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THE INTERNET AS A PUBLIC PLACE: FRAMING THE DEBATE IN BOSNIA AND HERZEGOVINA

The Internet and digital platforms are often portrayed as public spaces, hosting both private conversations and discussions of public interest. Political campaigns are conducted and business transactions are also carried out there. This paper challenges this view by highlighting the differences between the Internet and traditional public places. Instead, it argues that the Internet increasingly resembles a mosaic of private domains controlled by a few powerful entities that dictate the flow of information. This paper examines the issue from the perspective of the benefits that public places provide in modern democratic societies and posits the debate within Habermas's understanding of the public sphere, providing for differences in how public place is typically perceived regarding the Internet and especially digital platforms. Finally, it outlines the ongoing legislative debate in Bosnia and Herzegovina on this issue, with comparative insights from the legal frameworks of Serbia and Croatia.

Key words: *Public place. – Public square. – Disinformation. – Freedom of expression. – Digital technologies*.

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1. INTRODUCTION

One of the recent debates in Bosnia and Herzegovina concerns the question of whether the Internet should be classified as a public place in the way that streets, squares, parks and other physical places are treated.

In light of the emergence of recent legislative proposals in Bosnia and Herzegovina that extend the concept of a public place to the digital area through laws regulating misdemeanor liability, this paper offers answers to the question whether the Internet can be legally defined as a public place and what consequences this may cause. First, this paper explores whether there is theoretical justification for applying the current legal rules concerning public places to the Internet, it being a relatively new phenomenon that has its specifics. The second part of the paper analyzes the legislative frameworks and practices in Bosnia and Herzegovina, with comparative insights from Serbia and Croatia. Finally, the discussion revisits the theoretical considerations to evaluate the broader implications of defining the Internet as a public place.

Unlike physical public places, where the monopoly over the rules of conduct is in the hands of the state), the Internet primarily operates on the basis of contracts between private individuals. The relationship between users and digital platforms is increasingly in focus. They are the actors that create value by bringing two or more different types of economic entities together and facilitating interactions between them (Evans, Schmalensee 2014, 405) They can do this by providing digital infrastructure, facilitating the exchange of information, aggregating supply and demand, increasing the level of trust between actors, etc. (Murati 2021, 20). Digital platforms, primarily motivated by commercial interests, are not obligated to consider individual rights unless explicitly required to do so, which often results in rules that prioritize profits over user rights. Therefore, the idea that citizens can influence the regulation of public place through their political rights does not apply to the Internet, since they have a negligible influence on the policies of global technology giants, whose platforms have become indispensable in the life of modern humankind. The second goal of this paper is to highlight the risks and consequences of treating the Internet as a public place, based on examples from Bosnia and Herzegovina and other jurisdictions.

The paper provides an overview of the comparative practice of neighboring countries, which extends the general definitions of a public place to the Internet by practical application. Focusing on the specific case of Bosnia and Herzegovina, the paper highlights the potential shortcomings of the proposed legislative solutions that do not take into account the unique characteristics of digital environments. Ultimately, the paper advocates for

a nuanced approach to Internet regulation, an approach that recognizes the specific characteristics of the digital place and seeks innovative legal solutions.

2. THE PUBLIC SPHERE AND PUBLIC PLACES

The originator of the concept of the public sphere (public opinion) is Jürgen Habermas. His approach to the public sphere represents a key theoretical basis for understanding the democratic process and communicative rationality in contemporary societies. He describes the public sphere in Europe in the late 17th and 18th centuries as rational-critical and relates to the emergence of civil society (Habermas 1989). This era has been marked by the emergence of places where individuals can exchange ideas and discuss, such as cafes, public squares, salons, etc. Over time, the public sphere becomes transformed, due to social, economic and political structural changes. Industrialization, the growth of the mass media, and the commercialization of communication have been some of the main catalysts, often to the detriment of the original function of the public sphere as a place for rational discussion. Habermas (1989, 270) considers these phenomena to be harmful since the development of mass media (print and radio) – made possible by technology – made the public sphere susceptible to commercial interests and political pressures, leading to the manipulation of public opinion and the erosion of the quality of public discussion.

Before Jürgen Habermas's influential articulation of the public sphere, significant groundwork had been laid by earlier thinkers, most notably John Dewey and Walter Lippman. Their debates on deliberation, democracy, and public discourse set the stage for understanding how public spaces and communication shape democratic society. Dewey championed the idea of robust public participation and free exchange of ideas as a cornerstone of democracy, arguing that an informed public could effectively guide societal progress (Festenstein 2019, 3). Meanwhile, Lippman presented a more cautious view, questioning the public's capacity to engage meaningfully in complex political discourse given the challenges of information asymmetry and the cognitive limitations of individuals (Bieger 2020, 4).

These foundational debates not only predated but also enriched Habermas's conceptualization of the public sphere. Building on this intellectual tradition, Habermas framed the public sphere as a vital space for rational-critical discussion and democratic engagement. His vision traces its origins to 17th and 18th century Europe, where physical venues like coffee houses and salons provided forums for civic discourse.

The Internet – and especially social media – has once again led to the transformation of the public sphere. There is a decline in print readers (VOA 2023) and television viewers (Rizzo 2023). Almost without exception, print media have developed their own online editions or have completely replaced the press with the online place. Television programs are also increasingly available to watch online, and linear media is changing with on-demand content.

Social media has enabled even greater connectivity, speed and diversity of place, and discussion of news of public interest and the exchange of information about everyday life, leading to an increase in the complexity of the modern media environment. This has led to the merging of the individual public spheres that existed within the framework of nation-states into an increasingly global network of information flows, although the fact that national boundaries often still correspond to specific cultural attitudes, interests, and practices should not be ignored. Reporting on news that the public finds interesting has changed from the environment dominated by large media companies providing content to a wide audience. Today, the media scene is more diverse, complex and sometimes confusing. As asserted by Bruns and Highfield (2015, 101) mass and niche news from around the world compete for increasingly specific segments of an audience that is defined by common interests far more than by shared geographic origin or ethnicity. According to Mancini and Hallin (2004, 11), media systems can be classified into several model categories: the polarized pluralistic model, the democratic corporate model, and the liberal model.

However, with the advent and development of social media, the basic premise on which this categorization was based ceased to exist. Social networks such as Twitter and Facebook have empowered individuals to create "personal publics", allowing them to engage in public debate and share information through these digital platforms (Schmidt 2014, 4). Some believe that social networks have made the differences between private and public place ambiguous for an individual, so they propose the use of the term "private sphere". As Mancini (2020, 5767) notes, the division of media systems according to the work he co-authored has become untenable because of this. As a result, comparative studies of media systems tend to lag behind the digital technologies that influence most political and communication practices at the national level. Each individual has become a certain medium through social media because a huge number of people are available to them as an audience – all those who use social networks or even the Internet. Mancini calls this phenomenon deinstitutionalization and describes it as the development of unofficial organizations that produce and distribute news, commentary and other content, and where clear rules on creation and

distribution are no longer evident. This, however, does not mean that today's media place – and then the public sphere – is unbounded by rules and that there are no central points that have taken an important place in such confusion. Mancini calls this reinstitutionalization, and the phenomenon describes the transfer of the ability to create rules from the state to new institutions. Facebook and other social media outlets possess the authority to establish rules and boundaries for content circulation that transcend national borders, often persisting despite extensive criticism (Mancini 2020, 5767). Because of all of the above, there are also voices advocating that the use of the term "public sphere" be completely removed because it no longer corresponds to the reality dominated by places controlled by large private individuals – primarily digital platforms (Webster 2013, 19).

The state should maintain order in public places and ensure that all participants respect the basic rules of conduct, but it should not exercise control over them as long as they adhere to the rules. The public sphere entails that the state allows individuals to exchange ideas on anything, including criticism of the state. The dialogue between persons appearing in the public sphere is not always a face-to-face dialogue, where physical presence would be required. When this is the case, the public sphere manifests itself in the public place. There are other areas of life in which the public sphere manifests itself. These are, for example, the press, television and other media, as discussed by Habermas. The development of technologies has raised the question of whether it is necessary to approach the concept of a public place differently. This arises from the growing realization that an increasing number of information exchanges now occur in virtual spaces. The need for such a transformation is not only theoretical, i.e., it does not only aim to ensure methodological consistency and the need for law to follow what is a social reality. It should also solve a number of problems that arose when virtual places became forums for discussions on important and less important social issues, a tool for conducting political campaigns and a meeting place for sellers and buyers who have an unprecedented opportunity to place their advertisements to those customers who have a likelihood of being interested in their products or services. This transformation has caused many issues, some of which are already known and only appear in a new guise or with a much greater intensity. These include, for example, fake news, propaganda and hate speech. The Internet has provided an incomparably greater potential for the rapid creation and dissemination of such information. On the other hand, there are completely new issues that we have not faced before, such as the creation of deepfake content, which can faithfully deceive the audience by appearing true.

With the acceptance of the possibility that legislators may not have been guided by the reasons we have described above, there has been a tendency to rethink the concept of a public place, in order to tackle problems in the public sphere.

3. ANALYSIS OF THE LEGAL FRAMEWORK OF BOSNIA AND HERZEGOVINA

Legislative activity in Bosnia and Herzegovina regarding the regulation of misdemeanor liability on the Internet, i.e., the definition of the Internet as a public place, began in 2015 when the Law on Public Order and Peace of Republica Srpska was adopted. Talks on defining the Internet as a public place at other levels of government in BiH began after 2021; previously, the legislative framework at other levels of government in the domain of misdemeanor liability did not define the Internet as a public place. Due to the importance of extending misdemeanor liability on the Internet, it is important to point out that in 2022, 61 Internet service providers, 875,598 broadband Internet subscribers and 3,705,589 Internet users were registered in Bosnia and Herzegovina (European Commission 2023, 98). The number of users of Internet services speaks of the importance of the Internet as a medium, and points to the conclusion that expanding the definition of the public sphere to the Internet would have far-reaching consequences, encompassing a significant part of the population of Bosnia and Herzegovina.

3.1. Legislative Framework in the Federation of BiH

More recent indications about the need to expand the definition of public places to an online place were pointed out in 2021 by the then Member of Federation of BiH Parliament Irfan Čengić. An initiative has been launched to declare websites and social media a public place. The initiative has been passed on to all cantonal governments. As justifications for the new legal solutions, Čengić points out that a "serious series of violations in Republica Srpska and Croatia have been prosecuted. This cannot stop cyberbullying, but we can protect a small segment" (N1 2023, translated by author). Activities at the cantonal level of government, aimed at defining the Internet as a public place, were actualized in 2023 with the adoption of the Draft Law on Public

Order and Peace of the Sarajevo Canton (Draft CS, translated by author).[1] In addition to treating the Internet as a public place through misdemeanor legislation, the Draft Law on Information (USC Draft) was adopted in 2022 in the Una-Sana Canton,[2] which includes the regulation of the work of the media, social networks and other means of electronic communication.

At the federal level, the Bill on Amendments to the Law on Misdemeanors was sent to the parliamentary procedure in 2024, without changes focused on treating the Internet as a public place.[3] The Federation Government has the authority to address this issue, but Article 3 of the Constitution of the Federation of Bosnia and Herzegovina highlights that "Cantons and the Federation Government shall consult one another on an ongoing basis with regard to these responsibilities." However, the regulation of misdemeanor matters typically falls under the jurisdiction of the cantons.[4]

Defining the Internet as a public place by misdemeanor legislation is becoming a legislative issue at all levels of government, and such a tendency of the legislator is evidenced by the fact that certain local self-government units, specifically Bihać, Cazin and Velika Kladuša, have included provisions on the violation of public order and peace through digital platforms in their decisions on public order and peace (Išerić, Turčilo 2022, 40).

By analyzing the statistics of the Ministry of the Internal Affairs of the Federation of BiH (FMUP) by the place of the committing of a misdemeanor, we can see that only after 2024 there is the notion of "other places" and the number of misdemeanors committed in other places is 159 (Ministry of Internal Affairs FBiH 2024, translated by author).

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1 See Draft Law on Misdemeanors against Public Order and Peace in the Sarajevo Canton, 2023. Ministry of the Internal Affairs Sarajevo Canton. *https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023–05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf*, last visited April 15, 2025. Translated by author.

2 See Draft Law on Amendments to the Law on Public Information of the Una-Sana Canton, Ministry of Education, Science, Culture and Sports Una-Sana Canton. *https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf*, last visited April 13, 2025. Translated by author.

3 See Draft Law on Amendments to the Law on Misdemeanors of the Federation of BiH *https://fbihvlada.gov.ba/uploads/documents/prijedlog-zakona-o-prekrsajima-b_1718285594.pdf*, last visited April 13, 2025. Translated by author.

4 See Constitution of the Federation of Bosnia and Herzegovina, III Art. 3(2), *Official Gazette of the Federation of Bosnia and Herzegovina*, 1/94, 13/97.

3.1.1. Sarajevo Canton

The Draft Law on Misdemeanors against Public Order and Peace,[5] adopted in April 2023 by the Government of the Sarajevo Canton, which defines the Internet as a public place raised the issue of defining public places and started the conversation about more adequate regulation of the media, with an emphasis on online place and online media. The European Commission's 2023 Report on BiH states that the provision defining the Internet as a public place could be abused to restrict online communication and intimidate journalists, further emphasizing that all such norms must fully respect the standards of freedom of expression (European Commission 2023).

This is why the Draft CS has been criticized by a number of domestic and foreign organizations, such as the OSCE and Transparency International: "'Anything that gives the police the power to regulate freedom of speech is very dangerous' [...] the police could easily abuse the law on misdemeanors if it is adopted in this form" (Zatega 2023, translated by author).

The OSCE sent a letter to the Prime Minister of the Sarajevo Canton in which it indicated "that the text of the draft is indefinite, which leaves significant room for multiple interpretations" (F. H. 2023, translated by author) The Minister of the Internal Affairs of Sarajevo Canton pointed out that the proposer of the law would refine the criticized articles in the draft, but that "the fundamental commitment to punish people's misconduct on the Internet remains, as is the case with the dedication to finding a way to protect citizens and introduce order on the Internet, as well as on the streets." (I. M. 2023, translated by author).

A innovation is the determination of the manner of committing a misdemeanor and the inclusion of the provision that the misdemeanor can be committed through the media and social networks. Article 5, paragraph 2 reads: "It shall be considered that the misdemeanor referred to in this Law was committed in a public place when the action was committed in a place that is not considered a public place in the sense of paragraph (1) of this Article, [...] if the consequence occurred in a public place or if it was done through the media, social networks or other similar means of electronic

[5] See 2023 Draft Law on Misdemeanors against Public Order and Peace in the Sarajevo Canton, Art. 5(2), *https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023–05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf*, last visited April 13, 2025. Translated by author.

communication."[6] The work of the media and social networks is subject to a detailed analysis regarding liability for offenses, in particular in relation to Articles 24 and 30 (insult, hate speech, fake news).[7] In modern legal systems, these areas are usually regulated through content moderation and self-regulation; however, in this case, they are simply sanctioned as violations (Dias 2022). In addition to the above-mentioned innovations, Articles 11, 24 and 30 of the Draft CS define three distinct types of misdemeanor offenses that can be committed through the media, social networks, and other similar electronic means. Article 11 regulates the misdemeanor of serious threat; Article 24 regulates the misdemeanor of insulting religious, national, racial, and gender feelings of the citizens; and Article 20 regulates the misdemeanor of presenting or transmitting false news and claims. Article 30 of the Draft CS stipulates a fine in of BAM 600 to BAM 1,800 for a person who presents or transmits false news or claims that cause panic or seriously disturb public order and peace, or prevent or significantly hinder the implementation of decisions and measures of competent authorities and institutions exercising public powers. The prevention of fake news dissemination and the elimination of hate speech are the declared objectives in defining the Internet as a public place in the Draft CS. The provision on the prohibition of the spread of fake news can be perceived in the broader context of the legislative trend of prohibiting and punishing the spreading of fake news, which exists in some European Union (EU) countries. Ó Fathaigh, Helbeger and Appelman (2021) state that 11 EU member states have adopted applicable laws to tackle spread of disinformation. However, the OSCE Joint Declaration on Freedom of Expression argues that "there should be no general or ambiguous laws on disinformation, such as prohibitions on spreading 'falsehoods' or 'non-objective information'." (OSCE 2020, 2).

Ultimately, the proposed Draft Law, by explicitly defining the Internet as a public place, does not achieve the goal of eliminating hate speech and fake news, while at the same time it subjects online media and users of social networks to the arbitrary application of the misdemeanor system by the police on the Internet. Following the initial publication of the Draft CS and the reaction of nongovernmental bodies dealing with media freedom and

6 See Draft Law on Misdemeanors against Public Order and Peace in the Sarajevo Canton, Art. 5 (1). *https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023–05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf*, last visited April 13, 2025. Translated by author.

7 See Draft Law on Misdemeanors against Public Order and Peace in the Sarajevo Canton, Arts. 23, 24. *https://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/2023–05/nacrt_zakona_o_prekrsajima_protiv_javnog_reda_i_mira_na_podrucju_kantona_sarajevo.pdf*, last visited April 13, 2025. Translated by author.

media activists, there has been no indication of a potential adoption date for the new Cantonal Law or any information suggesting that the legislator has abandoned this effort.

3.1.2. Una-Sana Canton

The tendency of the legislator to regulate the media place and treat the Internet as a public place is not reflected only in the amendments to the laws that regulate misdemeanors and public order. In 2022, the Una-Sana Canton launched an initiative for the adoption of the Law on Information, and the USC Draft was created.[8]

In the explication of the new Law points out that "the goal is to prescribe how to remove comments in online media, and to define the reduction of hate speech on social networks to suppress any intolerance, which has taken hold and become an everyday occurrence in the Una-Sana Canton and Bosnia and Herzegovina."[9]

Article 16 prohibits the distribution of information or other media content provided there is necessity in a democratic society.[10] Furthermore, it is prescribed that the proposal for the prohibition of the distribution of information is submitted to the competent prosecutor's office. The proposal for a ban may require that the dissemination of such information be prohibited through public media, web portals, social networks, via the Internet, other electronic media, and other types of media. Such provisions raise the question of how the competent prosecutor's office is to prohibit the distribution of information on privately owned digital platforms that are located outside the jurisdiction of BiH prosecutors office.

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[8] See Draft Law on Amendments to the Law on Public Information of the Una-Sana Canton. *https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf*, last visited April 13, 2025. Translated by author.

[9] See Draft Law on Amendments to the Law on Public Information of the Una-Sana Canton. *https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf*, last visited April 13, 2025. Translated by author.

[10] See Draft Law on Amendments to the Law on Public Information of the Una-Sana Canton, Art. 16. *https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf*, last visited April 13, 2025. Translated by author.

At the suggestion of the Prosecutor's Office, the competent court may issue a decision on the temporary ban on the distribution of information until a final decision on the prohibition is passed. The competent court is required to immediately deliver the decision on the temporary ban to the publisher, the editor-in-chief, as well as the distributor or printing house, i.e., the authorized person representing the public media, web portal or other electronic publication.[11]

In January 2025, despite the failure of the initial attempt to regulate digital media through the 2022 draft, efforts to introduce a new Law on Information in Una-Sana Canton have been revived in a similar manner by largely the same group of policymakers. In light of ongoing legislative efforts, the Una-Sana Canton has initiated the drafting of a new Law on Information, aiming to address challenges posed by digital media and online discourse. The working group, composed of representatives from the media, academia, and government institutions, emphasizes the need for clearer regulations to combat misinformation and hate speech while safeguarding media freedoms (Hadžić 2025, translated by author). These developments highlight the continued relevance of the 2022 draft, necessitating a reassessment of its provisions in the context of evolving regulatory discussions. In addition to the circumstances related to the organization of BiH which stipulate that cantons should not adopt such law, a canton has dubious enforcement power due to complexity of the subject matter and limited resources as a lower-level government.

3.2. Legislative Framework of Republika Srpska

The modification of the definition of a public place has been the subject of legislative activities in Republika Srpska (RS) since 2015. After much criticism from nongovernmental organizations and media activists, the Law on Public Order and Peace of RS (ZJRM RS) was adopted in 2015.

Criticism from the opposition, international and nongovernmental organizations has put forward the thesis that the provisions of Articles 7 and 8 of the ZJRM RS, which define basic violations of public order and peace, may lead to an impermissible interference with basic human rights and

[11] See Draft Law on Amendments to the Law on Public Information of the Una-Sana Canton Art. 16, *https://vladausk.ba/v4/files/media/pdf/623a026240d084.03943493_Prijedlog%20Zakona%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20javnom%20informiranju.pdf*, last visited April 13, 2025.

freedoms, i.e., the right to freedom of expression (Transparency International BiH 2015). These provisions were debated during the legislative process and were amended from the original Draft and Proposal of the ZJRM RS.[12]

Clear and specific definitions of the fundamental elements of public order and peace infringements are necessary to ensure that there is no opportunity for arbitrary or uneven interpretation and application (Muratagić 2015, 6). Paragraphs 3 and 4 of Article 2 define the concept and scope of a public place, encompassing "any place where there is free access for individually unspecified persons, without conditions or under certain conditions", or "any other place where an offence has been committed and the consequence has occurred in a public place."[13] The criticism of the nonexistent resources and professional competence of the police for the implementation of the misdemeanor system on the Internet, addressed to the Draft CS, also applies to the existing legislative solutions in RS.

Išerić (2022, 39) states that it is not possible to examine the implementation of this legislative solution, because the data of the RS Ministry of Internal Affairs on the implementation of the Law on Public Order and Peace of RS and the Law on Misdemeanors of RS is not available to the public. Without the adequate analysis of the implementation of the existing legislative framework, we cannot answer the question of what negative or positive impact such solutions have in terms of freedom of expression and regulation of the Internet. The impossibility of public analysis of the application of the law supports the thesis that such solutions leave room for the unsystematic application of misdemeanor provisions on the Internet. The lack of access to statistical data maintains the concern that the misdemeanor provisions are not applied on the Internet and that such solutions do not meet the goals advocated by legislators. The fact that statistics are not available does not mean that these rules do not have any effect. As media law doctrine teaches, the threat of sanction for the spoken word leads to self-censorship (the so-called "chilling effect"), which consequently leads to some people not daring to express themselves, resulting in no need to apply the sanctions (Pech 2021, 5).

[12] See Law on Public Order and Peace of Republika Srpska, Art. 6, *Official Gazette of Republika Srpska* 11/ 15 and 58/2019.

[13] See Law on Public Order and Peace of Republika Srpska, Art. 2 (3–4), *Official Gazette of Republika Srpska* 11/15 and 58/2019. Translated by author.

4. A COMPARATIVE OVERVIEW OF THE LEGISLATIVE FRAMEWORKS IN CROATIA AND SERBIA

Certain jurisdictions define the Internet as a public place in the laws on offenses against public order and peace. As previously stated, legislators in BiH justify the future definition of the Internet as a public place on the grounds that neighboring countries and a significant number of EU countries extend misdemeanor liability to the Internet. To present the actual situation, and the exact legal definitions and applications of misdemeanor liability, we will provide a brief overview of the laws on misdemeanors in Croatia and Serbia and their application, with emphasis on the expansion of misdemeanor liability to the Internet by equating the Internet with a public place.

4.1. Croatia

The Law on Misdemeanors against Public Order and Peace of the Republic of Croatia,[14] in addition to not defining public places, does not define provisions related to possible unlawful misdemeanor behavior on new platforms. However, the police in the Republic of Croatia does initiate misdemeanor proceedings, for example, for insulting and belittling authorized state officials through social media platforms. According to Juras (2015, 97), the definition of a public place in legal theory and jurisprudence is understood to include both places where access is possible for an infinite number of people (a public place in the narrow sense, or a real public place) and places where access is not possible for an infinite number of people but where the public can still access the act or its consequences (a public place in the broad sense, or a fictitious public place).

Peulić, Matijević and Palić (2023, 55) point out that such an interpretation could raise doubts regarding Article 2 of the Law on Misdemeanors against Public Order and Peace,[15] which, among other things, states that no person may be punished if the act was not prescribed as punishable.

[14] See Act on Misdemeanors against Public Order and Peace, *Official Gazette of the Republic of Croatia* 41/77, 52/87, 55/89, 5/90, 30/90, 47/90, 29/94.

[15] See Act on Misdemeanors against Public Order and Peace, *Official Gazette of the Republic of Croatia*, Art. 2 41/77, 52/87, 55/89, 5/90, 30/90, 47/90, 29/94.

Although insulting and belittling is indisputably a misdemeanor, the dilemma exists if the public place and networks – as a place where a misdemeanor can be committed – have not been defined (Peulić, Matijević, Palić, 2023, 63). There is still no consensus on the status of the Internet as a public space, despite attempts to compare it to public places, due to the broad interpretation of the definition of public place (Despot 2022).

The Law on Misdemeanors against Public Order and Peace has undergone changes to the provisions exclusively related to currencies and the amount of the fine. The 2023 amendments, in which the amount of the fine has been significantly increased, have been criticized that such a law borders on censorship, and that it is necessary to adopt a new law adapted to the changes in social circumstances (HRT 2023).

By analyzing the statistics of the Ministry of the Internal Affairs of the Republic of Croatia (MUP), we can conclude that out of the 15,266 recorded offenses against public order and peace in 2022, only 10 cases are listed under "spreading fake news", of which four occurred in "streets, squares, etc.", and six were in "other places" (Ministry of Internal Affairs of Croatia 2023). It is important to point out that there are no separate category for the Internet in the statistics, and clearly cases taking place on the Internet are marked as occurring in "other places". Nine of these misdemeanors were committed individually, and one case is "in a group". In the 2021 report, the Ministry of Internal Affairs recorded 19 cases (Ministry of Internal Affairs of Croatia 2022) and in 2020, a year marked by the COVID-19 pandemic, out of a total of 17,006 violations of public order and peace, 59 were "spreading fake news", of which 23 were on the street, square, etc., 3 in a facility, and 33 in other places (Ministry of Internal Affairs of Croatia 2021).

The attached statistics show that the application of misdemeanor provisions by interpreting the Internet as a public place results in an insignificant number of misdemeanor fines, and there is no clear way of applying misdemeanor provisions to the Internet. It is also necessary to point out that an indictment has been filed for committing the offense of insulting officials (Torpedo.media n.d.) due to a comment in which a user insulted and belittled police officers with derogatory words in connection with actions during the COVID-19 pandemic. Statistical analysis shows that even with the application of such an interpretation, the number of misdemeanors committed in "other places", i.e., on the Internet, is insignificant, but the lack of clear determinants of when and why misdemeanor provisions will be applied does not dispel the fear of arbitrariness.

4.2. Serbia

In the Republic of Serbia, Article 3 of the Law on Public Order and Peace defines a public place as "a place accessible to an indefinite number of persons whose identity has not been predetermined, under the same conditions or without special conditions."[16]

The Law on Public Order and Peace defines the concept of a public place by determining the characteristics of the place that constitutes a public place, without specifically citing the example of a public place, allowing the possibility of reviewing whether a certain place meets the criteria of a public place.[17]

Jeličić (2023, 811) lists several violations committed on the Internet that meet the criteria of the definition of being committed in a public place. Furthermore, Jeličić points out that the act of committing the offense of indecent, insolent, and reckless behavior, referred to in Article 8 of the ZJRM, can undoubtedly be undertaken on the Internet, in various ways: by posting indecent comments or photos on social networks and websites or other inappropriate actions, insolent comments or messages that are distributed on the public network (Jeličić 2023, 823).

Jeličić (2023) analyzes in detail the possibility of applying other offenses to the Internet, such as the offenses from Article 9 insults and threats, which takes place on social networks.[18] These violations, which have already been discussed, can occur in a public place and public Internet.

The Internet is suitable for the commission of violations referred to in Article 14 (ticket scalping).[19] The act consists in the unauthorized offering, sale or resale of tickets for cultural, sporting and other events, or unauthorized organization or facilitation of the resale of tickets for such events.

Disturbing citizens by witchcraft, divination or similar deception is the name of the misdemeanor referred to in Article 15, and entails the engagement in witchcraft, fortune telling, interpretation of dreams or similar

[16] Law on Public Order and Peace, Art. 3, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018, translated by author.

[17] See Law on Public Order and Peace, Art. 3, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018.

[18] See Law on Public Order and Peace, Art. 9, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018.

[19] See Law on Public Order and Peace, Art. 14, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018.

deception in a way that disturbs citizens or disturbs public order and peace. This offense can also be committed via the Internet in different ways and its existence requires the occurrence of a consequence.[20]

The analysis of these articles confirms that it is possible to apply the misdemeanor framework to the Internet with a broad definition of public places, and the concept of public place can also be applied to the Internet by interpreting the characteristics of individual cases using the existing misdemeanor framework. It is necessary to emphasize the difference between defining the Internet as a public place and other definitions that allow for expanding misdemeanor liability online. The fact that a significant number of violations can be carried out on the Internet, however, does not confirm that the Internet meets the criteria for a public place. In the next sections we reflect on the similarities and differences between the Internet and a physical public place, in order to demonstrate the possibilities of treating the Internet as a public place.

5. THE SIMILARITIES AND DIFFERENCES BETWEEN THE INTERNET AND A PUBLIC PLACE

The idea of treating the Internet as a public place is based on finding analogue solutions in the physical world that could be applied to the digital one, which would avoid the uncertainty and risks that are immanent to the creation of new legal institutes and their application. This concept is also referred to in the literature as a "digital public square" and refers to online places where people participate in discussions, share ideas, and participate in democratic decision-making (Franks 2021, 427). Just like a physical public square, it is a place for open dialogue and expression. The concept is not only academic, but also recognized by decision-makers. The U.S. Supreme Court ruled in *Packingham v. North Carolina*[21] that the Internet is a modern public square.[22] Consequently, the Supreme Court declared that a law prohibiting registered sex offenders from using social media sites was unconstitutional, deeming it inconsistent with the First Amendment's protection of freedom

[20] See Law on Public Order and Peace, Art. 15, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018.

[21] U.S. Supreme Court, *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017).

[22] Justice Alito wrote a concurring opinion stating that "if the entirety of the internet or even just 'social media' sites are the 21st century equivalent of public streets and parks, then States may have little ability to restrict the sites that may be visited by even the most dangerous sex offenders."

of expression. As Franks (2021, 428) observes, the concept of a digital public square is descriptive and normative. The descriptive value is reflected in the previously given description, where a new phenomenon is explained using existing categories. If the public square as a concept has been known for millennia, then the risks and opportunities associated with it are also known. Normative value refers to the rules that the Internet needs to regulate, relying on the rules that apply in the previously known. This is a question of value to which jurisdictions on opposite shores of the Atlantic Ocean give different answers. While in the United States freedom of expression to be perhaps considered the most valuable, as exemplified by its First Amendment position to the U.S. Constitution, in European countries it is considered it one of the freedoms that competes with others and can be restricted by them.[23] The normative value of the concept of the public square can therefore be understood differently. In the United States, the Internet is viewed as a "marketplace of ideas" (Blocher 2008, 824–825), a traditional concept historically applied to physical spaces and now upheld by the U.S. Supreme Court (Weiland 2017).

To consider a physical public place and the Internet as public places would mean that they meet the conditions envisaged by the terms, which would enable a comparison between them. For example, the Law on Public Order and Peace of Serbia[24] stipulates that a public place is "a place accessible to an indefinite number of persons whose identity has not been predetermined, under the same conditions or without special conditions." In the Sarajevo Canton, the Law on Misdemeanors against Public Order and Peace regulates a public place as "a place where there is free access to an indefinite number of persons without any conditions (streets, squares, public roads, parks, picnic areas, waiting rooms, hospitality, trade and craft shops, means and facilities of public transport, etc.) or under certain conditions (sports stadiums and playfields, cinema, theater and concert halls, exhibition halls), as well as other places that serve for such purposes during certain periods of time (land or premises where public gatherings, competitions are held, etc.)."[25] The criteria provided in these legal definitions do not clearly define what constitutes a public place in the comparative legal analysis of Bosnia and Herzegovina and neighboring systems. What is indisputable is that these are

[23] See, inter alia, Nieuwenhuis 2000). Freedom of Speech: USA vs Germany and Europe. Netherlands Quarterly of Human Rights, 18(2), 195–214 (2000), *https://doi.org/10.1177/092405190001800203*.

[24] See Law on Public Order and Peace, *Official Gazette of the Republic of Serbia* 6/2016 and 24/2018, Art. 3(2), translated by author.

[25] See Law on Offenses Against Public Order and Peace, Art. 4, *Official Gazette of the Sarajevo Canton* 18/2007, 7/2008, and 34/2020.

places that are not private and, as such, closed to an unlimited number of people. They should be accessible to anyone who wishes to do so, provided that they respect the basic rules of conduct.

Defining the Internet as a public place presents numerous challenges, both theoretically and practically, as this disregards the unique characteristics of digital environments. The proliferation of different AI models makes the comparison untenable. A large number of interactions between users on the Internet are not done with other people, but with chatbots, generative artificial intelligence models, and other types of computer programs. Unlike the physical world, it is often impossible to assess whether the interaction is occurring with humans or with any of these forms of human creation.[26] It is estimated that the number of AI-generated content on the Internet will account for 90% of all content by 2025 (Garfinkle 2023). Thus, the recently adopted EU Artificial Intelligence Act (Regulation (EU) 2024/1689) provides for special rules on generative AI models that can create content (including text) so successfully that users cannot be sure whether the content is created by humans or artificial intelligence. This situation can hardly occur in the case of a physical public place where encounters take place between natural persons.

Furthermore, the Internet ensures anonymity, a characteristic that users can use to express views that they would not otherwise express or that would cause them discomfort. Anonymity is a value because it ensures that the truth is told and famously – "The emperor is naked." Anonymity, on the other hand, is a tool for concealing hate speech or presenting disinformation for the purpose of manipulating public opinion, thereby influencing one's reputation or public opinion on a particular topic. Numerous studies have shown that people are more likely to engage in violent behavior when they feel isolated from the consequences, especially when their identity is hidden (Winhkong 2017, 1228). Anonymity allows for disinhibition, which can have positive effects on the free exchange of ideas, but can also encourage reckless and destructive behavior that many individuals would avoid in personal contact in the physical world. Anonymity makes it difficult to discover the identity of the speaker and consequently makes them shielded from liability for such behavior (Franks 2021, 436). Related to this is a trait that streets and other physical public places have, but which cannot be attributed to the Internet or to traditional media, such as radio or television: what is said on the street will reach those present, who cannot easily ignore it. In relation

[26] In this way, Chat GPT has passed the so-called Turing test, which means that it can successfully mimic human behavior to the extent that other people cannot easily notice that they are interacting with an artificial intelligence. See Biever 2023.

to other means of communication, any individual faced with an unpleasant message can always turn the page, change the channel, or leave the website. On the other hand, on the street or other public place, the listener is often confronted with speech that could otherwise be abolished.

Another key difference lies in how these environments are tailored to meet anticipated needs and preferences. Streets as public places are unchangeable, regardless of who steps on them. The architecture of the streets, the number of people walking through them, the smells they can smell and so on will always be unchanged, no matter who the person on the street is. The street, like other physical public places, is relatively static, regardless of who is in it. In theory, the Internet works on the same principles. In the earlier stages of the use of the Internet, it was conceived as an unbounded place. John Perry Barlow, founder of the Electronic Frontier Foundation, wrote the Declaration of Independence of Cyberspace in 1996 (Barlow 1996). This document expresses an early optimism about the Internet as a place of freedom and aptly expresses the spirit of the times: "Governments of the industrial world [...] You have no sovereignty where we gather. [...] I declare the global social place we are building to be naturally independent of the tyrannies you seek to impose on us. Cyberspace does not lie within your borders. Do not think that you can build it. [...] It is an act of nature." The cyberspace in question has been significantly reduced today. This does not mean that it does not exist, but that users do not spend their time in it for the most part. A large part of our being on the Internet is not in certain non-administered parts where there is freedom of movement and choice of what is seen and how to react to what is seen. In fact, much of the time that users spend on the Internet takes place in centralized parts managed by Internet intermediaries, usually large technology companies that have been becoming larger over time. So, contrary to the expectation that the state is a source of danger to the rights and freedoms of individuals on the Internet, large technology companies have come forward.[27] Due to the specific business model (Zuboff 2018, 32) – and other reasons such as unadjusted competition law and a widespread belief in the correctness of deregulation of the Internet (Tyagi, Anselm, Cauffman 2024) – the wide availability of digital technologies has made these digital companies indispensable when using the Internet. These

[27] That doesn't mean that countries around the world aren't getting more and more involved in cyberspace. Sometimes their intervention is initiated by a specific social problem or incident related to the use of the Internet such as various types of fraud, terrorist financing or money laundering. On the other hand, certain jurisdictions have decided to set national rules for Internet users on their territory, creating parts of cyberspace that are de facto national. See: *https://www.economist.com/the-economist-explains/2016/11/22/what-is-the-splinternet*.

are large places that, due to their universality and unavoidability, sometimes resemble the Internet, and it seems that nothing but them comprises the Internet. As Slavoj Žižek (2009) noted, "the market has invaded new spheres which were hitherto considered the privileged domain of the state [...] We are thus in the midst of a new process of the privatization of the social, of establishing new enclosures."

There are at least two major differences between such private places as digital platforms owned by intermediaries and the Internet as a public place. Users who use the digital platforms of large online intermediaries conclude contracts before they start using them. These agreements stipulate rules of conduct, the authority of the intermediary to remove activity or access to the user, as well as a number of other rules governing their interaction. One of the rules is so-called algorithmic profiling. This refers to the ability of Internet platforms to adapt to the user's habits. After processing data collected through the analysis of access and all the activities of each individual user on the digital platforms, intermediaries use algorithms to gain the ability to predict the user's preferred content, as well as those that they will like less. As Citron and Richards (2018, 1357) stipulate, "the most important legal instruments governing free speech on the Internet today are not derived from the Constitution, but from contract law – the terms of service governing the relationship between Internet companies and their customers."

Guided mainly by commercial interests, technology companies design specific environments that favor our preferences and interests. As a result, the Internet becomes personalized and is not static, as is the case with the street. The information received by one user may not be received by another, so the Internet is no longer a place that guarantees that the person on it will be able to hear different voices. This phenomenon is recognized and these are called echo chambers, places that provide their users with information they want to hear, which at the same time means that they do not make available information that the algorithm considers unfavorable or undesirable to them. Echo chambers refer to communities of like-minded people who mutually strengthen their own worldviews and reinforce certain beliefs that they already have (O'Hara, Stevens 2015, 2). Moreover, the digital platforms are not inherently intended to pursue truth, ensure governmental accountability, or promote democratic deliberation. Instead, their primary design focuses on capturing and maintaining user attention through the constant flow of compelling content, which often favors extreme and polarizing information (Weiland, Morgan 2022, 371). Echo chambers are not necessarily a product of the digital platforms' end goal to polarize public. Rather, as platforms seek to increase user engagement, an effective

way to achieve this is to intensifying polarization. They seek engagement because the time users spend interacting with content – such as liking, sharing, and retweeting – correlates with the time they are exposed to paid advertisements, which are the primary source of revenue for digital platforms. Content that evokes partisan fear or outrage is particularly viral, thereby effectively supporting this advertising-driven business model (Barrett, Hendrix, Sims 2021, 17).

Therefore, users of Internet platforms are not exposed to different ideas and content that would question their preconceptions and attitudes, but to those that confirm them. Internet platforms facilitate the rapid dissemination of information and viewpoints, regardless of their quality, innovation, and societal importance. The criteria are primarily popularity, i.e., public interest in what is presented. If the content has the potential to shock, then the potential to capture the attention of a wide range of people is greater. Furthermore, the interactions typically take place on Internet platforms, which are private companies whose primary goal is to generate profits for shareholders. They have an incentive to support attention-grabbing speech, regardless of whether it is harmful or not, and thus to obscure other topics that could be more important to the public. Moreover, content that has become available on the Internet is very difficult to remove permanently, despite the existence of the right to be forgotten, which is recognized in the law of the EU and the Council of Europe (CoE) (Article 19 2016).

Another important difference between the street as a public place and the Internet is that state laws directly govern conduct in physical public spaces, while online behavior is typically regulated by the terms of service set by private entities. The rules of conduct on digital platforms are prescribed in the contract between the user and the Internet intermediary, which is usually referred to as terms of use. According to Kim (2022, 88) this is a form contract whose main feature is that the user does not have the possibility to modify its content.[28] Over 90% of users do not even read their content, according to a study conducted in the United States (Deloitte 2017). According to Savin (2020, 263) the user would probably not even notice if there are certain contractual provisions in the text that could be

[28] Kim (2022) observes that the legal fiction according to which the imposition of terms of business is equal to consent to the will ignores the centrality of the consent to the contract by the user. Allowing the stronger party to characterize the forced imposition of adhesive terms as a contract is similar to allowing the robber to call the robbery a donation because the victim did not resist enough. It also points out that not all such contracts are created equal, but that too often is simply ignored – the contract is a creation of the law and as such must meet certain requirements. If this is not the case, it is not a contract despite what one party may call it.

considered unfair. An experiment conducted at the University of Connecticut addressed this issue. The authors created a fake social network called Name Drop and wrote a terms and services agreement that users agreed to during the signing up process. The agreement included a provision that users would give up their first-born child in exchange for using the social network, and that anything shared by users would be forwarded to the U.S. National Security Agency. Ninety-eight percent of the participants agreed to the terms (Obar, Oeldorf-Hirsch 2018).

As Internet intermediaries become more and more unavoidable, the inequality of the parties – as a fundamental principle that permeates civil law (and other private law relations) in this contractual relationship – has become increasingly pronounced. Users must agree to the content of rules of conduct that they cannot influence, and the leeway not to do so is increasingly reduced as their business and private lives are tied to the use of digital platforms.[29] In 2024, the number of social media users will exceed five billion (Forbes 2024). For example, according to Phenomena (2023) in the first half of 2022, large tech companies (Google, Netflix, Facebook, Microsoft, Apple, and Amazon) generated almost half of all Internet traffic.

The user can influence the binding law in the physical public place since they have the opportunity to influence the law through the election of their representatives. Furthermore, since the rule-makers of the rules of conduct on the street are not guided solely by commercial interests, the content of the rules that will be binding are more suitable for the protection of the human rights of individuals than the rules established by private Internet platforms, which are primarily aimed at making a profit for their creators. Internet platforms are commercial entities, designed to maximize profit, and not with the aim of defending freedom of expression, preserving collective

[29] In certain industries, the regulator has the authority to consider the terms and conditions of business that companies offer to their customers, with the aim of correcting the fact that companies independently draw up the text of the contract and their counterparty is a party that is generally not equal. In Bosnia and Herzegovina, Internet platforms are not required to submit terms and conditions to any state organization for consultation or approval before offering them to their users. Exceptions exist when they provide services for which they are the regulator, such as banking services. Due to the outdated legislative framework (the Communications Act of 2003, which has been amended several times, most recently in 2012), the Communications Regulatory Agency does not have comprehensive competence over the Internet, so many problems arising from the inequality of the parties remain out of its reach. In addition, another specialized institution for consumer protection is the Ombudsman Institution, but its competences are also limited. First of all, it can act ex-post, after a violation of consumer rights occurs, but even then, it does not have the competence to make binding decisions, but only to initiate judicial and administrative proceedings and give recommendations.

heritage, or positively influencing users' creativity. The people who work in such companies are private employees, not public servants (Taylor 2014, 221). The restriction of the rights and freedoms of individuals, therefore, is not carried out by public authorities, but by private companies with a goal that is particular and focused on market success.

When it comes to public places that can be privately owned, such as banks, museums or shopping centers, they have their own specifics that distinguish them from digital platforms. Such physical places have their rules enforced primarily by staff, allowing owners to directly control the behavior and experience of visitors in a defined, tangible environment. These places are subject to clear rules and restrictions, with users being physically present and interactions taking place in real time. In contrast, digital platforms operate in a virtual environment without borders, in which access is given through online connectivity and digital platform membership, rather than physical presence. While digital platform owners also impose rules and guidelines, enforcement is algorithmic or reactive, often relying on user reports rather than direct oversight. Digital platforms facilitate interactions, which can be asynchronous, anonymous and global, blurring the boundaries between the public and private realms and enabling a more fluid, expansive, and often less predictable user experience. Consequently, the imposition of rules and their enforcement by the state becomes more difficult, while private public places are often subject to clear legal obligations, and owners usually cooperate with law enforcement to maintain order.

6. THE RISKS AND IMPLICATIONS OF DEFINING THE INTERNET AS A PUBLIC PLACE

Even if we do not take into account the previous considerations about the distinct theoretical differences between the Internet and public places, the issue of the risks and consequences of defining the Internet as a public place remains, especially through misdemeanor provisions.

Although the regulation of behavior on the Internet – and thus the definition of a public place – is a current and important issue, the media situation in BiH tells us that there are a number of areas that require more urgent legislative activity. The primary duty of state actors concerning the freedom of expression and the freedom of the media is to refrain from interference and censorship and to ensure a favorable environment for an inclusive and pluralistic public debate (European Commission 2018).

Minister of Internal Affairs of Canton Sarajevo Admir Katica stated that "Canton Sarajevo police officers are trained to punish offenses on the Internet provided for in the draft law, such as the spreading of fake news" (Zatega 2023, translated by author). Examples from Croatia on the implementation of misdemeanor provisions on the Internet tell of the insignificant number of issued misdemeanor fines, resulting in the justified fear that police officers are not adequately trained to punish misdemeanors on the Internet. Supervision over the implementation of this law is carried out by officers of the Police Directorate, who control the implementation of orders. The omission of a court instance from the assessment of what constitutes hate speech, fake news and disinformation is a major problem. This solution practically means that the police, in the part of misdemeanor proceedings, assess elements that are challenging even for court proceedings due to their complexity and possible interference with the freedom of the media. Comparative practice makes it clear that any restriction of the right to expression must be subject to judicial proceedings (Gačanica 2023). According to Gačanica, it is not clear whether the legislator made an omission, forgetting that it added the work of the media to the provisions on misdemeanors and thus left an imprecise solution, or whether the legislator consciously and intentionally introduced the possibility of banning media for committing a misdemeanor. The fact that the amount of online content is increasing exponentially and steadily forces the "big players" to invest heavily in AI systems and human resources to eradicate hate speech (Finck 2019, 5), serving as a counterargument to the state's capabilities and equipment – i.e., as an argument in favor of self-regulation of social networks.

6.1. The "Big Players"

The extent to which the "big players" have invested in hate speech regulation is demonstrated by the fact that, in 2019, it was revealed that Meta and subsequently Facebook engaged more than 20,000 people to identify hate speech on its platform. YouTube reportedly employs more than 10,000 people who check whether content violates its internal rules of conduct online. This type of investment certainly cannot be achieved by the stratified state administration. The difficult legal definition of hate speech is additionally highlighted as a problem. Meta reported in February 2021 that 97% of hate speech removed from Facebook was spotted by automated systems before anyone flagged it, up from 94% in the previous quarter and 80.5% at the end of 2019 (Schroepfer, 2021). Criticism of the inability to adapt to cultural places when flagging unwanted content has also been directed to AI mechanisms (Alkiviadou 2021, 105). The market of South

Slavic languages is not significant for the "big players", and consequently AI mechanisms for removing unwanted content in this language area does not have the level of development and efficiency of the mechanisms for English, Spanish and other languages with a large number of speakers. In addition to EU regulation, the owners of large digital platforms dictate the rules of the game.

Since mid–2023, significant changes in platform governance have emerged, particularly following Meta's announcement of sweeping changes to its content moderation policies. These changes include the removal of fact-checking programs and the introduction of user-driven "community notes" systems, modeled after X (formerly Twitter) (TechPolicy. Press 2025). Meta CEO Mark Zuckerberg emphasized that these shifts aim to prioritize free expression while reducing perceived censorship, yet critics argue that such policies may lead to increased disinformation and harmful content (CNN 2025). Amnesty International has raised concerns that these changes could increase risks to vulnerable communities, potentially fueling violence and human rights abuses, as seen in previous instances of inadequate content moderation (Amnesty International 2025). These developments highlight the complexities of defining the Internet as a public space, as they challenge traditional regulatory frameworks and underscore the evolving dynamics of platform governance showcasing that the owners of large digital platforms tend to avoid any regulation of digital platforms.

Existing AI mechanisms with human supervision show certain shortcomings and require significant amounts of funds that digital platform owners allocate to eliminate hate speech and fake news. Such considerations further show how unjustified it is to expect that insufficiently equipped administrative bodies would be able to monitor the immense number of social interactions on social networks. In conclusion, the application of misdemeanor provisions on the Internet by inadequately trained officials can ultimately achieve a chilling effect (Ó Fathaigh 2019).

6.2. The Path Forward

With the current media picture in Bosnia and Herzegovina, the announcement of the expansion of the public sphere to the Internet has resulted in a justified fear that the trend of legislative activity superficially regulating the media space and resulting in ambitious and unclear solutions will continue. From a legal point of view, "chilling effect" can be defined as the negative effect of any state action on natural and/or legal persons, which results in preventive neutralization and prevention of exercising their

rights or fulfilling their professional obligations, due to the fear of being subjected to formal state procedures that could lead to sanctions or informal consequences such as threats, attack or defamation (Pech 2021, 4).

The shortcoming of the Draft CS, as well as of the existing laws in Croatia and Serbia, is primarily the imprecise definitions of essential terms. The absence of legal definitions of terms such as "incorrect information" and "fake news" results in legal uncertainty and the possibility of arbitrary application of legal solutions.

The challenge of defining these terms does not imply that the legislator should abandon the regulation of social relations on the Internet, but such problems require more innovative legislative solutions that do not involve rewriting provisions that have proven to be ineffective. Although the Law on Public Order and Peace of the Republic of Serbia contains the meaning of the terms, many of them are not clearly defined. The argument that misdemeanor provisions are not frequently applied to the Internet in practice can support the thesis that defining the Internet as a public place will endanger freedom of speech. However, the nature of this right and the chilling effect tells us that in order to create the impression of a controlled and censored media place, it is enough to pass laws that can cause the media and significant number of citizens to refrain from any form of speech that is perceived as criticism of the government in the public place.

As Bosnia and Herzegovina is a candidate country for EU membership, it would be advisable to explore different trajectories to curb harmful speech. The EU Digital Services Act (DSA) represents the Union's constitutional approach to regulating digital platforms' power, as part of a broader set of measures to shape its digital future. Alongside other legislative initiatives, such as the GDPR and proposals for the Digital Markets Act and the Artificial Intelligence Act, the DSA seeks to apply fundamental rights horizontally to private entities. It introduces substantive and procedural safeguards that protect EU constitutional values in the digital realm, illustrating the EU's strategy to limit the influence of private digital platforms and promote accountability in the algorithmic society. As noted by de Gregorio and Pollicino (2021), the constitutional law provides two remedies to mitigate the consolidation of unaccountable powers of the digital platforms "the first concerns the horizontal application of fundamental rights vis-à-vis private parties; the second comes from the new phase of European digital constitutionalism, looking at the constellation of substantive and procedural rights to increase the transparency and accountability of platforms powers." Instead of attempting to tackle a real problem with erred tools, Bosnia and

Herzegovina should rather seek to learn lessons from the organization it strives to join. This is its legal duty, ultimately, based on the Stabilization and Association Agreement that Bosnia and Herzegovina signed in 2008.

The European Court of Human Rights has developed a robust framework for protecting freedom of expression under Article 10 of the European Convention on Human Rights. Landmark cases of the ECHRhave reinforced the principle that restrictions on speech must be necessary and proportionate (ECHR, Nagla v. Latvia, App. No. 73469/10, 2013. and ECHR, Sunday Times v. United Kingdom, App. No. 6538/74, 1979). Additionally, the Council of Europe has emphasized that the Internet provides a unique environment for exercising human rights, necessitating tailored regulatory approaches.

The CoE Internet Governance Strategy highlights the need for a balanced approach that safeguards freedom of expression while addressing challenges, such as disinformation and hate speech. These standards directly influence the debate on whether the Internet should be classified as a public space, as they underscore the importance of ensuring that digital platforms remain open forums for democratic discourse, while respecting fundamental rights.

The ECHR has played a crucial role in shaping the legal understanding of the Internet as a public space, particularly through its interpretation of Article 10 of the European Convention on Human Rights, which protects freedom of expression.

The ECHR has recognized that the Internet is one of the principal means by which individuals exercise their right to receive and impart information. The Court emphasized that the Internet enhances public access to news and facilitates democratic discourse (ECHR, Cengiz and Others v. Turkey, Apps. Nos. 48226/10 and 14027/11, 2015). This ruling suggests that digital spaces function similarly to traditional public forums, reinforcing the notion that online platforms should be subject to public space protections.

Additionally, the ECHR ruled that blocking access to an entire online platform due to a single violation was disproportionate and arbitrary (ECHR, Ahmet Yıldırım v. Turkey, App. No. 3111/10, 2012). This case highlights the Court's stance that restrictions to online speech must be necessary and proportionate, similar to regulations governing speech in physical public places.

The Council of Europe has also issued recommendations that influence this debate. Its Internet Governance Strategy stresses that digital platforms should uphold fundamental rights, ensuring that online spaces remain open for democratic participation. These standards suggest that while

the Internet shares characteristics with public spaces, its regulation must balance freedom of expression with concerns, such as disinformation and hate speech.

7. CONCLUSION

Equating the concepts of the Internet and public place is problematic for several reasons, which we have tried to show in this paper. The doctrine behind such an attempt is based on the juridical effort to explain the unknown through the known and to place the unknown into categories and concepts whose risks can be predicted and whose potentials can be used.

The problem that legislators are trying to solve by expanding the concept of public place to the Internet is real and significant. Many jurisdictions that have more resources, human capital, and experience in regulating digital technologies are struggling with this at the present. As historical experience teaches us, the law can be abused by the holders of power. The freedom of expression – as one of the fundamental freedoms without which a democratic society cannot survive – is very fragile and requires an environment in which individuals must feel free in order to readily express ideas that others, especially those in power, will not like. The solution to treat prohibited speech or the dissemination of disinformation through a well-known institute aimed at preserving public order and peace is too simplistic since it ignores the specificities that the Internet has in relation to physical public places. In this paper, we point out that there are numerous problems that make it impossible to solve this problem through without creating significant social damage. There are several issues, such as how to precisely terminologically define disinformation and what it means to spread panic. Who is adequately equipped, professional and has enough time to deal with this issue in the online space, where billions of posts and comments are written every day? This is especially controversial given online places where users are sometimes unidentifiable and remain anonymous. Concerns about unclear and ambiguous legal provisions, the possibility of abuse by the authorities and the risk of undermining freedom of expression prevail.

The shortcoming of the Draft CS, as well as the existing laws in Croatia and Serbia, is the imprecise definitions of key terms. Imprecise or nonexistent legal definitions of terms, such as disinformation and fake news, lead to legal uncertainty and allow for arbitrary interpretation. By jointly considering the differences between the nature of the Internet and public place, and the theoretical impossibilities of defining the Internet as a public place and the risks that the legislative definition of the Internet as a public place through

misdemeanor provisions results in, we can conclude that with the current media picture and all the negative consequences, defining the Internet as a public place in BiH is not a justified choice.

An overview of the legal frameworks in Croatia and Serbia reveals the challenges of defining the Internet as a public place in the context of misdemeanor laws and reveals the negative effects of broad definitions that result in arbitrariness in their application. In Croatia, the absence of explicit provisions relating to the application of misdemeanor provisions has led to a broad interpretation of the public place, which has enabled misdemeanor punishment of behavior on the Internet, such as insulting and belittling officials. In Serbia, the legal framework similarly allows for a broad interpretation of public places, making it easier to sanction various offenses in the online place under existing misdemeanor laws. The Internet is increasingly dominated by several large digital platforms where a large number of user interactions take place.[30] Unlike the street, these are private places where the rules of conduct are determined almost unilaterally by technology companies. In addition, digital platforms feature algorithmic profiling which adapts the content to users individually, based on what the algorithm considers desirable.

The path that the leading jurisdictions in the field of digital technology regulation are taking is to regulate the obligations of Internet intermediaries, prescribe obligations in the field of content moderation generated by users, and strengthen media literacy, i.e., the ability of individuals to critically analyze the information available to them on the Internet. Although it may be appealing to tackle the new problems with existing solutions, the challenges brought about by undesirable or prohibited speech on the Internet is a new challenge and needs to be approached as such.

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