributions are expected to be divided so that 20% goes to support public-service purposes (documentaries and series) and 80% is used for film-funding purposes (feature productions and series), to be decided finally when the proceeds are known. Media service providers that pay the contribution may subsequently apply for funding for the production of new Danish audiovisual content from these national aid schemes.

The Danish Ministry of Culture assessed, conservatively – before the territorial demands had been left out as described above – that the total cultural contribution would amount to about DKK 98 million (EUR 13 million) annually. It is not known what impact these amendments will have on the cultural contribution yield.

Lov om visse medietjenesterudbyderes bidrag til fremme af dansk kultur (kulturbidragsloven)] as passed by the Parliament on 19 December 2023

https://www.ft.dk/ripdf/samling/20231/lovforslag/l70/20231_l70_som_vedtaget.pdf

Act on Certain Media Service Providers' Contribution to Promote Danish Culture (the Act on Cultural Contribution) as passed by the Parliament on 19 December 2023

Høring over ændrede dele af lovforslag, med deadline 1. marts 2024

https://hoeringsportalen.dk/Hearing/Details/68375

Public consultation on adjusted parts of the Act, with deadline 1 March 2024

Lovforslag til Kulturbidragslov, som fremlagt i Folketinget den 12. april 2024 (med lovbemærkninger)

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_som_fremsat.pdf

Bill for Act on Cultural Contribution, as introduced in parliament on 12 April 2024 (with explanatory notes)

EU Kommissionens bemærkninger af 2. maj 2024

https://www.ft.dk/samling/20231/lovforslag/L159/spm/4/svar/2050451/2870353.pdf

2 May 2024 comments from the European Commission

Brev af 25. maj 2024 fra Kulturministeren til Folketingets Kulturudvalg om EU Kommissionens bemærkninger, og statsstøtte

https://www.ft.dk/samling/20231/lovforslag/L159/bilag/11/2873425.pdf

Letter from the Danish Minister for Culture to the Parliament Culture Committee about the EU Commission's comments, and state aid, 25 May 2024

Ændret lovforslag til Kulturbidragslov, efter afstemning i Folketinget ved 2. behandling den 28. maj 2024

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_efter_2behandling.pdf

Revised bill for Act on Cultural Contribution, after Parliamentary treatment 28 May 2024

Kulturbidragslov som vedtaget af Folketinget ved 3. behandling den 30. maj 2024

https://www.ft.dk/ripdf/samling/20231/lovforslag/l159/20231_l159_som_vedtaget.pdf

Act on Cultural Contribution, as enacted 30 May 2024

SPAIN

[ES] Approval of draft Organic Law on the Protection of Minors in Digital Environments

Maria Bustamante
-

On 4 June 2024, the Spanish Council of Ministers approved the *Anteproyecto de la Ley Orgánica de Protección de los Menores en los Entornos Digitales* (draft Organic Law on the Protection of Minors in Digital Environments).

According to Félix Bolaños, Minister for the Presidency, Parliamentary Relations and Democratic Memory, the law aims to guarantee the rights of minors, in particular the fundamental rights enshrined in Articles 18 and 20 of the Spanish Constitution, i.e. the right to honour, personal and family privacy and one's own image.

The law begins by raising the minimum age at which consent to the processing of personal data can be given from 14 to 16 years. Children under 16 will still be able to open a social media account if their parents give permission.

The law puts Spain on the same footing as 10 other EU countries where the minimum age is also 16.

In response to the dangers posed by deepfakes, the law also amends the Spanish Penal Code by adding Article 173 bis, which makes it a criminal offence to disseminate AI-generated pornographic content without permission. Anyone who uses AI to create and disseminate sexual images without the consent of the person concerned will be sent to prison for between one and two years.

A second amendment to the Penal Code concerns grooming, which is when adults pretend to be minors or change gender to ask children for pornographic material. Such impersonation, by means of which adults try to gain the confidence of minors, is identified as an offence in the Penal Code and punished as such.

An online restraining order for convicted offenders will be introduced to restrict their online activity and prevent them from contacting their victims.

A final key measure in the law is designed to address the current lack of an effective online age verification tool. It requires manufacturers of mobile phones, tablets, computers and similar devices to include a parental control tool in their operating systems by default. The responsible audiovisual authorities will also be obliged to verify that these mechanisms work properly and are effective. The age verification system will need to be installed free of charge by default in accessible, plain language.

The law also prohibits access for minors to random reward mechanisms that are sometimes present in video games and on online platforms.

Similarly, video-sharing platforms will be obliged to provide links to sites dedicated to the reporting of content that is potentially harmful to the physical, mental or moral development of minors.

Now that the text has been approved by the Council of Ministers, it still has to be debated in Parliament. Adoption is scheduled for the end of 2024.

Anteproyecto de Ley Orgánica para la protección de las personas menores de edad en los entornos digitales

https://www.mpr.gob.es/servicios/participacion/audienciapublica/Paginas/TAIP%202024/anteproyecto-de-ley-org-nica-para-la-protecci-n-de.aspx

Draft Organic Law on the Protection of Minors in Digital Environments

FRANCE

[FR] New digital safety and regulation law

Amélie Blocman
Légipresse

Law No. 2024-449 of 21 May 2024 aiming "to secure and regulate the digital space" was published in the French Official Gazette after being examined by the *Conseil constitutionnel* (Constitutional Council).

The first section of the law aims to prevent minors accessing pornographic websites. To this end, it gives the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) the task of drawing up minimum technical standards that must be met by age verification systems set up by publishers and online video-sharing platforms. ARCOM will also, after issuing a formal notice, be able to impose fines under conditions set out in Article 42-7 of the Law of 30 September 1986 and, subject to retrospective verification by the administrative courts, order the blocking of pornographic websites that fail to check their users' age or the delisting of such sites by search engines within 48 hours. Hosting providers will also be required to remove child pornography brought to their attention by the police within 24 hours. The new Articles 10 and 10-1 of the *Loi pour la confiance dans l'économie numérique* (Law on confidence in the digital economy – LCEN), established under the new law, apply exclusively to providers of online public communication services and video-sharing platform services established in France or outside the European Union.

The new law also increases the possible sanctions against people convicted of publishing hate speech online, online harassment or other serious offences (child pornography, pimping, etc.). The courts can also suspend such people from social networks for six months (Article 131-35-1 of the Penal Code), or one year in cases of recidivism. The online publication of deepfakes (videos or images created by artificial intelligence) will be punished more severely. The law also creates a new offence relating to sexual deepfakes, which may be sanctioned by a maximum of two years' imprisonment and a EUR 60 000 fine (Article 226-8-1 of the Penal Code).

Although it had been approved by parliament, the proposal to create within the Penal Code an offence of online public disrespect, i.e. "online dissemination of content that infringes a person's dignity, insults, degrades or humiliates them, or creates an intimidating, hostile or offensive situation for them", was rejected by the Constitutional Council. The members of the Constitutional Council noted that legislation already included several criminal offences that could be used to punish such acts and thought the proposed provisions could hinder freedom of speech and communication.

Under the law, which transposes the Digital Services Act (DSA), ARCOM is nominated as France's Digital Services Coordinator. Meanwhile, the *Commission nationale de l'informatique et des libertés* (the French data protection authority – CNIL) will be responsible for monitoring online platforms' compliance with rules limiting advertising based on the profiling of minors and profiling using sensitive data, and will also be responsible for obliging platforms to provide information on advertisements presented on online platforms (see Articles 26.1.d, 26.3 and 28.2 of the DSA).

Finally, the law contains measures to combat disinformation by foreign media outlets subject to EU sanctions (such as Sputnik or Russia Today France). ARCOM will, in future, be able to require new operators to block the online distribution of a foreign "propaganda" channel within 72 hours. If they fail to comply, it can order the blocking of the site concerned and fine the operator up to 4% of its annual turnover or EUR 250 000.

Loi n° 2024-449 du 21 mai 2024 visant à sécuriser et à réguler l'espace numérique, et décision du Cons. const. n° 2024-866 DC du 17 mai 2024, Journal officiel du 22 mai 2024

https://www.legifrance.gouv.fr/download/pdf?id=1kWAYP9AsPTUa6nbDcb3Sq3PzXyh2U2x_naRfEud_Wg=

Law No. 2024-449 of 21 May 2024 aiming to secure and regulate the digital space, and Constitutional Council decision No. 2024-866 DC of 17 May 2024, Official Gazette of 22 May 2024

[FR] *Conseil d'État* rejects application for TikTok ban in New Caledonia to be suspended

Amélie Blocman
Légipresse

On 15 May 2024, following a serious breakdown of law and order two days previously (armed confrontations, attacks on and destruction of public buildings, infrastructure and shops, with many human casualties and paralysed public services and transport networks), the President of the Republic, Emmanuel Macron, declared a state of emergency in New Caledonia. The day before, it had been decided that access to the TikTok social network should be blocked in New Caledonia because it was being used to facilitate the violence. On the basis of Article L. 521-2 of the Administrative Justice Code, various human rights groups and individuals asked the urgent applications judge of the *Conseil d'État* to suspend this decision and order the reinstatement of the social network. They argued that the necessary condition of urgency should be recognised because access to the social network had been blocked in a serious and clearly unlawful breach of freedom of communication.

The urgent applications judge found that the applicants had failed to demonstrate the urgency of the situation on the basis of Article L. 521-2 of the Administrative Justice Code, but had merely claimed that the disputed decision had caused such a serious breach of the freedoms of expression, communication, access to online communication services, the press and pluralist expression of schools of thought and opinions that it constituted an urgent situation in itself. However, a breach of a fundamental freedom was not sufficient to fulfil the condition of urgency. Whereas the applicants had claimed during the hearing that the judge should recognise the presumption of urgency in view of the seriousness and nature of the breach of these fundamental freedoms under the disputed decision, the judge found that the decision only concerned the blocking of one social network in New Caledonia and did not affect any other social networks or means of communication, including the press, television and radio. Moreover, the measure was expected to end very soon since, according to its latest statements, the government had promised to lift the ban as soon as law and order were restored.

Therefore, since (i) the applicants had failed to prove that the condition of urgency had been met, (ii) the measure was limited and temporary, (iii) the restoration of public safety and security was in the public interest, and (iv) the government had stated that the blocking of the social network had helped to quell the trouble, the condition of urgency could not be regarded as fulfilled. The application was therefore dismissed.

In a press release, the High Commission of the Republic in New Caledonia stated that: “Following the end of the state of emergency in the territory on Tuesday 28 May 2024, the ban on the TikTok platform has been lifted.”

Conseil d'État, 23 mai 2024, n° 494320, La Quadrature du net et a.

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-05-23/494320

Conseil d'État, 23 May 2024, No. 494320, La Quadrature du net et al.

UNITED KINGDOM

[GB] GB News' "People's Forum: The Prime Minister" breached Ofcom's due impartiality rules

Julian Wilkins
Wordley Partnership

An Ofcom investigation today concluded that "People's Forum: The Prime Minister" (the People's Forum) broadcast on 12 February 2024 by GB News breached broadcasting due impartiality rules. The determination was considered in the context of serious and repeated breaches of Ofcom's impartiality rules, and as a consequence the regulator is considering a statutory sanction against GB News.

Ofcom received 547 complaints about the People's Forum which is a live, hour-long current affairs programme. The episode featured the prime minister, Rishi Sunak, in a question-and-answer session with a studio audience about the government's policies and performance, presented in the context of the anticipated UK general election. The type of programme met the definition of a major matter under Ofcom's impartiality rules meaning that more demanding impartiality requirements applied.

Ofcom did not in principle object to the programme's editorial format. Broadcasters are free to innovate and use different editorial techniques in their programming such as providing the audience with innovative methods of debate. However, the broadcasting codes on impartiality had to be observed. Whilst the focus of the People's Forum would be mainly on the prime minister's Conservative Party policies and track record this still meant the programme had to comply with due impartiality rules under the code. GB News had an obligation to ensure that an appropriately wide range of significant views was given due weight in the programme or in other clearly linked and timely programmes.

Ofcom considered a number of factors to determine whether the People's Forum was duly impartial such as the audience's questions to the prime minister, the prime minister's responses, the presenter's contribution, and whether due impartiality was preserved through clearly linked and timely programmes. The regulator concluded that whilst some questions to the prime minister were challenging, on the whole the audience was not able to challenge the answers, and the presenter did not present alternative views or counterarguments to Mr Sunak's responses.

The prime minister presented future policies his government wished to implement if successful at the general election, but neither the audience nor the presenter challenged or otherwise referred to significant alternative views about those proposals. Mr Sunak was critical of some of his opponent's (the Labour Party)

polices but neither the Labour Party's views or positions on those issues, nor any other significant views on those issues were in fact included in the programme or given due weight. GB News did not identify an agreed future programme in which an appropriately wide range of significant opinions on the matters discussed would be presented and given due weight.

Whilst Ofcom recognised GB News representations that they had purposefully not known the questions audience members would ask the prime minister, an editorial decision meant that the presenter would not intervene or challenge the views expressed, and that there were no other editorial means for alternative views to be included in the programme.

Ofcom determined that GB News's approach to compliance was wholly insufficient, and that the broadcaster should have done more to ensure due impartiality, for instance, ensuring an appropriately wide range of significant viewpoints were presented and given due weight in the People's Forum; likewise, the broadcaster should have ensured due impartiality was preserved through clearly linked and timely programmes. Overall, Ofcom considered that the programme gave the prime minister an uncontested platform to promote his political party's policies in expectation of a UK general election.

Ofcom determined that GB News had breached Rules 5.11 and 5.12 of the Broadcasting Code.

The regulator considered GB News's failure to preserve due impartiality in this case to be serious and given its two previous breaches of these rules, Ofcom was therefore starting the process for consideration of a statutory sanction. Ofcom intends to conclude their consideration within 60 working days. If Ofcom decides a sanction is appropriate GB News will be notified with a Preliminary View and given the opportunity to submit oral and written submissions after which a final decision will be made. Sanctions can include fines or revocation of the broadcaster's broadcasting licence.

In an earlier announcement on 24 April 2024, Ofcom issued a guidance statement on politicians presenting during elections. In the statement, Ofcom reminded broadcasters that its code "prohibits candidates in UK elections from acting as news presenters, interviewers or presenters of any type of programme during the election period". Further, Ofcom said: "Politicians who are not standing as candidates in a UK election can present non-news programmes – including current affairs – during election periods, provided that programme complies with all relevant code rules."

Ofcom decision, "People's Forum: The Prime Minister" GB News, 12 February 2024, 20:00, 20 May 2024

https://www.ofcom.org.uk/__data/assets/pdf_file/0037/285589/Peoples-Forum,-GB-News,-12-February-2024.pdf

GEORGIA

[GE] Law on transparency of foreign influence enforced

Andrei Richter
Comenius University (Bratislava)

Despite objections by the European institutions, including the Venice Commission, despite mass protests in the capital and a veto by the country's president, on 28 May 2024, the Georgian Parliament finally enforced the bill "On transparency of foreign influence" (the Law) which had been tabled by the ruling party "Georgian Dream" on 3 April 2024 and was strongly supported by the government (for more information, see: IRIS 2023-4:1/30 and IRIS 2024-5:1/16). The Law was rushed through (very little time separated the three readings in parliament), with no meaningful consultation process.

The stated purpose of the Law, as articulated in Article 1, is to ensure transparency regarding foreign influence. The Explanatory Note also identifies transparency as the sole purpose of the Law. Nick-named by the opposition a "Russian bill", the new law indeed follows the steps of the Kremlin policy targeting civil society organisations and the media, which are independent of the authorities.

The Law creates a new category of "organisation pursuing the interests of a foreign power". It specifically includes both broadcasters, and legal persons owning and/or using alone or jointly an internet domain or internet media of mass information in Georgia. In both cases, more than 20% of their total annual income is to be received from a foreign power. Entities meeting this definition shall register with the National Agency of Public Registry of the Ministry of Justice of Georgia, with the subsequent yearly obligation to provide a financial declaration and other related obligations. The Law also empowers the Ministry of Justice to conduct wide-ranging inspections twice a year, on the implementation of the Law; it also provides for fines in the event of non-compliance. It requires the "organisations pursuing the interests of a foreign power" to provide the Ministry of Justice with required "personal data or secret-containing information (except for state secrets provided for in the legislation of Georgia)", with no link being established between such information and the aim of the Law.

"Income" is broadly understood by the Law as referring to any financial or other material revenue. The notion of what may constitute a "foreign power" encompasses a wide range of entities, from a constituent entity of the government system of a foreign state to a natural person who is not a citizen of Georgia.

The authorities argued that the aim of the Law is to protect democracy from disinformation spread under the influence of foreign actors and the restrictions introduced pursue the legitimate aims. The Venice Commission disagreed as

“[t]he targeting, silencing and causing the de facto shutting down of foreign funded associations and media as voices critical of the government is not readily characterised as countering disinformation: such measures are, instead, likely to undermine pluralism and free speech, in a manner which is contrary to international standards and harmful to democracy …”

საქართველოს კანონი „უცხოური გავლენის გამჭვირვალობის შესახებ“

https://parliament.ge/legislation/28355

Law of Georgia "On transparency of foreign influence" (draft), No. 07-3/433/10, tabled on 3 April 2024

Закон Грузии "О прозрачности иностранного влияния" (проект с пояснительной запиской)

https://www.kavkaz-uzel.eu/articles/399856

Law of Georgia “On transparency of foreign influence” (draft with explanatory note)

Venice Commission, CDL-PI(2024)013-e, Georgia – Urgent Opinion on the Law of Georgia on Transparency of Foreign Influence, 21 May 2024

https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2024)013-e

IRELAND

[IE] Information Pack for election candidates

Amélie Lacourt
European Audiovisual Observatory

On 23 May 2024, the *Coimisiún na Meán (*Irish media regulatory authority) published an Information Pack for candidates to the local and European elections, held on 7 June in Ireland. The aim of this pack was to provide information on the role of the Irish media regulatory authority and to offer guidance for candidates on what to do when they are faced with harmful and/or illegal content online. The Pack includes further information on the rights of users when their post is removed for allegedly going against the platform's community standards under the Digital Services Act (DSA).

The information Pack includes some of the following guidelines:

- Illegal content online should be reported on the platform. Content is illegal if it breaches the law of Ireland or another EU member state, or of EU law. The national police (Gardaí) should be contacted if fear for one’s safety.

- Harmful, but not illegal content, may be in breach of the platform’s rules or community standards and can be reported on the platform.

- Once harmful or illegal content is reported, the platform must provide a decision on how it has dealt with the report, setting out reasons for its decision in a timely manner.

- Notice must be given of any content restriction, removal, disabling or demotion.

- Appeals against platform decisions should be made clear and easy to find on the platform.

- Complaints can be addressed to Coimisiún na Meán if the platform has failed to provide these steps

The Information Pack also provides direct links to a list of platforms' procedures for reporting content that goes against the community's rules/terms and conditions and for reporting illegal content. These platforms include: Facebook, Instagram, X, TikTok, Linkedin, YouTube, Google and Bing.

Coimisiún na Meán recalled its role as a national regulatory authority to ensure platforms have complaint mechanisms in place and are operating them diligently. It does not carry out a content moderation role, act as an appeal body from decisions of providers of online services in relation to illegal content, or act as a judge in disputes between different parties or different users about illegal content. The regulatory authority however provides additional resources, support and

information relating to online safety, including to Media Literacy Ireland and Be Media Smart.

Through this Information Pack, the regulator reaffirmed the importance of the Online Safety Framework, which is composed of the DSA, the Online Safety and Media Regulation Act 2022 and the Terrorist Content Online Regulation (TCOR). The Framework makes digital services accountable for how they protect people from potential harm or exposure to illegal content online and consequently allows to impose sanctions, including fines.

Information Pack - Guidelines for candidates on keeping safe online during elections

https://www.cnam.ie/wp-content/uploads/2024/05/20240528_ElectionCandidates_InformationPack_ENG_FINAL.pdf

[IE] Online Safety Code notified to the European Commission

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Following its public consultation launched between 8 December 2023 and 31 January 2024, and consultation with its Youth Advisory Committee, *Coimisiún na Meán*, the Irish regulator, published an updated draft Online Safety Code on 27 May 2024. The Code, which will apply to video-sharing platforms (VSPs) headquartered in Ireland, was submitted to the European Commission on the same day. Back in December 2023, Coimisiún na Meán had already designated 10 VSP providers as falling under its jurisdiction (Facebook, Instagram, LinkedIn, Pinterest, Reddit, TikTok, Tumblr, Udemy, X, and YouTube). For more information on the designation decision framework refer to IRIS 2023-10:1/2.

The submission process under the Technical Regulations Information System (TRIS) Directive (Directive (EU) 2015/1535) involves a standstill period of 3 to 4 months, during which the European Commission and other EU countries may make comments or submit opinions on the Code. Following this, Coimisiún na Meán will finalise the Code and publish a final decision, after what it will apply to the 10 designated VSPs.

The final Code will be part of the Irish regulator's overall Online Safety Framework, which is composed of the Digital Services Act (DSA), the Online Safety and Media Regulation Act 2022 and the Terrorist Content Online Regulation (TCOR). This Framework will make digital services accountable for how they protect people, especially children, from harm online. The revised draft Code has been developed and revised to ensure that VSP providers take appropriate measures to provide the protections set out in Article 28b(1)(a), (b), and (c), in Article 28b(2), 28b(3), and to comply with the requirements of Article 9(1) of the Audiovisual Media Services Directive (AVMSD).

Following the public consultation, Coimisiún na Meán restructured the draft Code into a Part A and a Part B.

Part A contains introductory provisions and general obligations applying to VSP providers. It also intends to address the measures contained in Article 28b of the AVMSD. It applies to content which may impair the physical, mental, or moral development of children, content inciting hatred or violence on the grounds of protected characteristics, and content the dissemination of which is a criminal offence under EU law – child sex abuse material, terrorism, racism, and xenophobia. Part A further requires VSPs to take measures as appropriate to protect the general public and children.

Part B mostly contains the revisions introduced following public consultation. It provides for further mandatory specific obligations to be applied to VSP providers.

The Code notably introduces measures:

- Prohibiting the uploading or sharing of harmful content on VSP services including cyberbullying, promoting self-harm or suicide and promoting eating or feeding disorders as well as incitement to hatred or violence, terrorism, child sex abuse material, racism and xenophobia.

- Using age assurance to prevent children from encountering pornography or gratuitous violence online and having age verification measures in place as appropriate.

- Providing parental controls for content which may impair the physical, mental, or moral development of children under 16.

Once the Online Safety Code is enacted, Ireland will have fully completed its transposition of the AVMS Directive.

Response to consultation

https://www.cnam.ie/wp-content/uploads/2024/05/Response-to-Consultation_vFinal-3.pdf

Draft Online Safety Code

https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code_vFinal.pdf

ITALY

[IT] With great power comes great responsibility: Italian rulings confirm AGCOM sanctions against Google for gambling advertising violations

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First, the Italian Council of State (through Judgment No. 4277 of 13 May 2024, regarding the Google Search service) and then the Regional Administrative Court (TAR) for Lazio (through Order No. 1940 of 16 May 2024, regarding the YouTube video-sharing platform service, and Order No. 2272 of 31 May 2024, regarding the X service) confirmed the sanctioning measures adopted by the Italian Communications Authority (AGCOM) against Google Ireland Limited and Twitter International Unlimited Company for violating the ban on advertising gambling with cash winnings introduced by Article 9 of Decree Law No. 87 of 12 July 2018, converted with amendments into Law No. 96 of 9 August 2018 (hereinafter referred to as the Dignity Decree).

The significance of these rulings lies in the fact that, for the first time, Italian jurisprudence has recognised the liability of Google and Twitter for their digital services (see IRIS 2019-7:1/21, 2022-8:1/4,2024-1:1/12).

The importance of the Italian Council of State's ruling is that it established the active role of the Google Search service provided by Google. Previously, the Court of Justice of the European Union had not identified any liability on Google's part due to the "merely technical, automatic, and passive" nature of the Google Ads service, which excluded the possibility of knowing and controlling the transmitted data. However, through Judgment No. 4277, the Council of State classified Google as an active hosting provider, thereby holding it responsible.

The aforementioned ruling confirmed the actions of AGCOM, which in its Resolution No. 541/20/CONS demonstrated Google's awareness of the illegal activity committed and disseminated through an advertising service offered to a commercial user via Google Ads. Therefore, the critical aspect to verify is the provider's actual conduct concerning the content disseminated. The measure adopted by AGCOM showed that the provider was fully aware of the illegal activities being carried out. Furthermore, the measures adopted by AGCOM revealed that neither of the conditions for exemption from liability under Article 5 of the DSA (formerly Article 14 of the E-Commerce Directive) had been met.

This aspect was the focus of the first sanctioning measure adopted by AGCOM against Google, followed by three more for new violations found again with Google through the YouTube video-sharing platform through Resolutions Nos. 275/22/CONS of 19 July 2022, 331/23/CONS of 5 December 2023, and 50/24/CONS

of 1 March 2024, regarding the violation committed through the Google Ads service of Article 9 of the Dignity Decree.

Finally, through the recent orders of the TAR for Lazio Nos. 1940 of 16 May 2024, and 2270 of 31 May 2024, the legitimacy of AGCOM's actions concerning provider liability was again confirmed, respectively for Google with its YouTube video-sharing service and Twitter International Unlimited Company with its X service.

AGCOM's recognition of the provider's liability was based not on any illegal video uploaded to a VSP, but on the awareness of the illegal activity due to commercial partnership relationships established between the companies and their content creators. Although these are still orders to be followed by the relevant judgments on the merits, the TAR has already noted that the “notice and stay down order” contained in the contested measure did not concern all content disseminated on a VSP platform but only that content identified therein.

Eventually, the TAR reiterated what was stated by the Council of State in the referenced ruling, namely that global intermediaries that publish a massive amount of advertising daily are required to "equip themselves with adequate organisational systems, including automated ones and using artificial intelligence tools ... to prevent advertisers from publishing advertisements in violation" of Article 9 of the Dignity Decree.

Sentenza 4277/2024 del 13 maggio 2024

https://www.giustizia-amministrativa.it/web/guest/dcsnprr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=RLrOg69S

Judgment 4277/2024 of 13 May 2024

MOLDOVA

[MD] Audiovisual Council imposes sanctions against the regional public broadcaster GRT

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At its meeting on 26 April 2024, the Audiovisual Council of the Republic of Moldova (CA), the national regulatory authority, adopted several decisions. One of them attracted a lot of attention as it heavily penalised the public broadcaster *Găgăuziya Radio Televizionu* (GRT) a regional public broadcaster which comprises a TV station and a radio station.

By an earlier decision, the CA had initiated an inspection of compliance of the content of the GRT's programmes with the provisions of Articles 13 and 17 of the Audiovisual Media Services Code of the Republic of Moldova during the coverage of the tenth anniversary of the regional referendum on the self-determination of Gagauzia's foreign policy, which was then found illegal by the court. Those articles of the code contain certain requirements, including the requirement to ensure a clear distinction between facts and opinions, and to report on a fact or event in a reliable way, while information is to be verified and presented impartially and in good faith; there is also a requirement to refrain from spreading disinformation. For more information on the Audiovisual Code and the methodology for detecting disinformation, please refer to IRIS 2019-3:1/24, IRIS 2022-7:1/3 and IRIS 2023-10:1/28.

Having reviewed the results of the inspection, in its 30-page decision, the CA found violations of Article 17 paragraph 3 of the Code in certain live talk shows. It fined the GRT in the amount of MDL 60 000 (EUR 3 140). The violation consisted of several breaches of the prohibition on "broadcast[ing] audiovisual programmes that constitute speech that incites hatred, disinformation, propaganda of military aggression, extremist content, content of a terrorist nature or that presents a threat to national security". The decision of the CA grouped them under the following current affairs topics: 1. Gagauzia has the right to external self-determination; 2. the destruction of Gagauzia; 3. the Commonwealth of Independent States (CIS) is the largest market for the Republic of Moldova; 4. the loss of the language and identity of the Moldovans; 5. the loss of statehood and traditional values; 6. divisions within the Orthodox Church.

The decision cited the code on the mission of the public service media and noted that it had been violated by the GRT. It said in particular that "when celebrated as an event which has been declared illegal at the national level, social cohesion at local, regional, national and international level is not encouraged in any way."

In 2023 the GRT was deprived of its slot in the national multiplex of TV channels.

Cu privire la rezultatele controlului efectuat în temeiul Deciziei Consiliului Audiovizualului nr. 36 din 09 februarie 2024

https://consiliuaudiovizual.md/reports/

Decision of the Audiovisual Council of the Republic of Moldova No. 114 of 26 April 2024 "Regarding the results of the inspection carried out pursuant to the Decision of the Audiovisual Council No. 36 of 9 February 2024", published on 10 May 2024

NETHERLANDS

[NL] Court of Appeal rules arrest of journalist reporting on climate protest was unlawful

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On 23 April 2024, the *Gerechtshof Den Haag* (Court of Appeal of The Hague) delivered a particularly important judgment on the protection of journalists from arrest when reporting on protests. Notably, the Court of Appeal held that the arrest of a photojournalist who had been travelling with a group of climate protestors, who was then taken to a police station and had his equipment and telephone seized, was "unlawful" and a violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

The case arose in October 2021, when the photojournalist was travelling in a van with climate activists from the Extinction Rebellion group, which planned to block a major highway in the Netherlands as a protest action. The journalist wanted to report on this action from within the protest group (so-called "embedded journalism"). The police stopped the van and arrested all the occupants, including the journalist, on suspicion of preparatory actions in connection with an offence, namely the intentional blocking of a public highway. The journalist informed the police officers that he was in the van "in his capacity as a journalist", and was visibly carrying two large cameras, was wearing an official press badge (with "Press" in large print visible), and carrying an official Police Press Card ("Politie Perskaart").

This identification badge and card are national standardised press identification marks, and officially recognised by Dutch police, and Ministry of Justice. They are "strictly personal" to a journalist, with an ID number. However, the police arrested the journalist, and he was brought to a police station. The journalist's camera equipment and telephone were seized. However, shortly after the journalist's detention at the station, he was released after the Police Information Department "determined that he was indeed a photojournalist", and his equipment was returned.

Following his arrest, the journalist initiated legal proceedings against the police, seeking an order from the courts declaring the arrest and equipment seizure as unlawful and an "impermissible infringement" of Article 10 ECHR. In September 2022, the District Court of The Hague issued a preliminary judgment on the application, and rejected the journalist's claims. However, on appeal, the Court of Appeal overturned the District Court's judgment, and held the police had acted unlawfully in arresting the journalist and seizing his equipment.

In its judgment, the Court of Appeal first recognised there was a "reasonable suspicion" for arrest of the activists, and the applicant journalist was in a vehicle

together with a number of those activists, and was therefore, “at least at first glance”, part of the group against whom the suspicion was directed. The Court agreed with the police that at that time there was still a “reasonable suspicion” against the journalist, and therefore a lawful arrest. Crucially, however, the Court held that “very soon after the arrest” there could no longer be “any reasonable doubt” the applicant “was indeed a journalist”. This was because the applicant stated he was a journalist, and it was “particularly important” that it was “clearly visible” he had a press card around his neck and had a Police Press Card, which he had shown, together with a valid ID.

The Court emphasised the police press card and badge are “official identification marks of a journalist recognised by the Police and the State”, and the police “must therefore, in principle, assume” that the person who carries such identification marks is “actually a journalist”. This is the case even in a case of “embedded journalism”. Otherwise, “it would mean that such a Police Press Card no longer has any value”. As such, the Court held that shortly after the (initially lawful) arrest, there was “no longer a legal basis” for the arrest, and the police should have released him. The Court also held that the police conduct was contrary to the right to gather news freely.

Under Article 10 ECHR, an arrest can only be justified if there is a legal basis and is proportionate. By arresting the journalist, and “even taking him to the station”, the possibility of reporting by the journalist was “effectively ended”, as he could no longer make a photo report of the proposed blockade. In conclusion, the Court ordered the police and the State to pay damages and compensation to the journalist, as well as legal costs. The Dutch Association of Journalists (NVJ) welcomed the ruling as a “great victory for journalism”.

Gerechtshof Den Haag, ECLI:NL:GHDHA:2024:559, 24 april 2024

https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:559

Court of Appeal of The Hague, ECLI:NL:GHDHA:2024:559, 24 April 2024

[NL] Competition Authority investigation into DPG Media's acquisition of rival media company RTL Nederland

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On 17 May 2024, the *Autoriteit Consument en Markt* (Netherlands Authority for Consumer and Markets - ACM) issued an important decision that the planned acquisition by DPG Media (DPG) of rival media company RTL Nederland (RTL) is to be the subject of an investigation. DPG publishes various Dutch newspapers, magazines, owns general news websites in the Netherlands, and is active on the Dutch radio market with national radio stations. RTL has several commercial television channels, offers streaming services, and offers general news online through its website. Notably, the ACM stated it foresees "possible adverse effects" of the acquisition on the "quantity, quality, and pluralism" of the general news landscape for consumers, and as such, an investigation was required.

The ACM's investigation follows DPG's notification in February 2024, asking the ACM for permission for the takeover of RTL. In its decision of 17 May 2024 to open an investigation, the ACM made a number of notable observations. First, the ACM stated that DPG would gain an "even stronger position" as a provider of general news (free and paid), both online and offline, as a result of the acquisition of RTL. This could "possibly" enable DPG to "reduce the quality and accessibility of general-news services", for example, by distributing news articles across multiple channels instead of creating separate ones or by reducing freely available news. This may result in a "reduction of the quantity, quality, and pluralism of the general-news landscape for the consumer". Second, DPG could possibly be able to offer advertisers a broader advertisement package on favourable terms, in part because of the "substantial amount of data" it has about its users.

This raises the question of whether "other media companies" will still be able to "compete for these advertising revenues after the acquisition". Third, the acquisition could "further strengthen" DPG's bargaining position vis-à-vis news agency ANP, the largest news agency in the Netherlands. As a result, DPG might be able to "negotiate lower ANP rates", "exert influence over ANP's news choices", or stop using ANP's services. Fourth, the acquisition may have "adverse effects" on journalists' employment terms, because DPG "might gain or strengthen its buyer power" following its acquisition of RTL.

In terms of procedure, the ACM notes that DPG and RTL will now have to decide whether or not they wish to go through with the acquisition. And if they do, they must apply for a license for the acquisition. The ACM will then carry out an in-depth investigation into the consequences of the acquisition, and the Dutch Media Authority (CvdM) will also play a role in this investigation. The ACM will then issue a decision within 13 weeks on whether or not the acquisition will be cleared.

Autoriteit Consument en Markt, ACM: meer onderzoek nodig naar overname RTL door DPG, 17 mei 2024

https://www.acm.nl/nl/publicaties/acm-meer-onderzoek-nodig-naar-overname-rtl-door-dpg

The Netherlands Authority for Consumer and Markets, "ACM: further investigation needed into acquisition of media company RTL by rival DPG", 17 May 2024

A publication
of the European Audiovisual Observatory

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