

**FREEDOM OF EXPRESSION IN THE DIGITAL AGE:
PLATFORM GOVERNANCE AND THE FACEBOOK–USER
RELATIONSHIP**

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Abstract

In democratic societies where all forms of expression that propagate, encourage, incite, or justify hatred based on intolerance are sanctioned and prevented, the relationship between Facebook and the user can no longer be considered merely private in nature. Facebook may undertake actions to remove inappropriate content where users violate the ethical principles and rules codified in the “Facebook Community Standards.” Freedom of expression possesses a general character, yet it is not absolute. When its limits are exceeded, legal disputes arise between the user and the platform administrator concerning the nature, purpose, and consequences of the opinions expressed online. In such disputes, procedural guarantees and adversarial interaction between the parties should be ensured before sanctions are imposed, including the removal of content or suspension of accounts.

This paper analyzes the relationship between freedom of expression, defamation, privacy, and platform governance in the digital age, with particular emphasis on the legal responsibilities arising from hate speech and defamatory publications on Facebook. The paper further examines evidentiary standards, burden of proof, and the balancing of freedom of expression with the protection of reputation and private life under the jurisprudence of the European Court of Human Rights.

Keywords: *Freedom of Expression, Facebook, Defamation, Platform Governance, Human Rights.*

1. Introduction

Freedom of thought and freedom of expression represent fundamental values of democratic society. The development of digital communication platforms has transformed the manner in which individuals express opinions, exchange information, and participate in public debate. Social media platforms, especially Facebook, have become spaces where political opinions, journalistic information, artistic expression, and social commentary are communicated instantly to a global audience.

Despite the broad protection enjoyed by freedom of expression, this right is not absolute. Every democratic society establishes legal limitations intended to protect other legitimate interests, such as public order, national security, human dignity, reputation, and private life. Consequently, when online expression exceeds legally permitted boundaries and infringes upon the rights of others, legal disputes arise between users and digital platforms or between users themselves.

1.1. Freedom of Expression and Defamation

Freedom of expression protects the right to express opinions, exchange ideas, criticize public authorities, and participate in democratic discourse. However, freedom of expression also carries responsibilities and limitations. The dispute between the user and Facebook arises when disagreements emerge concerning the opinions expressed on the platform, their nature, and their purpose.

Freedom of expression extends beyond political communication. It also includes artistic expression, commercial speech, publication of photographs, caricatures, photomontages, satire, and other forms of creative communication. Persons who create, interpret, distribute, or explore works of art contribute to the exchange of ideas and opinions, which constitutes an essential foundation of democratic society. (European Court of Human Rights, 2020, p. 11)

The European Court of Human Rights institutionalized this approach in the case of *Müller and Others v. Switzerland*, emphasizing that artistic freedom forms part of the broader protection guaranteed by freedom of expression (European Court of Human Rights, 1988).

1.1.1. Satire and Digital Communication

Satire occupies a special place within freedom of expression jurisprudence. Satire is a form of artistic and social commentary characterized by exaggeration and distortion intended to provoke public reaction. Consequently, any interference with satirical expression must be assessed with particular care. Satirical expression may appear through paintings, cartoons, fictional interviews, political messages, advertisements, and other forms of public communication.

At the same time, the right to freedom of expression must be balanced with the right to respect for private life and reputation. This balancing process requires consideration of several factors, including the content and form of publication, the

consequences of publication, the public interest involved, and the proportionality of sanctions.

The publication and maintenance of unlawful comments on Facebook pages, where such comments exceed the limits of freedom of expression and possess degrading or insulting characteristics, may constitute unlawful interference with reputation and dignity. Similar issues were addressed by the European Court of Human Rights in *Alexandru Pătrașcu v. Romania* (European Court of Human Rights, 2024).

2. Facebook Governance and Procedural Guarantees

Facebook regulates user conduct through the “Facebook Community Standards,” which establish rules concerning hate speech, violence, harassment, misinformation, and other forms of harmful content. Users who violate these standards may face sanctions including content removal, temporary restrictions, or permanent suspension of accounts.

However, platform governance cannot exist independently from constitutional principles and human rights standards. Restrictions imposed upon users must satisfy requirements of proportionality, transparency, and procedural fairness. Before imposing sanctions such as the removal of content or accounts, an adversarial process between the platform and the user should be ensured.

3. Obligation Regarding Facts and Evidence

In order for judicial protection for defamation on Facebook to be provided, first and foremost the injured personality must be identified. Therefore, it must be proven that the defamatory statement concerns the plaintiff and relates to him or her. The content of the defamatory statement must be connected to the plaintiff either explicitly or implicitly.

The parties in civil court proceedings for defamation are obliged to present all the facts upon which they base their claims and to propose evidence through which those facts are proven. In this regard, reference is made to the important circumstances that will serve as the basis for the respective allegations or claims. The parties present the facts and evidence at their disposal; however, the court is also authorized to establish facts that the parties have not presented and to obtain evidence that the parties have not proposed, if the results of the hearing and the evidence indicate that the parties intend to dispose of claims with which they cannot dispose. Nevertheless, the court may not base its decision on facts and evidence regarding which the parties have not been given the opportunity to express their views.

When filing a lawsuit for defamation, it is important to prove the fact that the defendant mentioned the plaintiff by name or provided sufficient details for other persons to reasonably conclude that the statement refers to the plaintiff.

The obligation to present facts and evidence carries an important limitation - the court may not base its decision on facts and evidence regarding which the parties have not been given the opportunity to be heard.

Which facts shall be considered proven is decided by the court according to its own conviction, based on a careful and conscientious assessment of each piece of evidence separately and all evidence collectively, as well as on the basis of the results of the overall proceedings. Meanwhile, the parties, their representatives, and interveners are obliged to tell the truth before the court and conscientiously exercise the rights granted to them by law.

The court is obliged to ensure that the proceedings are conducted without delay, within a reasonable time, and with as few expenses as possible. The court is also obliged to prevent any abuse of rights belonging to the parties and other participants in the proceedings.

4. The Subject Matter and Burden of Proof

The special task of the judiciary is to prove liability. First and foremost, the court must prove the existence of the published statement. For a statement to be considered published, it must be proven that it was communicated to a third party. In order for liability to be adjudicated, the statement must be visible to other persons. Facebook posts, public comments, private messages sent or shared with another person are facts that the court must establish. The court must prove whether another person has seen the statement or not. If no one has seen the statement, then civil legal liability is excluded.

Evidence constitutes the means through which the truth is established, namely through which the facts upon which a certain right that is the subject of the dispute is based are proven. The truth, which represents the aim and duty of the court during civil contentious proceedings, is achieved through legality and the process of proof. Article 11 of the Code of Civil Procedure of the Republic of Albania defines evidence as data obtained in accordance with the procedure established by law, which serve to prove or refute the claims or objections of the participants in the proceedings (Code of Civil Procedure of the Republic of Albania, 1996)..The court shall adjudicate a dispute relying on the applicable substantive law and on its own free conviction. This free conviction must, however, be based on the establishment of the factual situation of the particular dispute.

Each party is obliged to present the facts and propose evidence upon which he or she bases the claim or through which the allegations and evidence of the opposing party are refuted. When the parties submit claims before the court and discuss their merits, they make statements whose content consists of presenting facts and deriving legal consequences from them (Brati, 2008, p. 275).

The statement must be false. If the statement contains truthful content, then civil legal liability is excluded. Truth is always an absolute defense against claims of

defamation. If the defendant can prove that his or her statement is true, then there can be no question of defamation.

During the proceedings, whenever the court assesses that such action would contribute to a complete and fair resolution of the dispute, it may also warn the parties about their legal obligations, particularly regarding the need to present decisive facts and proposals and to propose certain evidence. Therefore, the parties also have a legal obligation to submit facts and means of evidence in order to prove their claims in civil contentious proceedings (Morina & Nikçi, 2012, p. 581)

In civil contentious proceedings, there are several types of means of evidence, such as inspection, documents, witnesses, expert opinions, and the hearing of the parties. These means of evidence are determined by the Law on Civil Procedure.

5. Subject of Proof

The subject of proof consists of the facts of the case, or all factual circumstances alleged by the parties on the basis of which their claims or objections rest. Proof encompasses all facts that are relevant for rendering a decision. In other words, it includes all facts upon the existence or non-existence of which the success of the adjudication of a civil dispute depends. For this reason, the court itself decides which of the proposed pieces of evidence will be taken in order to establish decisive facts.

Decisive facts are considered those facts upon which a certain right, legal relationship, or legal situation depends. These facts are known as relevant facts. The effectiveness of granting judicial protection in a specific case also depends on relevant facts. The protection of a concrete right depends on the facts themselves and their proof. This is more precisely explained by the maxim "*da mihi factum, dabo tibi ius*" – give me the facts, I will give you the law. Therefore, for the success of a civil contentious proceeding, it is important to determine the factual issue – *quaestio facti* – and the legal issue – *quaestio juris*. The parties in a civil proceeding are legally obliged to present evidence to prove the factual circumstances, but not the legal provision on which the disputed right is based. The determination of the legal provision is the duty of the court.

However, in order for facts to be proven in civil proceedings, they must be relevant, necessary, and useful for the examination and resolution of the dispute. The Civil Procedure Code of the Republic of Albania provides that the court, by decision, allows the parties to prove the facts on which they base their claims and allegations by presenting only those pieces of evidence that are necessary and relevant to the subject matter of the case (Civil Procedure Code of the Republic of Albania, 1996, Art. 213). The existence of the fact that a statement harms reputation must be proven. This is assessed in correlation with the character, conduct, or reputation of the plaintiff in his or her community.

6. Facts That Do Not Need to Be Proven

Not all facts need to be proven. Certain facts, such as those admitted by the parties, presumed by law, or universally known facts, may be exempt from the obligation of proof (Morina & Nikçi, 2012, p. 585):

1. Facts admitted by a party before the court during the proceedings do not need to be proven. This is considered judicial admission of a fact. However, the court may order such facts to be proven if it considers that, through such admission, the party is attempting to dispose of a claim over which it cannot dispose. The court, taking into account all circumstances, shall assess whether it will consider the fact as admitted or disputed, especially where the party has initially admitted it but later fully or partially denied it or limited the admission by presenting other facts.
2. Facts presumed by law do not need to be proven, although it may be proven that such facts do not exist, unless otherwise provided by law.
3. Facts admitted by a party during the dispute do not need to be proven; however, exceptionally, the court may order such facts to be proven if it considers that the party, through admission, seeks to dispose of a claim over which it cannot dispose.

There are also universally known facts. Universally known facts are those which, at the time and place of the decision, are objectively known by the majority of persons of average education, so that there is no doubt about their existence or manner of existence, and therefore proof of them is unnecessary (Brati, 2008, p. 282).

7. Burden of Proof (*onus probandi*)

Regarding the proof of relevant facts in civil proceedings, the concept of free evaluation of evidence is known. However, each party in civil litigation is obliged to aim at establishing the truth. The plaintiff must present facts and evidence for their claim. If they fail to do so, the court will reject their claim - *actore non probante reus absolvitur*. The defendant must also present facts and evidence to prove their position, actions, or omissions - *reus in excipiendo fit actor*. Thus, both parties have an obligation to prove their claims - *actori incumbit probatio*. Proof is not only a burden but also a legal obligation.

The burden of proof in defamation proceedings operates in two stages. Initially, the plaintiff bears the burden of establishing that the defamatory statement was made, published, and caused harm to their reputation. Once the plaintiff satisfies this initial burden, the burden shifts to the defendant to prove that the statement was true or otherwise justified, since truth constitutes an absolute defense against defamation claims. This may be difficult if the statement is based on opinion rather than fact. Subjective opinions of a Facebook user fall within freedom of expression. Defamation must be based on fact and not on subjective opinion.

The court must form its conviction as to whether the case concerns a subjective opinion of the defendant or a fact presented with defamatory content.

Evidence before the court includes screenshots of defamatory statements, timestamps, relevant context, URLs of posts or comments, and any conversations or replies related to the defamation.

To form its conviction, the court may go beyond the evidence submitted, taking into account certain circumstances, such as the refusal of a party to answer questions or the conduct of the party. The Civil Procedure Code of the Republic of Albania provides that the court, at any stage of the proceedings, has the right to require the parties to appear in person in order to be questioned on circumstances considered relevant to the resolution of the case, regardless of whether they are represented or whether the proceedings are conducted in their absence. When, despite the court's order, the summoned party fails to appear without lawful justification or refuses to answer the questions posed, the court shall assess such conduct together with the other evidence (Civil Procedure Code of the Republic of Albania, 1996, Art. 182).

Free evaluation of evidence does not mean that the court decides without logical reasoning. Where specialized knowledge in a technical, scientific, or artistic field is required to understand or assess evidence, the court may appoint one or more experts to assist it.

8. Taking of Evidence

The taking of evidence is the activity of the court aimed at establishing the truth in civil litigation. Evidence is taken during the main hearing before the trial panel, but for important reasons the panel may decide that certain evidence be taken before the presiding judge or before a requested court judge. In that case, records of the evidence taken shall be read at the main hearing.

The presiding judge or the requested judge entrusted with taking evidence is authorized, if proposed by the parties, to take additional evidence if considered appropriate. When the panel decides that evidence is to be taken by a requested judge, the request shall describe the state of the case according to the course of the main hearing, and special attention shall be given to the circumstances to be considered during the taking of evidence.

The parties shall be informed of the hearing for taking evidence before the presiding judge or requested judge, unless they have stated that they will not attend. The presiding judge or requested judge has all the powers of the trial panel during the taking of evidence.

Evidence is taken before a requested court when there are important reasons, while testimony of parties is taken only if the party cannot attend for justified reasons or if attendance would cause disproportionate costs.

No separate appeal is allowed against a decision to delegate the taking of evidence to a presiding judge or requested judge.

If it can be assumed that certain evidence cannot be obtained or cannot be obtained within a reasonable time, or if it must be taken abroad, the court shall set a deadline for its collection. Once the deadline expires, the hearing shall continue regardless of whether the evidence has been obtained.

9. Conclusions

The state and law exist to ensure the effective realization of rights through the organs and institutions of the state system. In all cases, the totality of legal norms constitutes the structure of a state's legal system, and every citizen is obliged to respect legal norms. When a citizen fails to find respect for a given circumstance, event, or act, the need arises to activate state organs and institutions. State organs and institutions are activated to assist in the enforcement of legal norms. Thus, the state and law interact in ensuring respect for legal norms. There is no doubt that respect for legal norms is a fundamental element of the rule of law. In this regard, the state and law coexist and interact with the sole purpose of ensuring respect for human rights and freedoms.

The specific aspects of exercising freedom of expression in the context of Facebook determine the balancing of rights between freedom of expression and other rights and requirements. The risk of harm that may be caused to the exercise and enjoyment of human rights and freedoms, especially the right to respect for private life and reputation, is very high. Therefore, civil judicial protection is the guarantee provided by states for endangered persons.

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