

CJEU: Courts may Order Host Providers to Take Down Illegal Content

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The Court of Justice of the European Union ("**CJEU**") has rendered its long-awaited decision on the process started in 2016 with Austrian Green Party member Eva Glawischnig-Piesczek's request from Facebook to remove the posts offending her.

The CJEU's decision adds another dimension to the responsibilities of host providers regarding the violation of personal rights in social media. Furthermore, this decision also paves the way for swift preventive measures against the online violation of rights which can spread to millions with one click.

In the event subjected to CJEU's decision, Glawischnig-Piesczek initially sent a cease and desist letter to Facebook and requested the removal of the content violating her personal rights. Upon Facebook's refusal, the politician requested an injunction before the Vienna Commercial Court.

The Court found the comment defamatory and decided on an injunction which includes the removal of:

- the comment subjected to request,
- the identical comments, and
- the equivalent comments.

Upon this decision, Facebook disabled access to the initially published content, only in Austria.

Upon the appeal, the Vienna Higher Regional Court

- examined and approved the first instance's decision as regards the identical allegations, and
- refused Facebook's request regarding the order to be only effective in Austria.

However, the Vienna Higher Regional Court abolished the injunction decision regarding the removal of equivalent content, and instead decided that the equivalent content had to be ceased only as regards to those notified to Facebook each time.

The parties lodged appeals before the Austrian Supreme Court and the Supreme Court referred to CJEU regarding the scope of injunction like the one sought by the politician, namely if an injunction can be requested for the equivalent content and if it can be effective worldwide.

By its decision of 3 October 2019, CJEU had a different take on regarding equivalent information but adopted the view of Advocate General regarding the scope of territory:

- Ordering a host provider to remove the information identical to the content previously declared to be unlawful, or to block access to that information. For this decision requirements are as follows:

- The monitoring of and search for the information concerned by such an injunction are limited to information conveying a message the content of which remains essentially unchanged compared with the content which gave rise to the finding of illegality and containing the elements specified in the injunction,
- The differences in the wording of that equivalent content, compared with the wording characterizing the information which was previously declared to be illegal, are not such as to require the host provider to carry out an independent assessment of that content,
- Ordering a host provider to remove information covered by the injunction or to block worldwide access within the framework of the relevant international law.

Article 14/1 of the EU E-Commerce Directive numbered 2000/31/EC ("**Directive**"), provides that member states shall ensure that a service provider like Facebook is not liable for the information stored at the request of a recipient of the service, on condition that the provider does not have actual knowledge of illegal activity and upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. However, article 14/3 states that this article will not affect the possibility for a court or administrative authority, in accordance with member states' legal systems, of requiring the service provider to terminate or prevent an infringement. EUJS's decision dated 3 October 2019 refers to this article.

Directive Article 15 states that member states cannot impose a general obligation on providers to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity. The decision states that this provision is not contradicted as the courts will determine the characteristics of the equivalent content and the search is done automatically with a technology.

In Turkey, the Law on Regulation of Publications on the Internet and Combating Crimes Committed Through Publications numbered 5651 regulates that individuals claiming violation of their personal rights due to the content published on the internet, may apply to the content provider or host provider to remove the content or request from the criminal court of peace to block the content. The judge decides on a block of access based on this article by exactly stating the publication and the part which violates the personal rights and does not render a decision regarding equivalent content. However, how this decision will reflect on Turkish practice will be shaped by future decisions.

The full text of the CJEU's decision dated 3 October 2019 can be reached from this [link](#).

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