

REMOVAL OF ILLEGAL CONTENT ONLINE – CONFLICTS BETWEEN SLOVAK AND EU LEGISLATION?¹

ODSTRAŇOVANIE NELEGÁLNEHO OBSAHU ONLINE – ROZPORY MEDZI SLOVENSKOU LEGISLATÍVOU A LEGISLATÍVOU EÚ?

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ABSTRACT

The author compares Slovak and EU legislation and points out the fields that appear to be problematic. It seems that the Slovak Media Act and the European DSA regulation perceive differently what is covered by illegal content. This could restrict the proper application of the DSA in the Slovak Republic. In the paper, particular attention is paid to disinformation and terrorist content. Based on the different perception of illegal content under the Slovak Media Act and the DSA, the author asks the question who should decide whether it is illegal content. Namely, in Slovakia, the Digital Services Coordinator and the authority issuing orders to act against illegal content are one and the same administrative authority. Finally, the author points to a third problem, namely which platforms are covered by Slovak or EU regulation.

ABSTRAKT

Autorka porovnáva slovenskú legislatívnu a legislatívnu EÚ, a poukazuje na oblasti, ktoré sa javia ako problematické. Zdá sa, že slovenský mediálny zákon a európske nariadenie DSA vnímajú odlišne, čo je pokryté nezákoným obsahom. To by mohlo obmedziť riadne uplatňovanie DSA v Slovenskej republike. V článku sa osobitná pozornosť venuje dezinformáciám a teroristickému obsahu. Na základe rozdielneho vnímania nelegálneho obsahu podľa slovenského mediálneho zákona a nariadenia DSA si autorka kladie otázku, kto by mal rozhodovať o tom, či ide o nelegálny obsah. Konkrétnie na Slovensku je koordinátorom digitálnych služieb a orgánom vydávajúcim prikazy konáť proti nezákonému obsahu jeden a ten istý správny orgán. Napokon autorka poukazuje na tretí problém, a to na ktoré platformy sa vzťahuje slovenská alebo európska regulácia.

I. INTRODUCTION

On 01.08.2022, the Slovak Media Act³ came into force, which established a unique mechanism aimed at preventing the dissemination of illegal content on online platforms. From 17.02.2024, the European DSA Regulation⁴ applies in its entirety, aiming to ensure that what is

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³ Act No. 264/2022 Coll. on Media Services.

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

illegal offline is also illegal online. The Slovak legislator was thus ahead of the European one when it comes to regulating illegal content in the digital space. This consequently required him to react and harmonise Slovak and European legislation, which is why the Media Act was amended. Nevertheless, there may be a conflict between the Slovak law and the European regulation that needs to be resolved in order for the DSA to be properly applied in the Slovak Republic.

While the regulations are directly applicable and do not require implementation, the DSA contains a number of provisions that require national regulation. For example, Article 49 et seq. of the DSA regulates the position of the Digital Services Coordinator, whereby EU Member States had to designate their Digital Services Coordinators by 17.02.2024. The Slovak Republic did not fulfil its obligation in time and therefore the European Commission decided to open an infringement procedure.⁵ Subsequently, the Media Act was amended and with effect from 24.07.2024, the Council for Media Services is the Slovak Digital Services Coordinator under the DSA.⁶ As a result, the Council for Media Services will participate in the work of the European Board for Digital Services and decide on:

- (1) certification of an out-of-court dispute settlement body and decertification under the DSA,
- (2) the granting, suspension and cancellation of trusted flagger status under the DSA,
- (3) the granting of vetted researchers status and the termination of vetted researchers access to data under the DSA.⁷

As another example, orders to act against illegal content are regulated in Article 9 DSA. According to the DSA Recital, this Regulation should harmonise only certain specific minimum conditions that such orders should fulfil in order to give rise to the obligation of providers of intermediary services to inform the relevant authorities about the effect given to those orders. Therefore, this Regulation does not provide the legal basis for the issuing of such orders, nor does it regulate their territorial scope or cross-border enforcement.⁸ In the legal conditions of the Slovak Republic, the legal basis for the issuance of such orders is the Media Act, which in its Section 153 regulates the decision on preventing the dissemination of illegal content, which the Council for Media Services is competent to issue.

At this point a number of issues arise, which we will look at in more detail below. In particular, (i) the different understanding of illegal content under the Slovak Media Act and the European Regulation, (ii) who should decide whether it is illegal content, and finally (iii) which platforms are covered by the Slovak or EU regulation, seem to be problematic.

In the paper, the author uses traditional methods of legal scientific research. The general scientific methods used in the paper are the method of analysis, the method of synthesis and the descriptive method. The descriptive method has been used to approach the current legislation in removing illegal content online. The method of analysis has been used regarding relevant legal provisions to identify the shortcomings of the legislation and the subsequent formulation of *de lege ferenda* proposals. The method of synthesis has also been used alongside the analysis method. Among the special methods, the method of comparison has been used to examine the conflicts between Slovak and EU legislation in removing illegal content online.

⁵ April infringement package: key decisions. 24 April 2024. Available from: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_1941 [Accessed 5 March 2025].

⁶ Section 110(3)(w) of the Media Act.

⁷ Section 110(3)(x) and (y) of the Media Act.

⁸ Rec. 31 DSA.

II. WHAT IS MEANT BY “ILLEGAL CONTENT”?

Both the Slovak Media Act and the European DSA Regulation work with the concept of illegal content. However, their meaning differs, and in a significant way.

The Media Act contains a definition of illegal content in its Section 151(2). Illegal content is defined as content which:

- fulfils the elements of child pornography under Section 132(4) of the Criminal Act⁹,
- fulfils the elements of extremism material under Section 130(7) of the Criminal Act,
- incites an act which fulfils the elements of one of the terrorism offences,
- approves an act which fulfils the elements of one of the terrorism offences, or
- fulfils the elements of the offence of denying and approving the Holocaust, offences of political regimes and crimes against humanity under Section 422d of the Criminal Act, the offence of defamation of nation, race and beliefs under Section 423 of the Criminal Act or the offence of incitement to national, racial and ethnic hatred under Section 424 of the Criminal Act.

To summarise, the Slovak legislator, in defining illegal content, has limited itself to content that fulfils the elements of child pornography, fulfils the elements of extremist material, incites or approves an act that fulfils the elements of one of the terrorism offences, and fulfils the elements of certain extremism offences. In addition, the legislator has helped itself in defining illegal content by referring to the provisions of the Criminal Act, which forces the Council for Media Services to assess whether the content fulfils the elements of an offence. Only the law enforcement authorities or the court, depending on the stage of the criminal proceedings, have the power to establish the existence of the elements of an offence *in concreto*.¹⁰ Moreover, as a preliminary matter, the administrative authority cannot make a conclusion as to whether and by whom the offence was committed.¹¹

It is incomprehensible why the Slovak legislator did not include all extremism offences under “illegal content”, especially such content that fulfils the elements of any offence committed for a specific hate motive (Section 140(e) of the Criminal Act¹²). It is also incomprehensible why the Slovak legislator considers illegal content as content that incites or approves only an act that fulfils the elements of one of the terrorism offences. We believe that incitement and approval of an offence are dangerous forms of criminal complicity in the digital space in association with any offence, not only with terrorism offences, as this normalises illegal conduct. According to the UN Strategy and Plan of Action on Hate Speech, Incitement is a very dangerous form of speech, because it explicitly and deliberately aims at triggering discrimination, hostility and violence, which may also lead to or include terrorism or atrocity crimes.¹³

⁹ Act No. 300/2005 Coll., the Criminal Act.

¹⁰ Detail of the comments of the General Prosecutor's Office of the Slovak Republic on the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms. Available from: https://www.slov-lex.sk/pripomienky/legislativne-procesy/SK/LP/2023/129/pripomienky/a3dfb4a0-34ef-400f-b4eb-f84c4080bbb2/detail#error=login_required&state=67241a5c-d240-4dcb-8a54-6cee2e4db5db.

¹¹ See Section 40(2) of Act No. 71/1967 Coll. on Administrative Procedure (Administrative Procedure Code). The Media Act does not exclude the application of this provision of the Administrative Procedure Code to proceedings to prevent illegal content, see Section 225(1) of the Media Act.

¹² Hatred of a group of persons or an individual because of their real or perceived membership of a race, nation, nationality, ethnic group, real or perceived origin, colour, gender, sexual orientation, political opinion or religion.

¹³ United Nations. The Strategy and Plan of Action on Hate Speech. 2019. Available from: <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf> [Accessed 5 March 2025].

The Explanatory Report to the Media Act does not indicate what led the legislator to define the term illegal content in this way. The Explanatory Report is limited to stating that “it is serious content which, for example, fulfils the elements of child pornography, extremist material, incites terrorism, endorses such conduct or incites hatred”.¹⁴ However, the term illegal content under the Media Act does not include the amount of hate-inciting content that is commonly encountered in the digital space.

As mentioned above, the DSA does not provide a legal basis for issuing orders to act against illegal content, whereas in the legal conditions of the Slovak Republic this legal basis is the Media Act, which in its Section 153 regulates the decision on preventing the dissemination of illegal content. If such a decision is intended to have the effect of an order to act against illegal content, then it must contain a reference to the legal basis for the decision, including a reference to the DSA.¹⁵

In view of the above, we believe that the Slovak law understands “illegal content” quite restrictively. If the Media Act intends to be the legal basis for issuing orders to act against illegal content under the DSA, then it is necessary to address how illegal content is understood under the DSA regulation.

According to Article 3(h) of the DSA, “illegal content” means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law. In other words, any content that in a concrete case is in conflict with legal provisions is illegal.¹⁶ The definition of “illegal content” does not only focus on illegal content per se, it also covers illegal activities like the provision of services in infringement of consumer protection law.¹⁷

According to the DSA Recital, the concept of “illegal content” should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that the applicable rules render illegal in view of the fact that it relates to illegal activities. Illustrative examples include the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals.¹⁸ It is irrelevant what kind of legal provision justifies the illegality.¹⁹

The DSA basically refers to the entire legal system of EU Member States to express what is illegal for the purposes of the DSA.²⁰ The goal of Article 9 DSA is clearly to cover all possible criminal, administrative, or civil orders that one might find in national law.²¹

¹⁴ Explanatory Report to the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms. Available from: <https://www.slov-lex.sk/elegislativa/legislativne-procesy/SK/LP/2023/129>.

¹⁵ Section 153(2)(f) of the Media Act.

¹⁶ HOFMANN, F. In: HOFMANN, F. and RAUE, B.. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 81.

¹⁷ Ibid.

¹⁸ Rec. 12 DSA.

¹⁹ HOFMANN, F. In: HOFMANN, F. and RAUE, B. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 82.

²⁰ HUSOVEC, M. *Principles of the digital services act*. New York: Oxford university press, 2024. p 31.

²¹ Ibid. p 153.

In the context of illegal and harmful content, the DSA does not present a clear position, which is problematic and should be resolved.²² We agree with the statement that “different regulatory approaches should be implemented to deal with illegal and harmful content, if this terminology is not adopted, freedom of speech and expression may be undermined”.²³

For comparison with UK legislation, in contrast to the OSA’s very precise definition of what constitutes illegal content, and exhaustive listing of „priority illegal content“ the DSA is more open-ended.²⁴ However, „illegal content“ under the OSA²⁵ still includes more content than the Slovak Media Act. With a divergence in the treatment and understanding of harm, with the UK defining it in terms of specific activities or instances causing physical or psychological harm and the EU considering it in terms of the harm to both individuals and society, comes a correlative divergence in regulatory model.²⁶ In the EU, the consideration of a harm ecosystem and the systemic nature of the threats, specifically including content such as disinformation, results in a more holistic approach to platform responsibility.²⁷

It is obvious that the concept of "illegal content" under the DSA is much broader than the concept of "illegal content" under the Media Act, which might cause issues in the application of law. Is it even necessary for the Slovak Media Act to define what is "illegal content"? We believe it is not. The fact that it is illegal content is, after all, implied by a number of specific regulations, in particular the Criminal Act or the Misdemeanours Act²⁸, but also by private law regulations. Illegality can arise from EU regulations, national constitutional law, laws or even national regulations.²⁹

III. DISINFORMATION

Disinformation is not an exclusively digital phenomenon. Still, digital media and associated transformations feature strongly in the discussion of disinformation and their regulation.³⁰ The Internet provides space for exercising freedom of expression. In addition to spreading hate speech, the extremist scene uses the Internet to create and spread misleading information (disinformation), fake news or conspiracy theories.³¹

The DSA does not deal with the term “disinformation” in a coherent way. First of all, the articles of the DSA do not contain the term “disinformation”. They only explicitly address

²² TURILLAZZI, A., TADDEO, M., FLORIDI, L., & CASOLARI, F. *The digital services act: an analysis of its ethical, legal, and social implications*. In: Law, Innovation and Technology. Taylor & Francis, 2023. pp. 83–106. <https://doi.org/10.1080/17579961.2023.2184136>.

²³ Ibid.

²⁴ LAW, S. *Effective enforcement of the Online Safety Act and Digital Services Act: unpacking the compliance and enforcement regimes of the UK and EU's online safety legislation*. In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–38. <https://doi.org/10.1080/17577632.2025.2459441>.

²⁵ Online Safety Act 2023.

²⁶ FARRAND, B. *How do we understand online harms? The impact of conceptual divides on regulatory divergence between the Online Safety Act and Digital Services Act*. In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–23. <https://doi.org/10.1080/17577632.2024.2357463>.

²⁷ Ibid.

²⁸ Act 372/1990 Coll. on Misdemeanours.

²⁹ HOFMANN, F. In: HOFMANN, F. and RAUE, B. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 82.

³⁰ JUNGHERR, A.a Ralph SCHROEDER. *Disinformation and the Structural Transformations of the Public Arena: Addressing the Actual Challenges to Democracy*. In: Social Media + Society, 2021; PEUKERT, Alexander. *Desinformationsregulierung in der EU: Überblick und offene Fragen*. In: Juristen Zeitung, 2023, volume 78, pp. 278-296; PEUKERT, A. *Modi der Plattformregulierung in den Bereichen Urheberrecht, Hassrede und Desinformation*. In: KIRCHNER, R. et al. (eds.). *Digitalisierung im Recht der EU*. Baden-Baden: Nomos, 2023. <http://dx.doi.org/10.2139/ssrn.4306988>.

³¹ ROMŽA S., FERENČÍKOVÁ S. and KLIMEK L. *Dual Sanctioning of Hate Crimes and Hate Speech as Part of Extremism in the Slovak Republic*. In: Access to Justice in Eastern Europe. Kyiv: LLC VD Dakor, 2024. pp. 93-111 <https://doi.org/10.33327/AJEE-18-7.2-a000218>.

“illegal content”, which does not necessarily cover false information.³² The term “disinformation” is only used in the recitals of the DSA. In general, recitals are not binding and serve as additional information to interpret a regulation.³³

Disinformation can be war propaganda that is illegal under international law or someone’s belief that the Earth is flat.³⁴ Unlawful disinformation (e.g. war propaganda) is likely to justify more stringent treatment than lawful disinformation (e.g. flat earthers) already because the legislature said one is unlawful while the other is not.³⁵

It is difficult to acknowledge a single definition of disinformation in the EU. Multiple rules or communications establish different elements, and scholars do not seem to agree on any particular one.³⁶ What seems clear is that most legal definitions agree that disinformation is characterised by a subjective element (the intentionality of the actor) that distinguishes it from unintentional forms of misleading information and an objective one (the risk caused by it).³⁷

Neither the Media Act nor other Slovak legislation currently regulates disinformation. With effect from 26.02.2022, the Cybersecurity Act³⁸ introduced sections 27b and 27c, which regulate “blocking”. The institute of blocking websites is rather unique in the legislation of democratic states, as there is a very thin line between when this means will be appropriate and when it will show signs of censorship.³⁹ Decisions to block harmful content or harmful activity directed to or from the Slovak Republic’s cyberspace have been issued by the National Security Office. Such a decision could only be issued until 30.09.2022, and thus no such decision can be issued currently. The Cybersecurity Act works with a vague legal concept of “serious disinformation” without specifying it further.

What is meant by serious disinformation? One might conclude that it is the kind of disinformation that is dangerous. Not all disinformation has the potential to endanger the lives and health of individuals or democracy itself. A common example of disinformation that is not dangerous is the claim that the Earth is flat. It can be said that the state has no interest in blocking a website that spreads such claims. Disinformation may be clearly harmful, but they don’t have to be illegal - for example, disinformation about the effectiveness of wearing face masks during a pandemic may be false, but they don’t have to be an alarmist news under the Criminal Act, whereas disinformation about the location of a bomb clearly will.⁴⁰ Disinformation that affects democratic electoral processes are also dangerous. It can lead to very serious human rights violations, including the right to political participation. Both the EU DSA and the above mentioned UK OSA are very good at providing a legal basis for service providers to remove content that is considered illegal.⁴¹ However, even in doing so they both do not protect enough

³² JANSEN, N. *The Ability of the Digital Services Act (DSA) to Fight Disinformation* [online] [Accessed 10 July 2024]. Available from: <http://dx.doi.org/10.2139/ssrn.5076281>.

³³ Ibid.

³⁴ HUSOVEC, M. *The Digital Services Act’s red line: what the Commission can and cannot do about disinformation*. In: *Journal of Media Law*. Taylor & Francis, 2024. pp. 47–56. <https://doi.org/10.1080/17577632.2024.2362483>.

³⁵ Ibid.

³⁶ DEL MORAL SÁNCHEZ, M. *The DSA and the Fight against Online Disinformation in the Context of EU Law: Avenues for Internal Dialogue and External Territorial Extension*. Florence: European University Institute, 2024. (RSC Working Paper; 2024/19; Centre for a Digital Society). [online] [Accessed 10 July 2024] Available from: <https://cadmus.eui.eu/handle/1814/76896>.

³⁷ Idem.

³⁸ Act No. 69/2018 Coll. on Cybersecurity.

³⁹ KRAJNÁK, A.. *Hranice slobody prejavu na internete II*. Banská Bystrica: VIA IURIS, 2023. s 82.

⁴⁰ Ibid. p 102.

⁴¹ ABRUSCI, E. *The UK Online Safety Act, the EU Digital Services Act and online disinformation: is the right to political participation adequately protected?**. In: *Journal of Media Law*. Taylor & Francis, 2024. pp. 1–28. <https://doi.org/10.1080/17577632.2024.2425551>.

citizens against factual false content or harassing content that could impact the right to vote or the right to run for office.⁴²

For several reasons, the Slovak blocking legislation has been described as unconstitutional and even worse than the blocking legislation in the Russian Federation before the start of the war in Ukraine.⁴³ There is no doubt that the blocking legislation has been “slop-built”, which has caused the legislator to disregard the relevant ECtHR case law on website blocking. It is true that the situation required a rapid response, but the Slovak legislator has not corrected the shortcomings of this legislation even after three years, despite efforts to amend the inadequate legislation. Disinformation is not the only threat to democracy, so are regulatory overreach and alarmist warnings against disinformation.⁴⁴ We consider the blocking legislation to be an unfortunate example of the application of the concept of defending democracy in practice. The application of this concept is certainly appropriate in combating disinformation, but the legislator should bear in mind that this combat must be waged by constitutionally pure means.

Regarding the combating of disinformation, it should be added that there are no criminal instruments in Slovak legislation that could be used to prosecute disinformation. Theoretically, the offence of defamation under Section 373 of the Criminal Act, the offence of harming the rights of others under Section 375 of the Criminal Act or the offence of spreading alarmist news under Section 361 et seq. of the Criminal Act can be taken into account. In the past, there have been attempts to introduce a new criminal offence of dissemination of false information. A paragraphed version of such a proposal has already been drafted; the publication of socially harmful disinformation was to be punishable by one to five years' imprisonment.⁴⁵ In the end, however, even the ruling coalition did not agree on a new criminal offence. We share the point of view according to which the introduction of such an offence would constitute an unconstitutional restriction of freedom of expression for several reasons - contradiction with the principle of legality of criminal law *nullum crimen sine lege certa* or the guarantee of freedom of expression by the Constitution of the Slovak Republic, which also guarantees the right to receive information.⁴⁶

In view of the above, it can be concluded that although the DSA is supposed to provide protection even against disinformation, there are no instruments in the Slovak national law that would allow the DSA to be applied in this regard. Slovak legislation does not regulate disinformation, unless, for example, it is the dissemination of alarmist news, which is a criminal offence. However, such a criminal offence is not covered by the Media Act, therefore the Council for Media Services cannot issue a decision on preventing the dissemination of illegal content that would be disinformation.

⁴² Ibid.

⁴³ HUSOVEC, M. *Súčasné blokovanie dezinformačných stránok je ústavne problematické. Čo s tým?* In: Denník N. Available from: <https://dennikn.sk/2818631/sucasne-blokovanie-dezinformacnych-stranok-je-ustavne-problematicke-co-s-tym/> [Accessed 5 March 2025].

⁴⁴ KOSSEFF, J. *Liar in a Crowded Theater: Freedom of Speech in a World of Misinformation*. Baltimore: Johns Hopkins University Press, 2023. <https://doi.org/10.56021/9781421447322>.

⁴⁵ ŠNIDL, V. *Poľícia odmietla vyšetrovať predvolebný deepfake. Nikto súdny mu vraj nemohol veriť*. Denník N. Available from: <https://dennikn.sk/3777044/policia-odmietla-vysetrovat-predvolebny-deepfake-nikto-sudny-mu-vraj-nemohol-verit/> [Accessed 5 March 2025].

⁴⁶ See more FERENČÍKOVÁ, S. and VÍNEROVÁ B. *Páchatelia extrémizmu v kontexte preventívnych opatrení boja proti extrémizmu*. In: Košicené dni trestného práva 2024, VIII. ročník: zborník vedeckých príspevkov z celoštánej interdisciplinárnej vedeckej konferencie s medzinárodnou účasťou : Košice, 19.-20.06.2024. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. p 332.

IV. WHO SHOULD DECIDE WHETHER IT IS ILLEGAL CONTENT?

According to the DSA, national judicial or administrative authorities, including law enforcement authorities, may order providers of intermediary services to act against one or more specific items of illegal content or to provide certain specific information.⁴⁷ The authority issuing the order (or, where applicable, the authority specified therein) shall transmit it to the Digital Services Coordinator from the Member State of the issuing authority.⁴⁸ After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order to all other Digital Services Coordinators.⁴⁹

It can be deduced from the wording of the DSA that it assumes that the authority issuing orders to act against illegal content and the Digital Services Coordinator are two different authorities. However, in the Slovak legal conditions, both the Digital Services Coordinator and the authority issuing orders to act against illegal content (i.e. decisions on preventing the dissemination of illegal content) are the same administrative authority, namely the Council for Media Services. While the DSA does not assume that these orders will be issued by the Digital Service Coordinator itself, it does not rule this out either. It can also be deduced from the wording of the DSA that orders to act against illegal content can also be issued by a court or by an administrative authority other than the Council for Media Services, but this is not assumed in Slovak law.

Following on from the first chapter of this article, the question that arises at this point is whether the Council for Media Services should decide what illegal content is. As noted above, in defining illegal content in the Media Act, the legislator has helped itself by referring to the provisions of the Criminal Act, which forces the Council for Media Services to assess whether the content fulfils the elements of an offence. On the other hand, the too restrictive definition of illegal content in the Media Act seems to us to be in conflict with the DSA, since the term illegal content is to be interpreted broadly according to the DSA Recital. This means that it should include content that violates the provisions of criminal law, but also, for example, content in violation of consumer protection laws or in violation of copyright law. It is therefore a broad area, and the Council for Media Services cannot objectively even have competence to decide on all these matters.

V. TERRORIST CONTENT

The DSA is flanked by a number of specific instruments to strengthen and particularize the protections against online harms.⁵⁰ For example, illegal content is also regulated by the Terrorist Content Regulation⁵¹.

As mentioned above, the Slovak Media Act also defines illegal content as content that incites or approves an act that fulfils the elements of one of the terrorism offences.⁵² However, in our view, the Council for Media Services should not decide on terrorist content at all.

The Terrorist Content Regulation, which applies from 07.06.2022, is probably the most significant in this area, as it sets out uniform rules to deal with the misuse of hosting services for the public dissemination of terrorist content online. The Terrorist Content Regulation

⁴⁷ Rec. 31 DSA.

⁴⁸ Art. 9 DSA.

⁴⁹ Ibid.

⁵⁰ PEHLIVAN, C.N. *The Digital Services Act (DSA): A New Era for Online Harms and Intermediary Liability*. Global Privacy Law Review, 2023, pp. 53–59 [online] [Accessed 10 July 2024] Available from: <https://ssrn.com/abstract=4364923>.

⁵¹ Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

⁵² Section 151(2)(b) and (c) of the Media Act.

regulates in its Article 3 the removal orders that oblige hosting service providers to remove terrorist content or to disable access to terrorist content in all Member States. The removal orders ensure that terrorist content is eliminated across borders within one hour of receipt of the removal order or sooner.⁵³

Article 4 of the Terrorist Content Regulation regulates the procedure for cross-border removal orders. The procedure here is specific in that the authority which issued the removal order shall submit a copy of it to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established. That competent authority may inspect it in order to determine whether it seriously or manifestly infringes this Regulation or the fundamental rights and freedoms guaranteed by the Charter. Such orders will in principle have cross-border effects. However, if the competent authority finds an infringement, it shall take a reasoned decision on that finding, with the result that the removal order should cease to have legal effects.

According to Article 12 of the Terrorist Content Regulation each Member State shall designate the authority or authorities competent to:

- (a) issue removal orders pursuant to Article 3;
- (b) scrutinise removal orders pursuant to Article 4;
- (c) oversee the implementation of specific measures pursuant to Article 5;
- (d) impose penalties pursuant to Article 18.

In Slovak legal conditions, the officer of the Police Force is competent to issue removal orders pursuant to Article 3 and to scrutinise removal orders pursuant to Article 4, which follows from Section 29b(1) and (2) of the Police Force Act⁵⁴. The Council for Media Services is competent to oversee the implementation of the special measures pursuant Article 5 and to impose penalties pursuant Article 18, as follows from Section 110(3)(t) and (u) of the Media Act.

Here, a possible conflict between national and EU legislation becomes apparent. It is the police officer who is competent to issue removal orders. However, the Slovak Media Act regulates the procedure for the prevention of illegal content, which may result in a decision on preventing the dissemination of illegal content, and thus also content that incites or approves an act that fulfils the elements of one of the terrorist offences. However, the Council for Media Services decides in this procedure. It is implicit in the Media Act itself that the Council for Media Services is only competent to oversee and impose penalties in relation to terrorist content, not to issue removal orders (see Section 110).

In practice, orders to remove terrorist content were issued by the National Criminal Agency of the Presidium of the Police Force.⁵⁵ However, this has been abolished and replaced by the Office for the Fight against Organised Crime.

It can be assumed that decisions on preventing illegal content that incites or approves an act that fulfils the elements of one of the terrorist offences will not be issued by the Council for Media Services. To date, no such decision has been issued. This would contravene both the

⁵³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First Progress Report on the EU Security Union Strategy COM(2020) 797 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0797>.

⁵⁴ Act 171/1993 Coll. on the Police Force.

⁵⁵ *Teroristický útok na Zámockej ulici v Bratislave: bezprostredné a preventívne aktivity Rady pre mediálne služby na zamedzenie šírenia nelegálneho a škodlivého obsahu.* p 47. Available from: https://rpms.sk/sites/default/files/2023-03/Teroristicky_utek_na_Zamockej_ul_Bezprostredna_a_preventivne_aktivity_RpMS_na_zamedzenie_sirenia_nelegalneho_a_skodliveho_obsahu.pdf.

Police Force Act and ultimately EU law, as the Terrorist Content Regulation in its Article 12 assumes for the establishment of an online register listing the competent authorities, and this register also currently shows that the Police Force of the Slovak Republic is competent to issue removal orders in the Slovak Republic.⁵⁶

Going even further, we could conclude that the Council for Media Services should not even issue decisions on preventing the dissemination of illegal content that is extremist content. Both foreign literature and EU legislation devote their attention mainly to terrorism.⁵⁷ It even appears that the criminalisation of extremism is not common abroad; rather, extremism is subsumed under terrorism, or extremism is discussed alongside terrorism. This can be justified by the fact that abroad, the primary threat is terrorism, whereas in the Slovak Republic, the primary threat is right-wing extremism and its manifestations, whether in the real or digital world.

If the Counter-Terrorism Directive⁵⁸ is to be used in the fight against extremism⁵⁹, why should the Terrorism Content Regulation not also be used in this fight? If the Terrorism Content Regulation were also to apply to extremist content, this would bring our national legislation and practice into conflict with the EU legislation.

VI. WHICH PLATFORMS ARE COVERED BY SLOVAK AND EU LEGISLATION?

According to Section 9(1) of the Media Act, a “content sharing platform” is defined as “*an information society service whose main purpose or one of its main purposes or whose principal function is to store a large number of works and other objects of protection under a special regulation uploaded by its users and to disseminate them in accordance with a special regulation*⁶⁰”. Examples of content sharing platforms are Facebook, Instagram or YouTube. Section 9(2) of the Media Act also contains a negative definition of a content sharing platform. Although it does not explicitly follow from that provision, the Council for Media Services will not include e.g. Telegram (IM communicator) in its remit, as it is a chat application⁶¹. However, in our view, it should be included, as it is increasingly resembling social networks in its functionalities.

In comparison, the DSA works with the term “online platform” meaning “*a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation*”.⁶²

The DSA imposes due diligence obligations⁶³ on very large online platforms (“VLOPs”), particularly the annual assessment of systemic risks (specifically targeting illegal content and

⁵⁶ List of national competent authority (authorities) and contact points is available from: https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation/prevention-radicalisation/terrorist-content-online/list-national-competent-authority-authorities-and-contact-points_en.

⁵⁷ See more REPIŠČÁKOVÁ, D. *Boj proti extrémizmu prostriedkami boja proti terorizmu*. In: Správne právo bez hraníc. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. pp. 203 – 222.

⁵⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.

⁵⁹ REPIŠČÁKOVÁ, D. *Boj proti extrémizmu prostriedkami boja proti terorizmu*. In: Správne právo bez hraníc, Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. pp. 203 – 222.

⁶⁰ The Media Act refers at this point to Section 3 of Act No. 185/2015 Coll., the Copyright Act.

⁶¹ Information provided by the Council for Media Services.

⁶² Art. 3(i) DSA.

⁶³ On the due diligence obligations imposed by the DSA, see more STRINGHI, Elisabetta. *The due diligence obligations of the Digital Services Act: a new take on tackling cyber-violence in the EU?* In: International Review of Law, Computers & Technology. Taylor & Francis, 2024. pp. 215–229. <https://doi.org/10.1080/13600869.2023.2295101>.

negative impacts on fundamental rights)⁶⁴ as well as the implementation of reasonable, proportionate and effective mitigation measures to address these risks⁶⁵. The DSA will apply to Telegram as a very large online platform ("VLOP") under certain conditions, and circumstances suggest that Telegram will soon become one. To be considered a VLOP, it would have to have an average monthly number of active recipients of the service in the EU equal to or greater than 45 million.⁶⁶ Telegram has not yet surpassed this threshold, but in February 2024 it had more than 40 million users in the EU.⁶⁷ It can therefore be expected that Telegram will soon exceed this threshold and will therefore be covered by the DSA, i.e. it should also be covered by the Slovak Media Act. However, it should also be pointed out that only some of Telegram's functionalities qualify as an online platform under the DSA.⁶⁸

DSA requires very large platforms and search engines to assess and mitigate risks beyond illegal content – including negative effects to fundamental rights and to civic discourse and electoral processes.⁶⁹ In relation to the Telegram, this will be crucial, as it does practically nothing against harmful or illegal content and does not remove hate speech or death threats.⁷⁰ It has been noted that the ecosystem of radicalisation of public opinion, which influences discourse and destroys democratic values, has shifted to Telegram, dominated by disinformation sites, anti-system politicians or pro-Kremlin information.⁷¹

National legislation must also reflect these facts. Finally, they may not only concern Telegram, but also other platforms.

VII. CONCLUSION

In this paper, we focus on the conflicts between Slovak and EU legislation in the removal of illegal content online. In summary, we can state the following: the DSA has a much broader understanding of "illegal content" than the Slovak Media Act, which only defines illegal content as content that fulfils the elements of a few offences under the Criminal Act. The DSA does not only understand illegal content as content that violates the standards of criminal law, but also, for example, content in violation of consumer protection law or in violation of copyright law. The definition of illegal content under the Media Act is unnecessarily restrictive and omits a lot of content that is illegal and can occur online. Expanding the definition of illegal content in the Media Act to cover the concept of illegal content under the DSA may seem to be a solution. However, we believe that this is not even possible.

At this point, the question arose as to whether a definition of illegal content in the Media Services Act is actually necessary. The fact that it is illegal content is, after all, implied by the fact that the content violates the current legal order. Following on from this question, a second question arose, namely whether the Council for Media Services should decide what illegal

⁶⁴ Art. 34 DSA.

⁶⁵ Art. 35 DSA.

⁶⁶ Art. 33 DSA.

⁶⁷ *Telegram still doesn't meet large platform requirements under DSA.* In: euronews. Available from: <https://www.euronews.com/next/2024/08/21/telegram-still-doesnt-meet-large-platform-requirements-under-dsa> [Accessed 5 March 2025].

⁶⁸ Ibid.

⁶⁹ JUDSON, E., KIRA, B., & HOWARD, J. W. *The Bypass Strategy: platforms, the Online Safety Act and future of online speech.* In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–22. <https://doi.org/10.1080/17577632.2024.2361524>.

⁷⁰ STRUHÁRIK, F. *MediaBriefing: Extrémisti sa presúvajú na Telegram a majú tam tisícky fanúšikov.* In: Denník N. Available from: <https://dennikn.sk/2774016/mediabriefing-extremisti-sa-presuvaju-na-telegram-a-maju-tam-tisicky-fanusikov/?ref=mwat> [Accessed 5 March 2025].

⁷¹ *Tok klamstiev: Telegram je priestorom neobmedzených možností pre dezinformácie a konšpirácie.* In: Investigatívne centrum Jána Kuciaka. Available from: <https://www.icjk.sk/238/Tok-klamstiev-Telegram-je-priestorom-neobmedzenych-moznosti-pre-dezinformacie-a-konspiracie> [Accessed 5 March 2025].

content is. As illegal content is a broad area according to the DSA, we believe that the Council for Media Services objectively cannot even have the competence to decide on all these matters.

On the other hand, the definition of illegal content under the Slovak Media Act includes terrorist content, which the Council for Media Services cannot decide on, as this would be in conflict with the Police Force Act and, ultimately, EU law. As we have indicated above, the Council for Media Services' decision-making on extremist content is also controversial.

In view of the above, we conclude that the definition of illegal content in the Media Act is not appropriate and that the Council for Media Services should not even decide what is illegal content. The fact that it is illegal content follows from a number of specific legal regulations, and it is for the courts or administrative authorities to decide whether it is illegal content in a particular case. In removing illegal content online, the Council for Media Services should primarily fulfil its role as Digital Services Coordinator under the DSA.

Last but not least, in the future it will be necessary to ensure that the Slovak Media Act applies to platforms covered by the DSA, including, for example, the aforementioned Telegram.

KEY WORDS

illegal content online, extremism, disinformation, terrorist content online, DSA, Terrorist Content Regulation

KLÚČOVÉ SLOVÁ

nelegálny obsah online, extrémizmus, dezinformácie, teroristický obsah online, DSA, Nariadenie o teroristickom obsahu

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