



Spotlight on Parliaments in Europe

Issued by the EP Directorate for Relations with National Parliaments

N° 16 - July 2017

Only a few member states regulate hate speech through social networks

On 6 June 2017, the Croatian Sabor submitted to the ECPRD, a request (N. 3431) concerning the responsibilities of social networks and internet service providers in cases of spreading of hatred and incitement to violence. The Sabor addressed questions to its counterparts, namely on the existence within their national legal system of a special law (*lex specialis*) or general act regulating the liability of social networks and service providers in the context of spreading hatred and incitement to violence, asking them to indicate the relevant texts if that was the case. In the absence of a specific law or general act, Parliaments/Chambers were requested to refer to any other law or general act wherein such issues were dealt with. The Croatian legislator, considering the absence of a specific legal instrument in the national system, is about to initiate a bill. The replies given from 18 other national Parliaments/Chambers show that very few EU member states regulate the liability of social networks and service providers. And some of these exceptions are even more exceptional.

The replies of the 18 Parliaments/Chambers show that only Finland has a specific legislation concerning the Service providers' liability in the case of the spreading of hatred and incitement to violence. *Section 184 of the Information Society Code* stipulates exemption from liability in hosting services if the service provider acts expeditiously to disable access to information stored contrary to the provisions on ethnic agitation or on distribution of a sexually offensive picture. *Section 185* stipulates order, by a court, to disable access to information if this is clearly such that keeping its content available to the public, or its transmission, is deemed punishable or a basis for civil liability. *Sections 13, 18 and 22 of the Act on the Exercise of Freedom of Expression in Mass Media* contain provisions on editorial misconduct, in order to cease the distribution of a network message, and on forfeiture and order to destroy a network message.

A new bill which has been adopted by the *German Bundestag* on 30 June 2017, foresees that social networks are obliged to set up a transparent and effective procedure for the treatment of complaints on illegal content on their platforms. Illegal content shall be removed or access locked within 24 hours following the reception of the complaint. If not, the networks risk being fined. Unclear cases have to be treated within seven days. Social network providers can delegate cases of doubt to a neutral body of voluntary self-control. The state establishes the legal framework for this body which is inspired by a similar institution for the protection of youth in media. Other relevant norms already in force: Articles in the Penal Code deal with cases such as offenses, defamation and calumny (§185-187 StGB). Hate speech and appeals to violence can fall under "incitement of the people" (§130 StGB)

Although there is no specific Law, the responsibilities and liability of service providers are partially regulated in the Dutch Civil Code (art. 196) and by the Dutch Criminal Code (art. 54a and, in cases of non-compliance, art. 184 apply).

Some regulations concerning social networks and services' providers are also included in the Spanish Criminal Code according to article 235 of the Spanish Organic Law 1/2015 amending Organic Law 10/1995 of the Criminal Code.

Sweden has no specific law targeting the spread of hatred and incitement to violence on social networks and regulating the liability of services providers. Nevertheless the provisions contained in the Freedom of the Press Act and in the Fundamental Law on Freedom of expression on publishing responsibilities held by publishers connected to mass media companies can also cover websites, online radio, online TV and e-mail newsletter.

The UK, which promotes a multi-stakeholder approach in order to increase online companies self-regulation, has no regulation concerning the liability of social networks and services providers. Only the Terrorism Act 2006 contemplates the liability of web hosts.

An interesting case is the situation of Hungary. The country's legal system does not have a specific law regulating the liability of social network or services' providers. In cases of spreading hatred and incitement to violence through social media, the responsibility is of the author/person who makes the comment, the host only moderates. Nevertheless, the Criminal Code which entered into force in 2013, has provisions that can constitute limitations to the freedom of press (notably on incitement against a community, crimes of the use of symbols of despotism, denial of Nazi and Communist Crimes, violations of national symbols).¹

Furthermore, Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content and the Act CLXXXV of 2010 on Media Services and on the Mass Media granted the Media Council the right to examine the media content and impose fines in case of violation. The Press Freedom Act prohibits the publication of media content that "incites hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group (article 17/1). Article 17/2 therein provides that "the media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group". Finally, the Constitutional Court held that freedom of opinion may not be restricted merely on the basis of expressed values, as freedom also includes the freedom to express morally questionable opinions.

The remaining replies show that in the cases of Austria, Croatia, the initiator of the request, Estonia, France, Ireland, Lithuania, Luxembourg, Portugal, Romania, Slovakia and Slovenia, spreading hatred and incitement to violence are individual responsibilities of the person (or the legal person) and are as such regulated.

It is worth mentioning that in Austria, Facebook and the government reached an agreement on fast deletion of illegal online hate speech following the Code of Conduct on illegal hate speech announced in May 2016 by the European Commission and several IT Companies.

The Irish Department of Justice announced earlier this year that the legislation dealing with hate crimes will be reviewed with a view to "strengthening the law against hate crime, including in the area of online hate speech".

In Slovakia² and in Slovenia³, where the liability of social networks and services' providers has not been regulated, specific legislation exists for the responsibilities of Broadcasting Media.



Directorate for Relations with National Parliaments - Institutional Co-operation
www.europarl.europa.eu/relnatparl

Author-Contact: Paolo Atzori, paolo.atzori@ep.europa.eu

¹ It is worth mentioning that the available means of personality protection under civil or criminal law in Hungary do not apply to communities. Therefore the means of personality protection, including the protection of human dignity - laid down in the new Civil Code - are valid only for natural persons or for entities with legal personality. No civil action may be filed for using offensive expressions against communities in general. Besides, the crimes of libel and defamation stipulated in the Criminal Code do not protect communities.

² Act No. 308/200 Coll. on Broadcasting and Retransmission and on Amendments to Act No. 195/200 Coll. on Telecommunications as amended.

³ The Media Act, The Audiovisual Media Services Act and the Radiotelevizija Slovenija Act.