

## Panel 2 – Sharing knowledge and information to advance the gender equality agenda and implement the Council of Europe Strategy: the impact of social media

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I will use a case from the European Court on Human Rights as a starting point for my remarks, *Delfi v. Estonia* (2013 and 2015). It is not surprising that the first major international court case on internet comments concerns Estonia: not surprising as we are a very “internet based” society but also as we unfortunately have a poor culture when it comes to internet comments. Such comments are important, used a lot but the tone of comments is often very raw and even brutal. Not least are prejudices and hate speech based on gender, ethnicity, sexual orientation and so forth prevalent in the comments (exacerbated by a lot of “trolling” from other states as well). Freedom of expression is cherished and generally well respected in Estonia, but there may be a lack of understanding that freedom is not freedom to do whatever. Of course this is unfortunately a global problem – it may just be more noticeable in Estonia than some other countries as we have embraced social media to such a large extent.

Although the *Delfi* case did not deal with special prejudices or hate speech (it dealt with defamation), it is still important in our context. I was not upset with the ruling as were many freedom of expression groups, who fear any form of limitation of internet freedom and decried the verdict as a threat to freedom of expression. The reason is that I see the ruling not as creating any new law for internet but as an attempt to underline that internet is not a law-less society but the laws that apply in the off-line world should also apply on-line, to the extent and in the manner possible. This is very important for our discussion today.

What the European Court of Human Rights underlined was that there needs to be a system through which those that enable defamatory comments (or it could be other illegal comments and content) reaching an audience have a responsibility. The Court specifically underlined that it approved of the low fine (a bit more than 300 Euro) that Estonian courts had given *Delfi*, as this indicates not a wish to punish but an instruction to develop a system to take responsibility – something that *Delfi* did already after the first case in Estonian courts. The idea of responsibility for social media necessitates that a number of actors play a part. The Court on Human Rights did not see that putting in place clear and transparent procedures on content moderation is a threat to freedom of expression.

I support the idea to underline how existing laws must be implemented also in cyberspace because I believe it is dangerous to introduce new laws, criminalising certain behaviour on-line or similar, as any such laws may be abused to limit or stifle freedom of expression. Furthermore, I do not believe such laws are needed, as we do have legislation against abuse of different kinds and the problem tends to be that it is not effectively applied for different reasons. One reason can be that it is very difficult in the cyber environment to enforce laws, as activities can move so easily

from one jurisdiction to the other, there are various means of anonymous activities and so on. Another reason can also be that law enforcement agencies do not sufficiently understand threats and limitations to human rights and may not identify dangers arising from such behaviour. Online abuse must be dealt with in the broader context of gender based violence, also offline.

It can feel frustrating to have to deal with enforcement of existing rules rather than creating new ones, as it is a slower and more complex process including education, discussions, awareness-raising etc. rather than the adoption of a document, which is a more tangible result. Unfortunately, adoption of some rules is sometimes used as an excuse to not deal with serious underlying problems. Prejudices and negative attitudes cannot be combatted with rules only. This does not mean that rules in the form of international instruments or national laws as well as soft law instruments would not be important – they are very important but do not change anything on their own. However, soft law instruments like industry guidelines, codes of ethics, professional rules and so on can have a major importance by showing acceptable standards and helping the different actors to navigate the new environment. One big difference social media has brought with it, as compared to traditional media, is that no longer only media professionals have the ability to reach large audiences, but anyone can do this plus technical platforms are no longer just purely technical, but the distinction between transmission (in the broad sense) and content provision can be blurred.

The OSCE Representative on Freedom of the Media has done good work in the area of gender based violence in media, specifically on-line media and specifically violence against women. Through her office, recommendations were prepared and published in September 2015. What these highlight is the need for various actors to take a responsibility, which can include providing adequate support to journalists who experience online abuse.

The Recommendations highlight, and I would like to second that, that intermediaries and social media platforms have a responsibility to inform properly in an adequate and clear manner about terms of services, guidelines and best practices in ensuring a safe space for all users. It must be easy to report abusive content; people must feel that there is somewhere to turn to if they are being harassed online. It cannot be so that such harassment is seen as something not too serious and people are left with no support. In the modern society it is not a realistic solution to not be present on-line, as so much of professional, social and political life goes on there. There is no silver bullet with which to kill gender-based or other similar online abuse, but it does not further freedom of expression to pretend that an environment without rules will lead to a positive result. It will only mean that some people will refrain from speaking their minds, will be afraid to take part of online opportunities and will feel they are being violated by the new technologies.