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**DIGITAL PLATFORMS AND THEIR NORMATIVE ROLE:  
LOOKING THROUGH THE LENS OF EUROPEAN FUNDAMENTAL VALUES<sup>1</sup>**

The article is devoted to digital platforms and their impact on individuals and societies, including the legal systems and values on which the European legal order is based. The article provides a brief overview of the understanding of the term “digital platforms” and how it relates to “online platforms”, but for the purposes of this research, this understanding is narrowed to these two types of platforms: (1) those intended for the exchange of information, goods or services between producers and consumers, mainly by providing services, and (2) so-called “social media”, that is, those previously seen as communities and places for the exchange of opinions.

The article questions whether the nature and activities of modern digital platforms are compatible with the requirements of European fundamental values, in particular human rights, democracy and the rule of law. Special attention in the research is paid to the normative role of digital platforms, which includes both the directly regulatory role and the broader role of forming and maintaining certain social norms. This role manifests itself in aspects such as regulatory intervention, changing the social landscape, and replacing public institutions in their key activities and perceptions by individuals. In more detail, the serious influence of digital platforms is expressed in the promotion of specific regulatory norms, regimes for the protection of human rights and the interpretation of the essence of particular fundamental rights, the regulation of social relations through design, the spread of certain types of contractual relations, the replacement of the justice system with restrictive dispute resolution procedures offered by the platforms.

Digital platforms form the habit and tolerance of certain business models, which include the formation of dependence of people and governments on the decisions and actions of the platforms, the absence of alternatives and a monopoly position not only on the market but in broader context. By gaining public trust, platforms supplant traditional public institutions and increase platforms’ influence on public opinion and democratic processes. At the same time, platforms and their owners mostly avoid both legal and moral responsibility for the consequences of their activities for human rights, the rule of law and democracy.

**Key words:** *digital platforms, online platforms, European fundamental values, digital era, normative role, legal regulation, public power.*

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**Разметаєва Ю. С. Цифрові платформи та їх нормативна роль: погляд крізь призму фундаментальних європейських цінностей**

Стаття присвячена цифровим платформам і їх впливу на індивідів та суспільство, включно з правовими системами й цінностями, на яких побудований європейський правопорядок. У статті наводиться короткий огляд розуміння терміну «цифрові платформи» та його співвідношення з «онлайн платформами», але для цілей цього дослідження таке розуміння зводиться до цих двох типів платформ: (1) такі, що призначені для обміну інформацією, товарами чи послугами між виробниками та споживачами, головним чином шляхом надання послуг, і (2) так звані «соціальні медіа», тобто ті, які раніше розглядалися як спільноти та майданчики для обміну думками.

У статті ставиться під сумнів, що природа та діяльність сучасних цифрових платформ сумісна з вимогами європейських фундаментальних цінностей, зокрема прав людини, демократії та верховенства права. Особлива увага в дослідженні приділяється нормативній ролі цифрових платформ, що включає як безпосередньо регулюючу роль, так і ширшу роль формування та підтримки певних соціальних норм. Ця роль проявляється у таких аспектах, як втручання до регулювання, зміна суспільного ландшафту та підміна публічних інституцій у їх ключовій діяльності та сприйнятті індивідами. Детальніше серйозний вплив цифрових платформ виражається у просуванні конкретних регулятивних норм, режимів захисту прав людини та тлумачення змісту окремих прав, регулюванні суспільних відносин через дизайн, поширення певних типів договірних відносин, заміна системи правосуддя процедурами розв'язання спорів, які пропонуються платформами.

Цифрові платформи формують звичку і толерантність до певних бізнес-моделей, що включають формування залежності людей і урядів від рішень та дій платформ, безальтернативність і непохитне монопольне становище. Здобувачи суспільну довіру, платформи витісняють традиційні публічні інституції й посилюють свій вплив на думки людей і демократичні процеси. При цьому платформи й їх власники здебільшого уникають як юридичної, так і моральної відповідальності за наслідки своєї діяльності для прав людини, верховенства права та демократії.

***Ключові слова:** цифрові платформи, онлайн платформи, європейські фундаментальні цінності, цифрова ера, нормативна роль, правове регулювання, публічна влада.*

**Introduction.** Digital platforms have become an integral element of everyday life for many as well as a challenge to legal and economic models in various societies. The financial success of the business of such large platforms as Facebook, Amazon, Alphabet, Uber, Airbnb, etc. is indisputable. Moreover, such platforms are much more than business success stories; they acquire or have already acquired a serious influence on social relations and opinions of individual people, and here and there considerable power that competes with the power of traditional public institutions.

These platforms can be described as “technical artefacts” based on extensible codebase, as well as a “sociotechnical assemblage” with technical and organisational elements [1, 126]. Such platforms were also defined as “a socio-technical phenomenon rather than purely technical artefacts as they encompass both a technical core as well as business networks mediated by a technical core” [2, 574]. Annabelle Gawer writes about “atomistic view of platforms, which it conceptualizes as a locus of exchange across sides (subject to network effects)” [3], which affects the perception of researchers and the general public.

Another term for the platforms which is formally introduced into EU law is online platforms. The Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October



2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) focuses on their ability to have information nature while providing services. Such platforms are defined as “a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information”, whereby a hosting service, in turn, “consists of the storage of information provided by, and at the request of, a recipient of the service” [4]. Online platforms were described as those that “provide a technological infrastructure allowing social actors to enact and utilize networks with a global reach” [5, 564]. According to Nataliia Filatova-Bilous, “online platforms are considered as very powerful economic agents often tending to obtain oligopolistic or even monopolistic positions in the market” [6].

Regardless of which of these terms and their definitions are used, the debate about the impact of the platforms on people and societies, as well as their compliance with legal values and requirements, does not subside.

In order to investigate the digital platforms’ influence on certain values the European legal order is based on, I will narrow their understanding to these two types (1) platforms that are designed to exchange information, goods or services between producers and consumers, primarily by providing services, and (2) so-called “social media”, that is, those that were previously seen as communities and places for the exchange of views.

**Objectives.** The goals of this article are to describe and clarify the digital platforms’ impact in terms of their role in public and private spheres as well as to identify how it affects European fundamental values. Considering such fundamental values, I focus mainly on the triad of human rights, democracy and rule of law. Particular attention will be paid here to the normative role of digital platforms which would include a narrower regulatory role and a broader role of shaping and maintaining social norms.

**Research results.** In their current form, the nature and activity of digital platforms seems to be poorly compatible with the requirements of European fundamental values. This is manifested primarily in the gap between how the platforms declaring and positioning themselves and how they actually act. Digital platforms tend to positioning themselves as actors of the private sphere, neutral intermediaries and a phenomenon that provides connections between the parties of interaction. More often than not, this allows the platforms to seep into the crevices of the slightly cracked house of legal order like water, so to speak. Continuing this analogy, it could be assumed that their erosion of the foundation of this building – fundamental values – may lead to its destruction in the end.

In fact, digital platforms belong rather to the public sphere due to their impressive ability to influence decisions of public importance, almost invisible management of the thoughts and actions of individuals in society, and the formation of dependence on certain technologies implemented by the platforms. Platforms are also not just mediators that are strictly neutral, never interfere and blindly connect the parties to the interaction. This lack of neutrality begins with the value paradigm in which they form the rules of the platforms’ community and continues through the active promotion of ideas, goods and services, ending with a rather serious push for certain human choices. One of the most serious consequences is what could be called “the normative role” of digital platforms.

What do I mean when writing about the normative role of these platforms? This role is seen in the following:

1. *Interfering into regulation.* In the first place, legislation and legal practice have been serving the interests of businesses behind the platforms in countries where there is a lack of strong democratic institutions. Paradoxically, however, today the same is also happening in countries whose democratic mechanisms are strong enough. This is partly due to the fact that the platforms have already gained a lot of power. First of all, it is about their market power, sometimes called “intermediation power” [7, 4] but it cannot be denied that in some cases it is also about political power.

Besides, the new technologies, often implemented by business, emerge at a speed which any regulatory mechanisms cannot cope with, so when a problem is finally evident, it has usually already gone too far. For instance, the users of digital platforms have become addicted and dependent on problematic tech prior to any regulation. Not having a profile on social networks LinkedIn, Facebook, Instagram or on highly specialized platforms today often means being invisible as



professionals in some fields of employment or civic activism. Taking advantage of this dependence, companies acquire a regulatory role, while their business strategies and actions also remaining in the “gray areas” of state regulation. Their acquired power and resources, multiplied by the possibilities of new technologies, their massive reach, on the one hand, and their narrowly targeted impact, on the other – aggravate the problem even further.

As Guy Schleffer and Benjamin Miller rightly noted: “The different actors using social media platforms, whether for good purposes or bad, are exploiting the unprecedented concentration of knowledge power that these platforms have amassed over the past few years” [8, 81]. Possessing knowledge has always been valuable, including in order to increase the impact on people and societies. However, this is even more noticeable precisely in the digital era, when the accumulation of data, their interconnection and the ability to analyze with the help of new technologies open extraordinary ways for such an impact.

There are a number of problems stemming from the above.

One of them was described by Tomer Shadmy who argued that the platforms create and promote a novel regime of rights: “Rights, under this regime, protect the freedom to feel instead of the freedom to choose. They do not generate any duties. The platform itself is not accountable to, or limited by, the users’ rights. This regime of rights, unlike traditional ones, is not functioning through discourse and interpretation, but through code. Thus digital platforms go beyond adding a digital layer to our personal, professional, and political relations: they also add a normative and legal layer, and shape new social contracts, and create an internal, quasi-legal order” [9, 307]. The so-called rules of the community – what is and is not allowed to post or say – are starting to replace the states’ legal rules. This is dangerous for the very basis of legal order: the human rights, which now become a matter of platforms, or rather, their management, and not the result of judicial decisions, expert discussions and public consensus. As a result, platforms impose their interpretation of human rights, especially when it comes to freedom of expression, privacy, non-discrimination. In addition, digital platforms do not have mechanisms for balancing rights in conflict situations, which can be found in national and international law, and adjusted in line with judicial practice.

Secondly, the platforms regulate the understanding of what particular fundamental rights are, relying primarily on their own conceptions, rather than on human rights conventions. The example of freedom of expression and hate speech is illustrative here. According to Stefan Theil, “most private platforms are legally entitled to sanction the expression of users as they see fit, unless a specialised legal regime provides regulation” [10, 671]. This once again emphasizes the problem of false belonging of digital platforms to the private sphere. To clarify this, it should be noted that such a false affiliation of platforms to the private sphere allows them to be protected from the point of view of the requirements to maintain freedom of expression, freedom of entrepreneurship and free access to information in democratic societies, while avoiding such forms of responsibility as editorial for social media platforms or duty to care for services oriented platforms.

Thirdly, digital platforms regulate relationships through elements of their design, such as default settings, feed formation rules, users’ reactions to posts, and even certain visual elements. It is possible, for instance by pending notifications highlighted in red, thus urging a user to react to them asap. Platforms, besides, promote their interpretation of what agreement means and types of contracts that leave no choice. For example, it could be shown in the cases of “I agree” boxes, privacy policy, terms and conditions agreements. The platforms’ architecture, their built-in options and the default elements are reforming the type of communication and even people’s expectations, which are gradually becoming generally accepted and even legitimate.

Finally, justice is being replaced by procedures implemented by digital platforms (user’s complaints, suspending and evicting users from the platform, etc). These are often procedures without further appeal, which are, in principle, rather one-sided. A deleted account that could contain unique information, the results of creativity or many years of professional activity may be impossible to recover. The appeals can be, so to speak, letters to the void, but even the responses received do not contain a detailed explanation of why sanctions were imposed, unlike court decisions that



have mandatory motivational and resolute parts. This can hardly be regarded as meeting the requirements of the rule of law.

2. *Changing the landscape.* Digital platforms form the habit and tolerance for certain business models. Undoubtedly, both users and small businesses can always choose not to use platforms but in the digital age there is no way businesses can compete in the crowded market and users can avoid search engines pushing certain platforms to the top. For instance, if someone has a mini-hotel and does not have an account on Booking and Airbnb, their hotel will be virtually invisible to most customers. If someone is searching for a room it is becoming more and more difficult to find and book this room directly.

It is still possible to stay out of the system but it is turning into increasingly complicated and, at the end of the day, it does not pay off. At the same time, being forced to depend on the platform does not mean having individuals' rights and businesses' legitimate interests sufficiently protected.

In several court cases the Court of Justice of the European Union (CJEU) tried to deal with this, not always successfully. In particular, in the case C-390/18 "Airbnb Ireland" the CJEU constituted that Airbnb is to be regarded as a pure intermediary providing information society services [11]. This decision was definitely in favor of the platform for two reasons: (1) being an information society services provider is highly beneficial as by European law they are entitled to certain significant advantages, (2) being a pure intermediary means not bearing responsibility for most violations committed by the platform stakeholders.

Earlier, in the case C-434/15 "Asociación Profesional Elite Taxi 'Uber'" the CJEU concluded that the services provided by Uber should be classified as a "service in the field of transport" [12] and should therefore be excluded from the information society services. This means that Uber now is held at least partially responsible in cases of passengers rights infringement or bad service provision. This court decision was not in favor of the platform; however it had no major effect on the platform's prosperity.

Some landmark cases look promising. Large platforms are losing the battle more and more often. For example, in cases T-451/20 "Meta Platforms Ireland v. Commission" and T-452/20 "Meta Platforms Ireland v. Commission" the CJEU established that "the contested decision did meet objectives of general interest recognised by the European Union" [13]. In this case, Meta contested the necessity and proportionality of the data requests directed to the platform owner company by the EU antitrust regulator. However, the court considered that the regulator's requests are legitimate and balanced regarding rights.

These examples illustrate the tendency for digital platforms to maintain their influence in both public and private spheres. Despite the heated discussions around landmark judgments and some changes in legislation and especially judicial practice, the measures taken by courts and governments regarding the activities of digital platforms are not sufficient. More often than not the court cases do not really become turning points and hardly help to harness the platforms' expansion. Rather, these court cases focus on details, bypassing the complicated issues and failing to assess how digital platforms affect human rights, democracy and the rule of law in their very essence.

3. *Replacing public institutions.* The power of digital platforms extends far beyond the private sphere and is built partially on underestimating their impact. According to Frank Pasquale, "it is wrong to treat massive internet intermediaries as vulnerable media always in danger of being suborned by the state" [14, 490]. To some extent the state is in danger of being subjugated by digital platforms.

Platforms literally begin to dictate their rules to a wide audience, not only to users of certain digital technologies, contributing to a shift in trust and growing algorithmic dependency. This may lead to "undermining trust in other institutions and some redistribution of legitimacy" [15, 85]. In particular this entails perceiving platforms' information as more truthful, being dependent on their digital products, being influenced by platforms in terms of public opinion, underestimating the consequences of low level of platforms' accountability, etc. The "power is redistributed, flowing away from the hands of traditional public institutions, to which we have entrusted this power under



certain conditions, to the owners of certain technologies, which are often companies” [15, 88]. What is the new norm in public perception is often shaped by the significant influence of digital platforms on that perception. This norm may include the promotion of the gig economy at the expense of workers’ rights or the collection of excessive amounts of data at the expense of privacy.

In one of the studies of digital platforms they are considered as “aiming to change the current institutional settings and replacing rules and norms with new ones” [16, 890]. Then it is emphasized that “the institutionalization of new norms and forms of practices can have both negative and positive impacts for development” [16, 891]. The danger of the situation is that those powerful tools that are in the arsenal of digital platforms can relatively easily be turned to the “dark side”.

In addition, these powerful tools are not always controlled, such as the rapid spread of hate speech or, conversely, the silencing of discussion on pressing issues. Even in the case of controllability of what happens on the platform, controllability in itself is not a guarantee of adherence to a value-based approach. Thus, outbursts of hatred can be beneficial for platform owners because it increases the reach of the audience and allows them to profit from the growth of users number, and the silencing of voices can help promote certain opinions, products or services more successfully. If we add to this mixture the fact that the owners of digital platforms are not elected representatives in democratic and legitimate elections, but sometimes successfully interfere in matters of public interest, you can imagine what a dangerous mixture it turns out to be.

**Conclusion.** Digital platforms shape the online environment, manage trust, increase the impact on people and societies, and promote certain models that are destructive to European fundamental values. These platforms continue to replace public institutions and gain legitimacy, while occupying a niche that is not regulated by traditional instruments quite successfully. They still avoid responsibility, legal and moral, editorial for social media platforms and duty to care for services oriented platforms.

Eventually, the role of digital platforms becomes determinative for legitimate public expectations and even normative in terms of both: legal (regulative) norms and social norms as such. Their attempts to replace the laws of a democratic society exclusively with the laws of the market cannot be recognized as compatible with the requirements of fundamental values, mainly human rights and the rule of law.

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