

PROTECTING VICTIMS – PUNISHING OFFENDERS

INTERVIEW

The Personal Rights Protection Act (PRG) is a proposed alternative to the controversial NetzDG. It was drafted under the guidance of Prof. Dr. Dirk Heckmann, Director of the Research Institute for IT Law and Internet Policy of the University of Passau and its former CEO Dr. Anne Paschke. Prof. Dr. Heckmann discusses the most important issues covered by the draft bill in this interview.

What do you see as the greatest weakness of the current law?

PROF. DR. HECKMANN There are three basic weaknesses. First of all, we have no effective enforcement system. The fact that well over 90 percent of all offenses committed in the Internet, such as slander and defamation, go unpunished is absolutely untenable. I believe that this failure to enforce the law is unparalleled in our legal system. Secondly, there is a definite lack of protection for victims. And thirdly, instead of exploiting the technological expertise of platform operators, we have appointed them to act as judges. That is the wrong approach.

What effect has the NetzDG had to date?

PROF. DR. HECKMANN An overall assessment is still outstanding. However, reports published thus far indicate that criticism of the NetzDG is justified. Content is deleted, but often wrongly, as in the case of satirical articles, which are protected within the context of artistic freedom. On the other hand, numerous insults remain online. Thus the process is a failure in two senses. And it simply can't work, because it requires human workers to decide within minutes what is

permitted and what is not. And artificial intelligence is expected to recognize prohibited content, although text recognition software is not yet sufficiently capable of performing this task reliably. The NetzDG simply has not resulted in a lasting change in user behavior. I spend a great deal of time online for work-related reasons alone, and I see no evidence to suggest that a new attitude characterized by greater empathy and respect has emerged. Insults published in the Internet may be deleted, but the authors suffer no legal consequences whatsoever.

Have you received any feedback on your draft bill from the political community?

PROF. DR. HECKMANN We've presented our proposal in public on a number of occasions. Our greatest success thus far was an event organized by the Weißer Ring victim protection organization in Passau. Many positive responses came from the audience. Georg Eisenreich, the new Bavarian Minister of Justice, was there as well, and he appeared to be very interested, especially in the issue of victim protection. Minister Eisenreich plans to discuss the possibility of using at least parts of our draft bill within the context of a Bavarian legislative initiative with experts from his ministry.

Your alternative proposal for more effective protection of personal rights focuses on punishable statements posted in the Internet. Is it always possible to distinguish clearly between “permissible verbal attacks” and punishable statements?

PROF. DR. HECKMANN We definitely face difficulties when it comes to drawing the line between permissible expressions of opinion and punishable libel. This problem has existed practically forever and has nothing to do with the Internet. We focus on the truly serious cases in our draft proposal and speak deliberately of severe cases of libel that have a lasting negative impact on victims' lives. We want to set an example here, and we are fully aware that this cannot solve the problems caused by all of the illegal statements posted in the Internet. But by beginning with the truly serious cases we will be taking an important step forward.

If your proposal were adopted and became law, every legally relevant case would have to be settled in court. Do we have sufficient capacities for that in Germany?

PROF. DR. HECKMANN There would be a relatively large number of cases at first, and that would mean hiring additional personnel and making new resources available. But we should consider that a worthwhile investment. The issues at stake here are the direction in which our society will progress and



whether it values the protection of personal rights at all. The rule of law simply must not capitulate in the face of massive numbers of illegal acts. The need for additional resources would continue to exist only until the first verdicts were issued and the preventive effect of the law became apparent. The message must be this: The state is capable of defending itself, and offenders will not go unpunished. We should begin with relatively clear-cut cases that are suitable for model trials.

According to your draft bill, punishable content should be identified as needed, but not deleted until a final legal decision has been rendered. Does that mean that the “bone of contention” remains accessible to the public until such a decision is made?

PROF. DR. HECKMANN Our proposal requires platform operators to mark questionable content as follows: “Attention, this posting may be punishable by law!” Anyone who shares the content in question would be regarded as an accomplice. That alone would give people pause for thought and have a certain positive effect. Such a marking would also serve as evidence of the fact the platform operator is aware that a posting is

probably illegal. If they leave it as is, they become liable as well. Operators are free to delete such contents, and it is in their own interest to keep their platforms clean.

While not all attacks in the Internet are punishable by law, they are painful for those affected nonetheless. Do victims simply have to live with that, or are there ways in which they can defend themselves?

PROF. DR. HECKMANN Not everything that isn't punishable is automatically permitted. Victims can defend themselves in civil proceedings and obtain an order to cease and desist, for example. Yet some things an individual feels are damaging may be permissible. The context plays a role as well. People in public life have to put up with more than ordinary citizens.

Your proposal for better protection for personal rights places strong emphasis on protection for victims. What kind of victim support is recommended in your draft bill?

PROF. DR. HECKMANN We want to ensure that serious offenses are investigated by law enforcement agencies. It is simply not right to



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demand that victims file formal requests. That is an unnecessary hurdle. Providers should be required to save the content in question and make it available to the courts. Within the framework of electronic file systems, courts have immediate access to case data, which helps accelerate the proceedings. That is very important for victims, and we are convinced that timely rulings will have a preventive effect. We also call for appointment of a victim's attorney paid by the government. Victims also need psychological counselling. They may suffer under the burden of their situation and need someone who can help them cope. It's important to us to ensure that more is being done in the area of victim protection. And if we could say that we provided the triggering impulse for that, we would consider it a personal success.