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Internet censorship regulations as a tool for restricting freedom of speech. Actions taken by the European Commission and Polish legislators

Przepisy dotyczące cenzury w Internecie, jako narzędzie ograniczające wolność słowa. Działania Komisji Europejskiej i polskiego ustawodawcy

Abstract

The article focuses on the issue of Internet censorship as a tool limiting freedom of speech in the context of the activities of the European Commission and the Polish legislature. The first section discusses the importance of freedom of speech for civil society and its guarantees in the Constitution of the Republic of Poland. This is followed by an analysis of the threats to such freedom in the European Union and Poland, namely attempts to ideologise so-called 'hate speech' and expand its parameters, censorship of online content, and attempts to create types of offences with vague and fluid characteristics. The paper refers to a report prepared by the Committee on the Judiciary of the U.S. House of Representatives, which discusses the censorship of content by the European Commission. The study concludes with a summary of how the trend towards increasing control over communication and the flow of information in cyberspace can be counteracted.

Key words: freedom of speech, law, censorship, hate speech, social media, European Commission, pathostreaming

Streszczenie

Artykuł dotyczy cenzury w Internecie, jako narzędzia ograniczającego wolność słowa w aspekcie działalności Komisji Europejskiej i polskiego

ustawodawcy. W jego pierwszej części omówiono, jakie znaczenie dla społeczeństwa obywatelskiego ma wolność słowa oraz jej gwarancje w Konstytucji Rzeczypospolitej Polskiej. Następnie przeanalizowano zagrożenia dla takiej wolności na prawodawstwa Unii Europejskiej i Polski; chodzi o próby ideologizowania tzw. mowy nienawiści i rozszerzania jej wyznaczników, cenzurowanie treści zamieszczonych w Internecie czy próby tworzenia typów przestępstw o nieostrych i płynnych znamionach. Odwołano się do Raportu przygotowanego przez Komisję ds. Sądownictwa Izby Reprezentantów Kongresu Stanów Zjednoczonych, który mówi o cenzurowaniu treści przez Komisję Europejską. Całość opracowania kończy podsumowanie, jak przeciwstawić się działaniom zmierzającym do coraz większej kontroli państwa nad komunikacją i przepływem informacji w cyberprzestrzeni.

Słowa kluczowe: wolność słowa, prawo, cenzura, mowa nienawiści, media społecznościowe, Komisja Europejska, patostreaming

1. Introduction: the concept of freedom of speech

Freedom is a concept that has been key to assessing the state of human existence and the moral condition of every human being for centuries. It encompasses the entire essence of being, because it is only a free person who can fully realise themselves in life. Since the law regulates interpersonal relations, statutory provisions are not indifferent to issues of freedom. Already in divine law, i.e. the books of the Old and New Testaments, much is written of the sovereignty of the spirit; St. Paul writes in his letter to the Galatians that people have been called to freedom. This concept was incorporated into modern law, and freedom was an important concept of the Enlightenment, alongside equality, brotherhood and solidarity. The first article of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 states that “Men are born, and always continue, free and equal in respect of their rights” although in practice, the guillotine, which punished people with death for their views, contradicted this. After the trauma of World War I and II, society once again began to search for the pillars of its existence, and one of them, in terms of law, became the Universal Declaration of Human Rights of 10 December 1948. The preamble to the Declaration refers to human beings having the right to inherent and inalienable dignity, which implies the right to freedom of speech.

The emphasis on freedom of speech in the second half of the 20th century heralded a new era in interpersonal communication, when, on the one hand, thanks to the development of mass media, the individual voice of citizens became more audible, and, on the other hand, information from all over the world began to reach everyone. However, it also turned out that freedom of communication posed a threat to certain entities: undemocratic governments, corporations and the influential establishment. It is for this reason that censorship began to be introduced. In Poland, the Main Office of Control of Press, Publication and Shows, the socialist government's agency for censoring the media, was located at 3 Mysia Street in Warsaw. After the breakthrough of 1989 and the fall of the communist regime, the Office was closed and it was formally decided to end censorship of free speech. Today, however, censorship is being reborn in new forms and is primarily directed at social media, through which millions of people express their beliefs and discover the world around them. The battle against this censorship is very difficult because it does not take the form of a specific person or office, but flows into social life through various channels: legal regulations, indoctrination of children in schools – generally it is an attempt to build a new *homo sovieticus*, i.e. a person deprived of independent thinking and submissive to authority.

2. Freedom of speech in the Constitution of the Republic of Poland

Freedom of speech is guaranteed in international law: Article 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees everyone the 'right to freedom of expression, to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers'. This guarantee is one of the fundamental foundations of a democratic society, the conditions for its progress and the self-fulfilment of the individual. The preamble to the Constitution of the Republic of Poland¹

¹ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

states that the Constitution establishes fundamental rights for the state based on respect for freedom and justice, cooperation between authorities, social dialogue and the principle of subsidiarity, which strengthens the rights of citizens and their communities. Article 8(1) of the Constitution states that “the Constitution is the supreme law of the Republic of Poland”. The fact that the Constitution is the act with the highest legal force also means that the legal norms adopted by Parliament must align with it². This is a very important principle, because there have been attempts in recent years to enact laws censoring freedom of speech, which did not respect the supremacy of the Constitution over “ordinary” laws.

The right to freedom of speech is guaranteed in Article 54(1) of the Constitution of the Republic of Poland; the provision states that everyone is guaranteed the freedom to express their opinions and to acquire and disseminate information. The jurisprudence of the Polish Constitutional Tribunal assumes that freedom of expression is one of the foundations of a democratic society, a condition for its development and the self-fulfilment of individuals³. Therefore, individual freedom should be understood as three possibilities for the unrestricted expression of one’s views, as well as for obtaining and disseminating information. All these areas are interrelated, and full freedom of speech can only be achieved when each of them is fully realised⁴.

Article 54 of the Polish Constitution is related to Article 14 of the Constitution, which states: *The Republic of Poland shall ensure freedom of the press and other means of social communication*. This refers to mass social communication through which content is transmitted to a large and diverse audience in the press, radio, television and, nowadays, primarily on Internet platforms such as Facebook, Instagram, portal X and computer games. The decisive distinguishing feature of the mass media is their practically unlimited global reach. Content transmitted in this way is public in nature, as it is directed at anyone who may be interested in it and is received by a mass audience⁵. In a democratic state governed by the rule of law, as stated by one of the Polish courts of appeal, the role

² S. Wronkowska, *W sprawie bezpośredniego stosowania Konstytucji*, „Państwo i Prawo” 2001, z. 9, s. 4.

³ Judgment of the Constitutional Tribunal of 23 March 2006, ref. no. K 4/05, OTK-A 2006, no. 3, poz. 32.

⁴ P. Sarnecki, *Commentary on Article 54 of the Constitution of the Republic of Poland*, [in:] *Constitution of the Republic of Poland. Commentary. Volume II*, L. Garlicki, M. Zubik (eds.), 2nd edition, Warszawa 2016, LEX.

⁵ PWN Encyclopaedia, entry: „Środki masowego przekazu”, <https://encyklopedia.pwn.pl/haslo/srodki-masowe-go-przekazu> [dostęp: 25 lutego 2026 r.], [note: definition of mass media in Polish]

of free media, linked to the principle of freedom of expression, cannot be questioned – their activity is in fact the foundation and guarantee of a democratic system⁶.

Freedom of information is a fundamental guarantee of freedom of speech, and the relationship between Article 54 and Article 14 of the Constitution provides an important guideline for those who control the mass media – this media should be open to the public so that everyone can use it to exercise their freedom⁷. The Supreme Court ruled that the role of media service providers is not limited to conducting business and making a profit, but also includes informing citizens about important events, shaping opinions, providing them with entertainment, and contributing to the development and promotion of culture. The media thus has a significant influence on the formation of individuals' views, attitudes, habits and customs⁸. There is no restriction on the form in which these views are expressed; they may be expressed verbally in public, in writing, or using the advances in Internet social media technology (posts and videos on digital platforms). Each of these forms is subject to the same protection, and in accordance with Article 54(2) of the Polish Constitution, preventive censorship of the media is forbidden.

This does not mean that any and all forms and content can be posted and disseminated on social media. Users who post offensive or insulting comments online are subject to civil liability, as well as criminal liability if their behaviour constitutes a criminal offence. Nevertheless, the issue of such liability in specific cases is highly controversial, and any restriction of freedom of speech by social media platforms must be based on specific grounds. In such cases, the question often arises: are the censorship activities of the platform administrator in accordance with applicable law, and do the regulations governing censorship on the Internet duly respect the protection of freedom of speech, or rather constitute a tool for its unjustified restriction?⁹ This question is particularly relevant today, when the social dimension of criticism has increased due to electronic media. The importance of social discourse – in particular the exchange

⁶ Judgment of the Court of Appeal in Katowice of 15 October 2024, V Aga 269/22, LEX No. 3779308.

⁷ P. Sarnecki, *Commentary on Article 54 of the Constitution of the Republic of Poland ...*, LEX.

⁸ Judgment of the Constitutional Tribunal of 23 March 2006, ref. no. K 4/05, OTK-A 2006, no. 3, poz. 32..

⁹ E. Milczarek, *Ograniczanie czy ochrona wolności słowa? Rozważania wokół koncepcji regulacji mediów społecznościowych*, „Przegląd Sądowy” 2022, no. 3, p. 122.

of views, may justify the expression of polemical content in a harsh and controversial form.

The Polish Constitutional Tribunal, referring to Article 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ruled that the freedom of expression guaranteed by the Convention applies not only to “information” and “opinions” that are well received or perceived as harmless or indifferent, but also to those statements that are offensive, shocking or disturbing. Such are the requirements of pluralism, tolerance and openness, without which there can be no “democratic society”. Freedom of expression cannot be limited to information and opinions that are favourably received or regarded as inoffensive or neutral¹⁰. However, the Supreme Court has ruled that shocking and even offensive messages are permissible if they can be used to draw attention to a socially significant problem and pave the way for its solution¹¹. The Supreme Court’s case law rightly assumes that setting too narrow limits on freedom of expression may in fact lead to the so-called chilling effect that is detrimental to democratic society as a whole¹².

3. The ideology of “hate speech” as a tool for shaping the “new citizen”

Although freedom of speech is a constitutional value, Polish lawmakers have recently proposed solutions that would significantly and unjustifiably restrict the exercise of this freedom on the Internet. These are draft laws regulating various areas of human activity: some of them directly relate to censorship of speech, while others would indirectly restrict the broadly understood right to freedom of communication in cyberspace. One of the instruments for censoring content on the Internet has become the ideology of “hate speech”.

In official European Union documents, “hate speech” is defined as incitement to violence or hatred on the grounds of race, skin colour, religion or national or ethnic origin. It is about inciting and encouraging

¹⁰ Judgment of the Constitutional Tribunal of 23 March 2006, ref. no. K 4/05, OTK-A 2006, no. 3, poz. 32.

¹¹ Judgment of the Supreme Court of 12 April 2023, II CSKP 1021/22, OSNC-ZD 2023/4/51.

¹² Judgment of the Supreme Court of 11 August 2022, II CSKP 313/22, OSNC-ZD 2023/4/45

hatred, discrimination or hostility towards any person, resulting from prejudice against that person because of a characteristic feature¹³. In order to combat hate speech, a comprehensive set of legal and political tools has been developed, with the particular involvement of the European Commission, to respond effectively to such crimes, together with Member States, international organisations, EU agencies and civil society. One of the leading legal acts is Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law¹⁴, which aims to ensure that manifestations of racism and xenophobia throughout the European Union are subject to effective, proportionate and dissuasive criminal sanctions, and to improve judicial cooperation in combating such crime.

While the battle against hate speech in its rational sense is clearly justified, in European Union policy it has at times become a weapon for combating conservative attitudes and traditionalist views, as well as promoting extreme ideological content. Particular emphasis is placed on protecting members of the so-called LGBT community, suggesting that fear resulting from hate crimes prevents lesbians, gays, bisexuals and transgender people from fully participating in social life¹⁵. This creates space for arbitrary, particularistic, subjective interpretations of views expressed on the Internet, which poses a threat to the freedom to express rational opinions rooted in European culture.

The European Union's actions in the area of increasingly intensive censorship of content appearing in the public domain of the Internet have been confirmed by a report prepared by the Committee on the Judiciary of the United States House of Representatives¹⁶ entitled *The Foreign Censorship Threat [...]*. The report states that these actions

¹³ European Union Agency for Fundamental Rights, *Hate speech and crimes against LGBT persons*, https://fra.europa.eu/sites/default/files/fra_uploads/1226-Factsheet-homophobia-hate-speech-crime_PL.pdf [access: February 25, 2026].

¹⁴ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, <https://eur-lex.europa.eu/legal-content/pl/ALL/?uri=CELEX%3A32008F0913> [access: February 25, 2026].

¹⁵ European Union Agency for Fundamental Rights, *Hate speech and crimes against LGBT persons...*, https://fra.europa.eu/sites/default/files/fra_uploads/1226-Factsheet-homophobia-hate-speech-crime_PL.pdf [access: February 25, 2026].

¹⁶ U.S. House Judiciary Committee, *The Foreign Censorship Threat, Part II: Europe's Decade-Long Campaign to Censor the Global Internet and How It Harms American Speech in the United States*, <https://judiciary.house.gov/media/press-releases/new-report-exposes-european-commission-decade-long-campaign-censor-american> [access: March 3, 2026].

began in 2015 and have since taken the form of broad strategies aimed at encouraging online platforms to censor political speech that is *de facto* legal under the law and does not violate the limits of freedom of speech. This includes, among other things, conservative speech, which is often referred to as “violent right-wing extremism”. In order to apply such censorship, the following were created, among others: the Code of Conduct on Countering Illegal Hate Speech Online (2016) and the Code of Practice on Disinformation (2018). The report reveals that the European Commission regularly interferes even in democratic electoral processes within EU Member States by controlling political statements posted on the Internet during election periods. In 2024, “election guidelines” were created, obliging platforms to take censorship measures before important European elections, including “labelling” posts considered to be “disinformation” based on “left-wing fact-checkers”. This was intended to disadvantage conservative political parties; the 2023 elections in Slovakia are a key example of such actions, where TikTok’s internal guidelines, enforced by the EC, concerned the censorship of “hate speech” in the form of statements such as: *There are only two genders, We must stop the sexualisation of young people/children, I believe that LGBTI ideology, gender ideology and transgender ideology pose a great threat to Slovakia, just like corruption.*

Applying these considerations to Poland, the current provisions of the Criminal Code of 6 June 1997¹⁷ guarantee the prosecution of discrimination (Article 119 of the Criminal Code), assault on grounds of xenophobia, racism or religious intolerance (Article 257 of the Criminal Code) and the promotion of Nazism, communism, fascism or any other totalitarian system (Article 256 of the Criminal Code). However, the legislator wanted to extend the criminalisation of “hate crimes” and in 2025, Parliament adopted a government bill amending the Criminal Code, significantly expanding the list of protected characteristics to include age, gender, disability and sexual orientation (in addition to the previously protected characteristics of nationality, ethnic , race, religion and irreligion (lack of religious affiliation)¹⁸ . Hate crimes against these characteristics were to be prosecuted *ex officio*, without the need to file a private indictment. The explanatory memorandum to the draft emphasised that the need

¹⁷ *Act of 6 June 1997, Criminal Code* (Journal of Laws of 2025, items 383, 1818, 1872).

¹⁸ Government draft bill amending the Criminal Code, Sejm paper no. 876, <https://www.sejm.gov.pl/sejm10.nsf/druk.xsp?nr=876> [access: February 25, 2026].

to provide effective means of protection for victims of discrimination and to take all necessary steps to counteract these phenomena stems from the recommendations and guidelines issued by international organisations, including the European Union. As cultural and legislative experiences in other European countries show, the draft aimed to punish opposition to the demands of LGBT organisations and to impose their views on gender and sexuality. The proposed changes to the law in the spirit of the Istanbul Convention¹⁹ concerned ideological legislation destabilising the concept of gender, understood as a social construct rather than an objective biological reality. This was in flagrant contradiction with Article 18 of the Polish Constitution which protects marriage as a union between a woman and a man; similarly, the family, motherhood and parenthood are under the protection and care of the Republic of Poland.

Ultimately, the bill extending the concept and criminalisation of hate crimes did not come into force: it was referred by the President to the Constitutional Tribunal, which reviewed its compliance with the Constitution. In its judgment of 30 September 2025²⁰, the Tribunal ruled that such provisions are inconsistent with the Constitution of the Republic of Poland, as the new concepts are undefined and ambiguous in nature and therefore contrary to the fundamental principle of criminal law *lex certa*, which requires criminal acts to be precisely described in the statute. The fact is that, even under the current Criminal Code, in cases involving “hate speech”, in order to establish all the relevant circumstances of the case, courts and prosecutors often seek specific expert opinions in the field of linguistics and communication, assessing statements or posts on the basis of the full cultural, historical, situational, semantic, semiotic, ideological and linguistic context. Experts in the field of theological sciences specialising in cultural theology, moral theology or homiletics are sometimes called upon. In addition, such offences are committed using information technology data processing systems and remote communication. This creates a need for law enforcement agencies to carry out evidentiary

¹⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence, drawn up in Istanbul on 11 May 2011 (Journal of Laws of 2015, item 961 [access: March 3, 2026]); according to Article 3(c) of the Convention, ‘socio-cultural gender’ means socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women or men.

²⁰ Constitutional Tribunal, *Przesłanki penalizacji mowy nienawiści*, <https://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/przeslanki-penalizacji-mowy-nienawisci-5> [access: February 25, 2026].

activities involving the securing of electronic data carriers, the use of digital evidence and specialist knowledge of computer forensics.

Returning to the aforementioned ruling of the Constitutional Tribunal, the Tribunal stated that the new determinants of “hate crimes”, such as age, gender and sexual orientation, raise numerous interpretative doubts. While there is no doubt that statements of an offensive nature towards any groups or individuals are unacceptable in the public sphere, the restriction of the freedom of expression by establishing types of prohibited acts with insufficiently defined characteristics violates the constitutional freedom of speech. Criminal law should not protect against all criticism or controversy, but only against actual cases of hatred and violence. The Court stated that the grounds proposed in the amendment would result in the criminalisation of speech and a disproportionate restriction of pluralism, and would prevent genuine debate on the policies of inclusion, rehabilitation and accessibility.

Nevertheless, the Polish government continued to seek to tighten the prosecution of acts, most often committed on the Internet, which it considers “hate speech”. On the basis of a special regulation of the Minister of Justice of 4 February 2026²¹, 49 prosecution units were designated throughout the country and a group of 100 prosecutors was selected to conduct criminal proceedings concerning “hate crimes”. Despite the unconstitutionality of such solutions, the Minister of Justice repeated in the regulation the unconstitutional characteristics of crimes for the purposes of qualifying an incident if indicated by the content of the crime report or the established circumstances of the case. These are offences committed on the basis of prejudice against a group distinguished by characteristics common to its members, such as race, nationality, ethnicity or ethnic origin, religion or lack thereof, gender, age, disability, sexual orientation or gender identity. The content of a legal act of lower rank than a statute raises concerns in terms of legislative technique and may constitute a violation of the guarantee of *nullum crimen sine lege*. Many conservative and right-wing circles express legitimate concerns that the mechanism for prosecuting “hate speech” as constructed in the Public Prosecutor’s Office will become a tool for suppressing freedom and

²¹ Regulation of the Minister of Justice of 4 February 2026 on the designation of organisational units of the public prosecutor’s office competent to conduct proceedings in cases of crimes motivated by prejudice, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20260000140/O/D20260140.pdf> [access: March 3, 2026].

a muzzle for people who do not share the particular views ideologized by the European Union to the exclusion and censorship of other views.

4. Censorship of content posted on Internet platforms

In Poland, as in the rest of the European Union, there is a trend towards state authorities exercising increasing control over people's behaviour on the Internet and imposing criminal or administrative penalties for publishing certain content. This is the purpose of the Digital Services Act (DSA), known as the constitution of the Internet. It is a European Union legal act that makes digital companies across the EU responsible for the content posted on their digital platforms. The European Commission's website²² describes the Digital Services Act as aiming to build a safe cyberspace for users of digital platforms with regard to the risk of encountering illegal goods, content or services, and to facilitate the reporting of illegal content and complaints when an online platform breaks the law. It refers to content posted on commercial platforms and social media, and applies to hosting service providers.

Poland was obliged to adopt a law that would clarify the provisions of the DSA, and a government bill was drafted on 18 December 2025 to amend the Act on the provision of electronic services²³, which ultimately did not come into force due to the Polish President's objection to the regulations adopted by Parliament on 9 January 2026. The draft bill contained poor solutions which, if applied in practice, could have restricted freedom of public debate and freedom of speech in cyberspace. The bill provided for the possibility of removing and blocking "illegal content" on the Internet by a government administrative body – the President of the Office of Electronic Communications. Such a mechanism raised serious doubts from the point of view of constitutional guarantees of freedom of expression and the right to a court hearing. It is unacceptable for an official, rather than an independent court, to decide on the scope and content of the right to freedom of expression in social media. Although

²² European Commission, *Digital Services Act – Questions and Answers*, <https://digital-strategy.ec.europa.eu/pl/faqs/digital-services-act-questions-and-answers> [access: March 1, 2026].

²³ Government draft bill amending the Act on the provision of electronic services and certain other acts, Sejm paper no. 1757, <https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?nr=1757> [access: March 3, 2026].

the draft law provided for the possibility of appealing against an official's decision to block content to an administrative court, given that the appeal to the court took place *post factum* after the content had been blocked or removed, it was illusory in nature, as the examination of such an appeal would take months in court. In motivating his decision, the President of the Republic of Poland also pointed to the overregulatory nature of the bill, as its framework for preventive state action went beyond the scope of the EU regulation, posing a threat to freedom of speech. It should be borne in mind that although, in theory, the President of the Office of Electronic Communications is supposed to act objectively, in practice he is an official appointed by the current ruling political party. He is not independent and inevitably identifies with his political environment in terms of his worldview, so his decisions on blocking and removing content from the Internet could be biased and support a particular ideological message.

The bill also contained procedural provisions that were unacceptable from the point of view of civil rights and freedoms. This concerned, for example, the possibility for an official to inspect digital platform administrators and request binary copies or printouts of materials stored on media or in ICT systems, as well as the release of the media themselves. It follows that a natural person acting on behalf of the President of the Office of Electronic Communications could obtain the personal data of thousands of Internet users – users of a specific digital platform – and learn the entire content of the information (text messages, videos, photos) they exchanged with one another. Under current legislation, such powers are only granted to courts and prosecutors, whose legal status is protected by appropriate safeguards to ensure that they are immune to extraneous influences, including political ones.

However, the European Commission is not content with the legislation already adopted, but is constantly developing new solutions aimed at imposing a digital muzzle on freedom of speech and communication on the Internet. This is the Defence of Democracy Package, presented on 12 December 2023, which includes provisions establishing common standards of transparency and accountability for the activities of interest groups influencing the decision-making process in the EU, recommendations on promoting free and fair elections and the resilience of electoral processes, and recommendations on promoting the participation of

citizens and civil society organisations in policy-making²⁴. The objectives described sound positive and constructive for the creation of free media and the fight against disinformation, but sometimes problems are seen when carrying out detailed analysis. One example is the European Democracy Shield, which is intended to counteract the manipulation of information and strengthen the resilience of Member States' societies to related challenges. However, there is a concern that under the lofty slogans of defending democracy and freedom of speech, the shield will become a tool for introducing censorship for ordinary citizens and organisations that have views other than the official agenda of the European Commission. This is an attempt to educate a “new man” through legal prohibitions and restrictions so that he uncritically accepts what the establishment imposes on him.

5. Expanding the areas of criminalisation in cyberspace as an example of “complex legislation”

With the development of cyberspace and the rapid increase in the number of people using various types of social media platforms, new, undesirable phenomena have emerged on the Internet that are difficult to classify unequivocally in legal terms. In this field, attempts are sometimes made to introduce legislation that, while responding to the social need to condemn certain pathologies, is broad and vague in its definition of the offences it seeks to punish. There are various reasons for this: the proposed solutions are not sufficiently developed in terms of legislative technique, they are put together *ad hoc* to meet political demands in order to appeal to voters, or there are objective difficulties concerning activities that cannot be easily described in legal language. These comments apply, among other things, to two bills concerning the crime of so-called pathostreaming, submitted to the Polish Sejm by the two largest political parties. Pathostreaming is the online audio-video transmission of pathological and vulgar content, often related to social deviance, including behaviour involving physical violence. Such content is

²⁴ European Commission, *Protection of democracy*, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_pl [access: March 2, 2026].

primarily aimed at young people, who pay for streaming, and in the long term, the creators often identify strongly with their audience.

The aforementioned draft amendments to the regulations were aimed at punishing not only those creating the pathological content, but also those who transmit and even view such content on the Internet. In one of the draft bills of 23 May 2023²⁵, the new Article 255b of the Criminal Code contained elements of a prohibited act of a non-specific nature, such as: “disseminating”, “in order to defend the public interest or a private interest worthy of consideration” or “simulating the commission of a prohibited act “. These are very broad and, yet, vague terms; their interpretation would be too discretionary and would even censor freedom of communication and access to information in cyberspace. In the second draft bill of 29 January 2026²⁶, the “dissemination of content presenting, as authentic, the simulated commission of a prohibited act” concerning, among other things, violation of physical integrity or cruelty to animals, was made a criminal offence. The proposed amendment is aimed at punishing not so much the creators of pathostreaming as the people who view such content on the Internet. There was a concern that the entry into force of such a regulation would cause law enforcement agencies to focus on prosecuting random Internet users rather than the actual producers of destructive videos.

The legal issues surrounding how to effectively punish pathostreaming and who should be held criminally responsible for such acts are difficult, as different people participate in different ways in the functioning of such content on the Internet. Under Polish law, the abuse of another person, violation of their bodily functions or sexual freedom, humiliation, as well as incitement and aiding and abetting such behaviour are already punishable under existing regulations. Therefore, it is necessary to find the right balance and set the correct limits for punishing pathostreaming, bearing in mind that the fundamental principles of criminal law are based on principles such as *nullum crimen sine lege*, which expresses the requirement for the statutory classification of prohibited acts punishable by law. This gives rise to the principle that a punishable act must be defined in a precise and clear manner for the individual (*nullum crimen*

²⁵ Sejm of the Republic of Poland, Draft bill, Sejm 9th term, paper no. 3310, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=3310> [access: March 3, 2026].

²⁶ Sejm of the Republic of Poland, Draft bill, Sejm 10th term, <https://www.sejm.gov.pl/sejm10.nsf/agent.xsp?symbol=PROJKONSU&NrKadencji=10&Kol=D> [access: March 2, 2026].

sine lege certa) and that the provision of the law classifying such an act must be interpreted strictly, excluding broad interpretation and reasoning by analogy (*nullum crimen sine lege stricta*). Even if we recognise the need for a certain flexibility in substantive criminal law in order to adapt the provisions to changes in society and values resulting from the principle of the rule of law ²⁷, we must always remember to draw precise boundaries between what is permitted and what is prohibited by criminal law.

6. Conclusions

The 3rd February 2026 Report of the Committee on the Judiciary of the U.S. House of Representatives on the Foreign Censorship Threat, Part II²⁸, found that the Internet and social media promised to be a force that would democratise public debate and strengthen pluralism of expression, including on the Internet. However, their dynamic development threatened the established political order, and the political establishment in power in the United States and Europe sought to counteract movements questioning the liberal-left order through increasing surveillance of media communications. From 2015 and 2016 onwards, the European Commission began to create various meeting platforms where European telecommunications market regulators could directly influence companies managing online digital platforms to moderate content posted on the platforms in accordance with the European Commission's guidelines. Such actions were officially aimed at combating "disinformation" and "hate speech," but investigations showed that over the past ten years, the European Commission has exerted direct pressure on platforms to censor lawful political speech within and outside the European Union.

Of course, the findings contained in the US Report should be approached critically, bearing in mind that they require further verification. Nevertheless, it is a fact that the actions of the European Union's bodies and institutions show an increasingly clear tendency to impose censorship on the Internet in a manner disproportionate to the threats that exist in

²⁷ Judgment of the Constitutional Tribunal of 12 April 2011, SK 62/08, OTK-A 2011, No. 3, item 22.

²⁸ U.S. House Judiciary Committee, *The Foreign Censorship Threat, Part II: Europe's Decade-Long Campaign to Censor the Global Internet and How It Harms American Speech in the United States*, 3 February 2026, <https://judiciary.house.gov/media/press-releases/new-report-exposes-european-commission-decade-long-campaign-censor-american> [access: March 3, 2026].

cyberspace. The text refers to “hate speech”, the Digital Services Act and the European Democracy Shield. However, new initiatives aimed at restricting freedom of speech and freedom of communication on the Internet continue to emerge, primarily at the instigation of the European Commission. One example is the plan to introduce a *European digital identity (EU digital identity wallet)* by the end of 2026, enabling users to access public and private services online and offline, store and share digital documents, and create legally binding signatures. Again, the idea of creating such a tool may sound good, but at the same time there is a danger that, as it develops, eID (electronic identification) will be used to collect an ever-increasing and widening range of data on every citizen of the European Union until it eventually becomes a tool for digital surveillance of the entire private sphere of the individual. This brings to mind the example of the People’s Republic of China, where the authorities exercise total digital control over society using a range of computer applications.

How, then, can we resist the growing temptations of both the European Commission and individual governments to exercise ever greater control over communication and the flow of information in cyberspace? There is only one solution: to build a civil society that is aware of its rights, including the constitutional right to freedom of speech. Only such a society, which cares about individual autonomy, freedom of speech and human dignity, can enjoy full civil rights and freedoms, including in cyberspace. Wide-ranging organisations, associations and free trade unions with specialist knowledge and logistical resources that can be used in the fight for democratic standards when they are threatened are an essential element of democracy. Another element is independent, efficient courts that control the executive branch (of government) in order to prevent abuses when requested to do so by citizens. To fully understand the factors and determinants necessary for building a sustainable democratic society that is resistant to manipulation, one would also need to add an independent Prosecutor’s Office, an objective and competent civil service, and many other elements of social reality. Nevertheless, primarily, the defence of freedom of speech must be anchored in the mind of every person who is aware of their goals, because it is the human being who is the most important element of the “freedom jigsaw”.

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