

**THE KNIN CARTOON: THE CLASH OF PUBLIC AND PRIVATE CONTENT
MODERATION RULES ON SOCIAL MEDIA PLATFORMS**

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ABSTRACT

This thesis examines the challenges and complexities of content moderation on social media platforms (SMPs) within the overlapping regulatory frameworks at local, EU, and global levels. By focusing on the case study of the *Knin Cartoon*, which glorifies the controversial Croatian military operation “Operation Storm,” the thesis explores the conflicting content moderation rules of the Digital Services Act (DSA) and Meta’s Oversight Board (OB).¹ While the DSA provides a public regulatory framework aimed at harmonizing content moderation across EU member states, Meta’s OB operates as a private oversight body with its own set of rules and standards.² This clash of public and private moderation rules results in the tensions and uncertainties faced by global digital platforms in managing content that intersects diverse legal and cultural contexts. Through an analysis of the *Knin Cartoon* case from the perspective of both the public regulatory framework and Meta’s self-regulatory mechanism, the thesis aims to provide a comprehensive understanding of these conflicts.

¹ Oversight Board, “Knin Cartoon,” 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

² European Parliament and the Council of the European Union, “Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act),” *Official Journal of the European Union* L 277 (October 27, 2022); Facebook, “An Update on Building a Global Oversight Board,” December 12, 2019, accessed May 12, 2024, <https://about.fb.com/news/2019/12/oversight-board-update/>.

LIST OF ABBREVIATIONS

Abbreviation	Definition
DSA	Digital Services Act
EU	European Union
ICTY	International Criminal Court for Former Yugoslavia
OB	Oversight Board
SMP	Social Media Platforms
UN	United Nations
US	United States

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1 INTRODUCTION

1.1 Central Idea: Overlaps in Content Moderation

The rapid evolution of social media platforms (SMPs) has fundamentally altered the global communication landscape, offering unparalleled opportunities for information sharing and community building. However, this transformation has also introduced significant challenges, particularly in the realm of content moderation. SMPs must navigate a complex web of content-moderation rules and practices that intersect across various territorial jurisdictions—state, EU, and global levels—and different types of moderation rules, both public and private. This intricate interplay of regulations can lead to situations where a single piece of user content is simultaneously subject to multiple sets of rules, resulting in tensions and uncertainties about how to manage such content in a global and culturally diverse environment.

At the heart of this thesis is the examination of how these overlapping jurisdictions and regulations impact the moderation of controversial content. To illustrate these challenges, the thesis will focus on a specific and controversial piece of content: the *Knin Cartoon*.³ This cartoon, which glorifies the Croatian military “Operation Storm” (Oluja) from August 1995, serves as a poignant case study for understanding the complexities of content moderation. “Operation Storm”, which

³ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

resulted in multiple war crimes, is celebrated as a national holiday in Croatia, and it is viewed as one of the most important events in Croatia's national history.⁴

The Digital Services Act (DSA), enacted by the European Union in November 2022, represents a significant regulatory framework aimed at addressing illegal content on SMPs.⁵ The DSA establishes obligations for very large online platforms (VLOPs) like Facebook (now Meta), requiring them to implement preventive content filtering mechanisms and comply with orders from national judicial or administrative authorities.⁶ However, the DSA's broad definition of illegal content presents significant challenges for platforms attempting to navigate the diverse legal landscapes of different EU Member States.

In parallel with these regulatory developments, Meta has created its own self-regulatory mechanism, the Meta Oversight Board (OB), which acts as an independent entity to review and adjudicate complex content moderation cases.⁷ The OB, often referred to as Facebook's "Supreme Court" for content moderation, aims to provide an additional layer of oversight and accountability.⁸ The *Knin Cartoon* case was one of the first decisions made by the OB concerning content in the

⁴ "5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>; International Criminal Tribunal for the Former Yugoslavia, Judgement, 15 April 2011, Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač, Case No. IT-06-90-A (The Hague, Netherlands: ICTY, 2012).

⁵ European Parliament and the Council of the European Union, "Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act)," *Official Journal of the European Union* L 277 (October 27, 2022).

⁶ *Ibid.*

⁷ Facebook, "An Update on Building a Global Oversight Board," December 12, 2019, accessed May 12, 2024, <https://about.fb.com/news/2019/12/oversight-board-update/>.

⁸ Kate Klonick, "The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression," *Yale Law Journal* 129, no. 8 (June 2020): 2418-2499.

European region.⁹ The cartoon, depicting ethnic Serbs as rats and celebrating their forced displacement, was ultimately removed by the OB for violating Meta's Hate Speech and Violence and Incitement Community Standards.¹⁰

This thesis will explore how the *Knin Cartoon* could be appraised differently depending on the regulatory framework applied, be it the DSA, Meta's internal content moderation policies, or national laws. By examining the *Knin Cartoon* through these various lenses, this thesis seeks to highlight the complexities and challenges that arise when global digital platforms intersect with diverse legal and cultural contexts. The goal is to provide a comprehensive understanding of the tensions and uncertainties inherent in the current content moderation landscape and to discuss potential pathways for more coherent and effective regulatory approaches.

1.2 Research Methodology

The research methodology for this thesis involves a comprehensive analysis of legal texts, case studies, and relevant literature. The primary focus is on the Digital Services Act (DSA) and the policies of the Meta Oversight Board (OB). The Knin Cartoon case serves as the central case study, illustrating the complexities of content moderation across different jurisdictions. The methodology includes a detailed examination of legal frameworks, an analysis of Meta's content moderation practices, and a review of secondary sources such as academic articles and legal commentaries.

⁹ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

¹⁰ *Ibid.*

This multi-faceted approach ensures a thorough understanding of the interplay between various content moderation rules and practices.

1.3 Thesis Roadmap

The thesis will be divided into four chapters to provide the reader with clarity and an easy-to-follow structure. Each chapter will cover different aspects of content moderation and its challenges.

In the first chapter, background information is provided, including a historical overview of social media platforms' content moderation practices, tracing the evolution from Facebook's early days to the establishment of the Meta Oversight Board. This chapter also introduces the Digital Services Act (DSA) and gives a brief history of "Operation Storm" and the Knin Cartoon, setting the stage for the case study.

The second chapter delves into the content filtering mechanisms established by the DSA. It explains the definition of illegal content under the DSA and examines the Knin Cartoon's legal status within this framework. The chapter also discusses the practical challenges of content removal versus disabling access.

The third chapter provides an overview of the Meta Oversight Board, detailing its decision-making process and its role in content moderation. It includes an in-depth analysis of the Knin Cartoon

case, highlighting the Board's reasoning, its application of international human rights standards, and its implications for content moderation practices.

In the final chapter, the approaches of the DSA and the Meta Oversight Board in handling controversial content like the Knin Cartoon are compared. The effectiveness and limitations of each approach are discussed, reflecting on the broader implications for content moderation in a global and culturally diverse environment. The chapter concludes with insights into the future of content moderation, emphasizing the need for a nuanced approach that respects both international human rights standards and diverse cultural contexts within the EU.

2 BACKGROUND INFORMATION

2.1 Evolution of social media platforms' content moderation rules

The inception of social media platforms can be traced back to the late 1990s and early 2000s.¹¹ From the early days of platforms like Friendster and MySpace to the dominance of Facebook (now Meta), Twitter, Instagram, Twitter (now X) and TikTok, social media platforms have evolved rapidly, reflecting and shaping the cultural, political, and economic fabric of our global society.¹² Facebook, initially founded by Mark Zuckerberg in 2004 to connect with his Harvard University peers, started as an exclusive social networking site restricted to Harvard students with harvard.edu email addresses.¹³ However, in just a few years, Facebook became a global networking powerhouse, allowing individuals to share news and ideas with a vast audience beyond their immediate geographic location.¹⁴ The expansion has facilitated the emergence of grassroots movements and enabled rapid mobilization around social, political, and environmental issues. However, the rise of Facebook has also presented significant challenges to democracy and human rights worldwide, with the potential to influence public opinion, and electoral outcomes, and even incite violence.¹⁵

¹¹ Danah M. Boyd and Nicole B. Ellison, "Social Network Sites: Definition, History, and Scholarship," *Journal of Computer-Mediated Communication* 13, no. 1 (2007): 210-230.

¹² *Ibid.*

¹³ Andreas M. Kaplan and Michael Haenlein, "Users of the world, unite! The challenges and opportunities of Social Media," *Business Horizons* 53, no. 1 (January–February 2010): 59-68.

¹⁴ Ellison, Nicole B., Charles Steinfield, and Cliff Lampe. "The Benefits of Facebook 'Friends': Social Capital and College Students' Use of Online Social Network Sites." *Journal of Computer-Mediated Communication* 12, no. 4 (2007): 1143-1168.

¹⁵ See e.g. Philip N. Howard and Muzammil M. Hussain, "Digital Media and the Arab Spring," in *Democracy's Fourth Wave? Digital Media and the Arab Spring*, Oxford Studies in Digital Politics (New York: Oxford University Press, 2013; online edn, Oxford Academic, 23 May 2013), <https://doi.org/10.1093/acprof:oso/9780199936953.003.0001>.

Initially, Facebook's content moderation was relatively simple and intuitive, guided by basic principles like removing content that was obviously objectionable and relying on the gut feelings of a small team.¹⁶ This approach, however, became unsustainable as Facebook grew in scale and diversity. Over time, the Facebook team has developed the "Community Standards" for the public and an internal document, the "Abuse Standards," detailing the enforcement of these standards.¹⁷ Besides "Community Standards", which outlined the types of content that were not allowed on the platform, Facebook also established a system for users to report violations of these standards.¹⁸ Additionally, the platform was significantly expanding its team of content moderators, employing thousands of people around the globe to review flagged content.¹⁹

Despite these advancements, content moderation at Facebook has faced high-profile incidents that have sparked debates about Facebook's moderation efforts.²⁰ Facebook found itself at the center of global attention, facing increasing criticism and legal pressures to establish more effective content moderation procedures.²¹

¹⁶ Kate Klonick, "The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression," *Yale Law Journal* 129, no. 8 (June 2020): 2418-2499.

¹⁷ Kate Klonick, "The New Governors: The People, Rules, and Processes Governing Online Speech," *Harvard Law Review* 131, no. 6 (April 2018): 1598-1670.

¹⁸ See Facebook. "Community Standards." Accessed June 02, 2024. <https://www.facebook.com/communitystandards>.

¹⁹ Jason Koebler and Joseph Cox, "The Impossible Job: Inside Facebook's Struggle to Moderate Two Billion People," *Vice*, August 23, 2018. <https://www.vice.com/en/article/xwk9zd/how-facebook-content-moderation-works>.

²⁰ See e.g. Senate Select Committee on Intelligence. "Senate Intel Committee Releases Bipartisan Report on Russia's Use of Social Media.", <https://www.intelligence.senate.gov/press/senate-intel-committee-releases-bipartisan-report-russia%E2%80%99s-use-social-media>; Evelyn Douek, "Facebook's Role in the Genocide in Myanmar: New Reporting Complicates the Narrative," *Lawfare* (October 22, 2018), <https://www.lawfaremedia.org/article/facebook-role-genocide-myanmar-new-reporting-complicates-narrative>.

²¹ See e.g. U.S. Select Committee on Intelligence, 115th Cong., "Policy Response to Russian Interference in the 2016 U.S. Election: Open Hearing" (2017); European Commission, "Countering Online Disinformation: Towards a More Transparent, Credible and Diverse Digital Media," <https://digital-strategy.ec.europa.eu/en/events/countering-online-disinformation-towards-more-transparent-credible-and-diverse-digital-media>;

In response to the First Amendment's limitations, which restrict the U.S. government's ability to limit the spread of harmful content online, there was a significant push to find alternative solutions for content moderation.²² The search for alternatives was largely driven by the realization that existing legal frameworks, such as Section 230 of the Communications Decency Act, provided broad immunity to online platforms from liability for user-generated content. Meanwhile, in Germany, growing concerns about the proliferation of online hate speech led to the enactment of the Network Enforcement Act, commonly known as NetzDG, in 2017.²³ This legislation was specifically enacted to address the prevalence of online hate speech and other unlawful content by imposing stringent regulatory requirements on social media enterprises.²⁴ It will turn out that this very act was the first step towards the Digital Services Act (DSA), which was set in force in February 2024, aiming to establish a more regulated and accountable digital environment across the EU.²⁵

Influenced by these external regulatory pressures and ongoing internal deliberations about the best approach to content governance, Facebook (now Meta) began in 2016 the creation of a regulatory oversight body.²⁶ The process culminated in 2019, with the creation of the Meta Oversight Board,

²² Eric Goldman, "Why Section 230 Is Better Than the First Amendment," *Notre Dame Law Review Reflection* 33 (2019): 33. See Klonick, *supra* note 8, at 1600-02.

²³ See *Netzwerkdurchsetzungsgesetz (NETZDG)*, Bundesgesetzblatt (Federal Law Gazette), part I, no. 61, issued on 7 September 2017, 3352.

²⁴ *Ibid.*

²⁵ European Parliament and Council of the European Union, "Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act) and Amending Directive 2000/31/EC," Official Journal of the European Union, L 277 (2022).

²⁶ Sarah T. Roberts, interview by author, quoted in Klonick, *supra* note 6, at 2448.

an independent entity often referred to as Facebook's "Supreme Court" for content moderation.²⁷

The Meta Oversight Board comprises experts from various fields, including law, journalism, and human rights, tasked with reviewing and adjudicating complex content moderation cases.²⁸

The separate efforts of public policymakers and legislators in Europe, alongside private initiative within Facebook, have led to the development of comprehensive content moderation rules and practices. Yet, despite their shared intentions, these efforts reveal legal complexities that create uncertainties in how platforms should handle specific content due to divergent regulatory approaches.

2.2 “Operation Storm” and *Knin Cartoon* case

One of the first decisions made by the Meta Oversight Board concerning content in the European region was the *Knin Cartoon* case.²⁹ In this case, the Meta Oversight Board reviewed content that depicted an edited version of Disney's "The Pied Piper," which explained and glorified the Croatian military “Operation Storm” (Oluja) that happened in early August 1995.³⁰ The caption, translated by Meta, read “The Player from Čavoglave and the rats from Knin,” with the video portraying a city overrun by rats, labeled as "Knin" instead of the original "Hamelin." The narrative

²⁷ Facebook, "An Update on Building a Global Oversight Board," December 12, 2019, accessed May 12, 2024, <https://about.fb.com/news/2019/12/oversight-board-update/>.

²⁸ *Ibid.*

²⁹ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

³⁰ Sense Transitional Justice Center, "Operation Storm," accessed May 16, 2024, <https://oluja.sensecentar.org/oluja-en.html>; *Ibid.*

within the video included rats harassing the city's inhabitants, followed by a piper from Čavoglave leading the rats away with his "magic flute" and culminating in the rats' disappearance into a tractor.³¹ Since it involves an edited Disney video, on some other portals the video was published under the title "Homeland war for the youngest - Educational video," aiming to portray "Operation Storm" to children in an interactive manner.³²

"Operation Storm", conducted by Croatian forces in August 1995, occurred during the wars in the former Yugoslavia and aimed to recapture the Krajina region from Serb control.³³ The operation resulted in the displacement of nearly the entire Serb population from the territory of the then-known Republic of Serbian Krajina.³⁴ The jurisdiction to investigate and prosecute individuals responsible for crimes committed during and after the operation was held by The International Criminal Tribunal for the Former Yugoslavia, established in 1993 by the United Nations.³⁵

In 2001, the Tribunal indicted three Croatian generals: Ante Gotovina, Ivan Čermak, and Mladen Markač. The trial began in 2008 and was focused on several key aspects: the goal of the operation,

³¹ The tractor symbolizes the mass exodus of Serb civilians during Operation Storm, reflecting the displacement and the use of farm vehicles in their hurried evacuation. This imagery connects to the broader hardships faced by the evacuees, symbolizing the desperate conditions of their flight; see Human Rights Watch, Impunity for Abuses Committed During 'Operation Storm', <https://www.hrw.org/report/1996/08/01/impunity-abuses-committed-during-operation-storm-and-denial-right-refugees-return>; The identification of the piper with the Croatian village of Čavoglave refers to the anti-Serb song "Bojna Čavoglave" by the band Thompson, whose lead singer originates from Čavoglave, <https://www.oversightboard.com/decision/fb-jrq1xp2m/>.

³² See HSPVG MAG, "Domovinski rat za najmlađe - edukativni video," Facebook video, June 17, 2024, <https://www.facebook.com/hspvg.mag/videos/domovinski-rat-za-najmla%C4%91e-edukativni-video-426951648918557/>.

³³ Sense Transitional Justice Center, "Operation Storm," accessed May 16, 2024, <https://oluja.sensecentar.org/oluja-en.html>.

³⁴ *Ibid.*

³⁵ International Criminal Tribunal for the former Yugoslavia. Accessed June 08, 2024. <https://www.icty.org/>.

the purpose of shelling, the occurrence of murders, the destruction and plunder of property, and the prevention of Serb return.³⁶ In 2011, the Trial Chamber found Gotovina and Markač guilty, sentencing them to 24 and 18 years in prison, respectively, while Čermak was acquitted.³⁷ The Trial Chamber determined that the Croatian military leadership had engaged in a joint criminal enterprise aimed at permanently removing the Serb population from the Krajina region.³⁸

However, in 2012 highly controversial decision, the Appeals Chamber overturned the convictions of Gotovina and Markač, concluding that the evidence was insufficient to establish the existence of a joint criminal enterprise aimed at the forcible and permanent removal of the Serb population.³⁹ Nevertheless, the Appeals Chamber acknowledged the occurrence of murders of civilians and property destruction.⁴⁰

Furthermore, a total of 6,390 criminal reports have been submitted to the various public prosecution offices concerning the crimes committed during and after “Operation Storm”.⁴¹ According to statistical data, as many as 2,380 have been convicted for petty crimes.⁴² While the total number of criminal reports includes 439 against army personnel, the names and crimes of those convicted have not been made public.⁴³

³⁶ International Criminal Tribunal for the Former Yugoslavia, *Judgement*, 15 April 2011, Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač, Case No. IT-06-90-T (The Hague, Netherlands: ICTY, 2011).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ International Criminal Tribunal for the Former Yugoslavia, *Judgement*, 15 April 2011, Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač, Case No. IT-06-90-A (The Hague, Netherlands: ICTY, 2012).

⁴⁰ *Ibid.*

⁴¹ Sense Transitional Justice Center, "Operation Storm," accessed May 16, 2024, <https://oluja.sensecentar.org/oluja-en.html>.

⁴² *Ibid.*

⁴³ *Ibid.*

2.3 “Storm” in Croatian Legislation

“Operation Storm”, known as "Oluja" in Croatian, is celebrated as a national holiday in Croatia, officially recognized as Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders.⁴⁴ This commemoration takes place annually on August 5th, marking the day in 1995 when Croatian forces successfully recaptured the Krajina region from Serb control, effectively ending the War of Independence.⁴⁵ The operation is seen as a pivotal moment in Croatian history, symbolizing the country’s struggle for sovereignty and territorial integrity.⁴⁶

The celebrations of “Operation Storm” are characterized by a series of official events and public ceremonies, predominantly centered in the town of Knin, which was a key strategic location during the operation.⁴⁷ The President and Prime Minister of Croatia, along with other high-ranking officials and dignitaries, typically attend these events.⁴⁸ In addition to the official ceremonies, within which tribute is sometimes paid to Serbian victims, various cultural and sporting events

⁴⁴ "5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>.

⁴⁵ "Croatia Marks Victory and Homeland Thanksgiving Day on August 5," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/press/news/croatia-marks-victory-and-homeland-thanksgiving-day-august-5>.

⁴⁶ *Ibid.*

⁴⁷ See for example, Ministry of Croatian Veterans, "Program Presented in Knin for the 28th Anniversary Celebration of the Military and Police Operation 'Storm'," accessed May 14, 2024, <https://branitelji.gov.hr/vijesti/u-kninu-predstavljen-program-svecanog-obiljezavanja-28-obljetnice-vro-oluja/4389>

⁴⁸ See for example, Dnevnik.hr, "Celebration of 'Operation Storm' in Knin, Plenković Delivers Speech: 'We Will Not Allow Serbia to be the Regional Prosecutor and Judge,'" accessed May 14, 2024, <https://dnevnik.hr/vijesti/hrvatska/tradicionalnom-budnicom-u-kninu-pocelo-obiljezavanje-dana-pobjede-i-domovinske-zahvalnosti---795561.html>.

take place throughout the country, including concerts where chants such as "Kill the Serbs" and 'For the Homeland, Ready' is often heard, reflecting nationalist sentiments.⁴⁹

On social media, the commemoration of ‘‘Operation Storm’’ is marked by a widespread outpouring of patriotic and nationalistic sentiments and rhetoric.⁵⁰ Croatian citizens are sharing content from both official and other events happening during the day, while official government and military accounts post updates and live streams of the events in Knin.⁵¹ Hashtags such as #Oluja, #DanPobjede (VictoryDay), and #DanHrvBrantielja (Day of Croatian Defenders) become trending topics across different social media platforms, often used by the highest officials in Croatia.⁵²

Given the circumstances ‘‘Operation Storm’’, or the *Knin Cartoon Case*, serves as a prime example of the challenges that social media platforms like Facebook will increasingly face in the future. This case illustrates not only the complexities of content that can be interpreted differently depending on historical, cultural and political perspectives, but also the legal intricacies involved.

⁴⁹ See for example, N1 Info, "'Kill the Serb' and 'For the Homeland, Ready' at Thompson's Concert," accessed June 1, 2024, <https://n1info.rs/region/a82644-koncert-tompsona-u-kninu/>; The phrase 'For the Homeland, Ready' is particularly controversial as it was a well-known salute used by the pro-Nazi Ustasha regime in Croatia during the World War II; See also, "Controversial Singer Thompson Charged for Misdemeanour Due to Ustasha Slogans," Total Croatia News, April 20, 2023. <https://total-croatia-news.com/news/politics/controversial-singer-thompson-charged-for-misdemeanour-due-to-ustasha-slogans/>.

⁵⁰ See for example, "Proslava Oluje u Kninu," video, posted by Dnevnik.hr, accessed June 15, 2024, <https://www.facebook.com/DNEVNIK.hr/videos/proslava-oluje-u-kninu/1314631935806231/?rdr>.

⁵¹ Ministry of Defence of the Republic of Croatia, "The 21st Anniversary of the Operation 'Storm' Marked in Knin," accessed June 1, 2024, <https://www.morh.hr/en/the-21st-anniversary-of-the-operation-storm-marked-in-knin/>.

⁵² See for example, Former President of Croatia, Kolinda Grabar-Kitarović, post on X, August 5, 2023, <https://x.com/KolindaGK/status/1687746897035825152>.

3 NAVIGATING CONTENT MODERATION UNDER THE DIGITAL SERVICES ACT: THE CASE OF THE *KNIN CARTOON*

3.1 Content Filtering Mechanisms under the Digital Services Act

The DSA entered into force in the EU on 16 November 2022, while the majority of the operative provisions came into force on 17 February 2024.⁵³ The main purpose of the DSA is to update the European Union's legal framework for illegal content on intermediaries.⁵⁴ Therefore, DSA establishes obligations regarding the application of preventive content filtering mechanisms by the so-called 'very large online platform providers' (VLOPs) such as Facebook.⁵⁵

In principle, the DSA establishes several primary mechanisms for content filtering.⁵⁶ Firstly, The DSA mandates that platforms must adhere to orders issued by Member States' authorities.⁵⁷ Specifically, platforms are required to act against illegal content based on orders from national judicial or administrative authorities.⁵⁸

⁵³ European Parliament and the Council of the European Union, "Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act)," *Official Journal of the European Union* L 277 (October 27, 2022).

⁵⁴ European Commission, "The EU's Digital Services Act," accessed June 01, 2024, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en.

⁵⁵ Regulation (EU) 2022/2065 (Digital Services Act), Recital 76.

⁵⁶ Regulation (EU) 2022/2065 (Digital Services Act).

⁵⁷ Regulation (EU) 2022/2065 (Digital Services Act), Article 9.

⁵⁸ *Ibid.*

Besides orders from national, judicial or administrative authorities, the engagement of trusted flaggers is another important component of the DSA.⁵⁹ The DSA allows trusted flaggers, designated by the Digital Services Coordinator of a Member State, to submit notices regarding illegal content.⁶⁰ Platforms are required to prioritize these reports and provide specific reporting channels for these trusted flaggers.⁶¹

Moreover, the DSA establishes specific requirements for platforms to ensure an effective and user-friendly mechanism for reporting illegal content.⁶² Platforms must implement mechanisms that allow individuals or entities to notify them of specific items of information deemed illegal.⁶³ These mechanisms must be easily accessible, user-friendly, and allow for the submission of notices exclusively through electronic means.⁶⁴

Therefore, all these mechanisms aim for one primary goal: to enable social media platforms, through these processes, to obtain knowledge or awareness of illegal activity and then react by expeditiously removing or disabling access to such activity.⁶⁵ However, in practice, these mechanisms will face significant challenges due to the definition of illegal content that is too broad yet still vague.

⁵⁹ Regulation (EU) 2022/2065 (Digital Services Act), Recital, Article 22.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Regulation (EU) 2022/2065 (Digital Services Act), Article 16.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Regulation (EU) 2022/2065 (Digital Services Act), Article 6(b).

3.2 Defining Illegal Content: The Digital Services Act's Scope and Implications

According to the DSA Recital 12. the concept of illegal content ‘*should be understood as the information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech...*’⁶⁶ Moreover, according to Article 3(h), illegal content is defined as ‘*any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law*’.⁶⁷

Such a definition, although seemingly concrete, will prove to be highly inconsistent in practice. The concept of illegal content is not uniformly defined across European Union Member States and is subject to varying interpretations, especially concerning historical events that are differently perceived in different societies and countries.

Croatia, a European Union member state, celebrates “Operation Storm” as one of its most important national holidays.⁶⁸ While on the other hand, the International Criminal Tribunal for the Former Yugoslavia has unequivocally indicated that war crimes occurred during “Operation Storm”.⁶⁹ This brings us to the question of how social media platforms should respond upon

⁶⁶ Regulation (EU) 2022/2065 (Digital Services Act), Recital 12.

⁶⁷ Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

⁶⁸ "5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>.

⁶⁹ International Criminal Tribunal for the Former Yugoslavia, *Judgement*, 15 April 2011, Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač, Case No. IT-06-90-A (The Hague, Netherlands: ICTY, 2012).

discovering content that glorifies ‘‘Operation Storm’’, or more specifically, upon becoming aware of the *Knin Cartoon* post. Should such content be declared illegal, and if so, how should social media platforms act against it?

3.3 Assessing the *Knin Cartoon's* legality under the Digital Services Act

Given the context of the *Knin Cartoon* such content is most certainly considered hate speech, which is outlined in the DSA preamble as an example of illegal content.⁷⁰ Therefore, the *Knin Cartoon* could be seen as contravening the EU Charter of Fundamental Rights. Article 21 of the Charter explicitly prohibits any discrimination „based on any ground such as sex, race, colour, ethnic or social origin...”⁷¹

Moreover, it can be argued that the content is in violation of the Framework Decision on Racism and Xenophobia, an EU framework that aims to combat racism and xenophobia through criminal law, requiring Member States to penalize public incitement to violence or hatred against a group of persons based on race, color, religion, descent, or national or ethnic origin.⁷²

⁷⁰ ⁷⁰ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

⁷¹ Charter of Fundamental Rights of the European Union, Article 21, "Non-discrimination," Official Journal of the European Union, C 303/17, December 14, 2007. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P/TXT>.

⁷² Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, L 328/55, Official Journal of the European Union, December 6, 2008. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0913>.

The cartoon's portrayal of Serbs in a dehumanizing manner fits within the scope of content that both EU Charter of Fundamental Rights and this framework seeks to address, as it promotes discriminatory stereotypes and potentially incites hostility towards an ethnic group.

However, it is important to note that while the preamble of the DSA outlines the concept of illegal content, including hate speech, the preamble itself is not legally binding. The actual enforceability of these principles relies on the interpretation and application of specific legal provisions within the Member States. Thus, while the DSA provides a framework for addressing such content, the responsibility for determining its legality falls to judicial and administrative authorities, which may interpret the preamble differently.

Moving forward, under the binding provision of the DSA, illegal content is defined in Article 3(h) as „*any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law*”.⁷³ The core issue is that the concept of illegal content here is that it is not uniformly defined across EU Member States. This inconsistency arises from the varying national laws and legal interpretations, leading to situations where content deemed illegal in one country may be considered lawful in another.

⁷³ Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

For the *Knin Cartoon* to be considered illegal under the DSA, it must contravene the laws of Croatia that are in compliance with the Union law.⁷⁴ However, as discussed previously, Croatia celebrates “Operation Storm” as a national holiday, officially recognized as Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders.⁷⁵ The Law on Holidays in Croatia explicitly states that Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders are about the combined military and police “Operation Storm”.⁷⁶

On the other hand, Article 39 of the Constitution of the Republic of Croatia explicitly prohibits any call or incitement to war, violence, national, racial, or religious hatred, or any form of intolerance.⁷⁷ Besides, according to Article 325, Paragraph 1 of the Croatian Criminal Code, *"anyone who, through the press, radio, television, computer systems or networks, at a public gathering, or by any other means, publicly incites or makes accessible to the public materials such as flyers, images, or other items that call for violence or hatred directed against a group of people or a member of a group based on their race, religion, national or ethnic origin, language, origin, skin color, gender, sexual orientation, gender identity, disability, or other characteristics, shall be punished with up to three years in prison."*⁷⁸ Furthermore, Celebrating “Operation Storm” is arguably contrary to the Croatian Law on Suppression of Discrimination, particularly Article 3 (1),

⁷⁴ European Union. "EU Member States." Accessed June 01, 2024. https://european-union.europa.eu/principles-countries-history/eu-countries_en.

⁷⁵ "5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>.

⁷⁶ *Ibid.*

⁷⁷ "Ustav Republike Hrvatske" [Constitution of the Republic of Croatia], *Narodne novine*, no. 56/1990, Article 39. <https://www.usud.hr/hr/ustav-RH>.

⁷⁸ "Kazneni zakon" [Criminal Code], *Narodne novine*, no. 125/2011, December 7, 2011, Article 325, Paragraph 1. https://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html.

which prohibits behavior that "*constitutes a violation of a person's dignity and causes fear, a hostile, degrading, or offensive environment.*"⁷⁹

The provisions of the Constitution and these laws are certainly in compliance with Union Law, however, it could be argued that the Law on Holidays contradicts the Constitution and laws in Croatia. Nevertheless, social norms have influenced the legal practice in Croatia to see nothing legally questionable in the Law on Holidays. The Croatian government expresses every year a commitment to remembering the military operation as a dignified part of their history, including honoring the military efforts and the sacrifices made by Croatians during the conflict.⁸⁰

According to Article 4(2) of the Treaty on European Union (TEU), „*the Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.*”⁸¹ Therefore, the EU is obliged to acknowledge the inherent national, political, and constitutional characteristics of its member states, which includes how they choose to commemorate their histories. Considering the perspective of Croatian politicians, institutions, and society, the celebration of “Operation Storm” is seen as legitimate and legal. Given the

⁷⁹ Zakona o suzbijanju diskriminacije" [The Law on Suppression of Discrimination], *Narodne novine*, no. 112/2012, October 11, 2012. Article 3(1) https://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_85_2728.html.

⁸⁰ "We Will Continue to Celebrate Success of the Operation Storm and Our Victory in Homeland War with Dignity," Government of the Republic of Croatia, accessed June 05, 2024. <https://vlada.gov.hr/news/we-will-continue-to-celebrate-success-of-the-operation-storm-and-our-victory-in-homeland-war-with-dignity/32714>.

⁸¹ Consolidated Version of the Treaty on European Union, Article 4(2), October 26, 2012, Official Journal of the European Union, C 326, p. 18. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M004>.

circumstances, it cannot be classified as illegal content within the meaning of Article 3(h) of the Digital Services Act (DSA) when assessed from the Croatian legal perspective.⁸²

In the specific piece of content, *Knin Cartoon*, this content could be rendered illegal as it implicitly depicts Serbs as rats, and it might be understood that reference to rats personifies negative human traits, and therefore, such personification could arguably be in violation of Croatia's anti-discrimination laws.⁸³ However, since it concerns a Disney-edited video, it can also be argued that this video simply served as a useful illustration of the events from 1995, and thus the depiction of Serbs as rats is purely coincidental. Additionally, it is quite debatable how such content would be interpreted if the Disney video did not use rats but instead depicted other animals symbolizing positive human qualities. Suppose the video was edited so that at the end, different animals enter a tractor and depart from a castle named Knin. In this revised scenario, the representation would likely be viewed differently in terms of its implications and symbolism. Nevertheless, the cartoon is still about "Operation Storm" which involved multiple war crimes, but it would not be considered illegal from Croatia's legal perspective given its view of these events as a dignified part of their history.⁸⁴

So, following this analysis, celebrating "Operation Storm", nor the *Knin Cartoon*, cannot be classified as illegal content within the meaning of Article 3(h) of the DSA when assessed from the

⁸² Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

⁸³ Zakona o suzbijanju diskriminacije" [Anti-Discrimination Act], *Narodne novine*, no. 112/2012, October 11, 2012. https://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_85_2728.html.

⁸⁴ "We will Continue to Celebrate Success of the Operation Storm and Our Victory in Homeland War with Dignity," Government of the Republic of Croatia, accessed June 05, 2024. <https://vlada.gov.hr/news/we-will-continue-to-celebrate-success-of-the-operation-storm-and-our-victory-in-homeland-war-with-dignity/32714>.

Croatian legal perspective.⁸⁵ However, what about other European Union member states? All EU member states have very similar anti-discrimination laws, yet none of them share any tradition related to “Operation Storm” that might justify its celebration.⁸⁶

This leads us to the question of what platforms should do if, for example, the *Knin Cartoon* appeared on the platform, or other similar content that glorifies “Operation Storm”, and that content is reported as “DSA illegal content”.

3.4 Removal vs. Disabling Access: Practical Challenges in Moderating the *Knin Cartoon*

The Digital Services Act (DSA) Article 6 outlines the obligations of very large online platforms (VLOPs) to remove or disable access to illegal content upon obtaining knowledge of such content.⁸⁷ To understand the practical implications of Article 6, it is crucial to distinguish between the terms “removing” and “disabling access” to content.

Firstly, removing content refers to the complete deletion of the content from the platform's servers.⁸⁸ This action ensures that the content is entirely eliminated and no longer accessible or visible to any users on the platform.⁸⁹

⁸⁵ Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

⁸⁶ See “General Act on Equal Treatment” [Allgemeines Gleichbehandlungsgesetz – AGG], Federal Ministry of Justice, accessed June 12, 2024. https://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html.

⁸⁷ Regulation (EU) 2022/2065 (Digital Services Act), Article 6(b).

⁸⁸ “Glossary,” OECD VTRF Pilot, accessed June 15, 2024. <https://www.oecd-vtrf-pilot.org/glossary>.

⁸⁹ *Ibid.*

On the other hand, disabling access to content involves restricting access to the content without deleting it from the platform's servers.⁹⁰ This method is often used to comply with regional laws without affecting the availability of the content in other jurisdictions where it might be legal.

Given the complexities surrounding content that glorifies “Operation Storm”, such as the *Knin Cartoon*, the approach to handling this content under the DSA requires careful consideration. Since this content is not illegal under Croatian law, it presents a unique challenge for platforms tasked with moderating content that straddles the lines of legality and cultural significance across different EU Member States.

In Croatia, “Operation Storm” is celebrated as a national holiday and is officially recognized as Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders.⁹¹ This celebration is ingrained in Croatian national identity and is protected under Croatian law.⁹² Therefore, content glorifying “Operation Storm”, such as the *Knin Cartoon*, is not considered illegal in Croatia. As a result, it cannot be classified as illegal content within the meaning of Article 3(h) of the DSA when assessed from the Croatian legal perspective.⁹³ However, other EU Member States have strict anti-discrimination laws that prohibit content promoting hate speech or inciting violence based on

⁹⁰ *Ibid.*

⁹¹ "5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders," Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>.

⁹² "We will Continue to Celebrate Success of the Operation Storm and Our Victory in Homeland War with Dignity," Government of the Republic of Croatia, accessed June 05, 2024. <https://vlada.gov.hr/news/we-will-continue-to-celebrate-success-of-the-operation-storm-and-our-victory-in-homeland-war-with-dignity/32714>.

⁹³ Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

race, nationality, or ethnic origin.⁹⁴ For that reason, such content could be deemed illegal in these jurisdictions. Given the content cannot be removed since it is legal under the Croatia legal perspective, one possible solution is to disable access to the content in countries where it is deemed illegal, while allowing it to remain accessible in Croatia. This approach, known as geo-blocking, allows platforms to comply with regional laws without entirely removing the content from their servers. Disabling access in specific regions ensures that the content is not visible where it contravenes local laws, while preserving it in areas where it is legally permissible.

However, geo-blocking content that glorifies “Operation Storm” raises further complications. Croatian citizens living in other EU countries might feel that their right to celebrate a significant national event is being infringed upon.

Thus, it remains unresolved what the platform should ultimately do, as balancing the diverse legal standards and cultural sensitivities across EU Member States presents an ongoing challenge without a clear, universally acceptable solution.

⁹⁴ See "General Act on Equal Treatment" [Allgemeines Gleichbehandlungsgesetz – AGG], Federal Ministry of Justice, accessed June 12, 2024. https://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html.

4 META OVERSIGHT BOARD

4.1 Structure and Functioning of the Meta Oversight Board

The Meta Oversight Board (OB) is as an independent entity tasked with addressing complex content moderation issues on its platforms, including Facebook and Instagram.⁹⁵ The board operates independently from Meta but is funded by the company, creating an interesting dynamic where it functions autonomously while being financially supported by the entity it oversees.⁹⁶ The OB is composed of a diverse group of experts from fields such as human rights, journalism, law, and technology.⁹⁷ These members are selected for their expertise and their ability to consider a wide range of perspectives, ensuring that the board's decisions are well-informed and balanced.⁹⁸

The process by which content decisions reach the OB begins when a user, whose content has been removed or who disagrees with how their content was handled, exhausts Meta's internal review options.⁹⁹ The OB then selects cases to review based on their potential impact on public discourse, their significance in highlighting critical issues, or their capacity to question the adequacy of Meta's existing policies.¹⁰⁰

⁹⁵ Meta, "Creating the Oversight Board," accessed May 19, 2024, <https://transparency.meta.com/pl-pl/oversight/creation-of-oversight-board/>.

⁹⁶ *Ibid.*

⁹⁷ Oversight Board, "How We Do Our Work," accessed May 19, 2024, <https://www.oversightboard.com/our-work/>.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

When reviewing a case, the OB meticulously examines all relevant materials, listens to stakeholders involved, and often invites public comments to understand the broader implications of the content in question.¹⁰¹ After thorough deliberation, the board issues a decision. Decisions on specific cases are binding, which means Meta is obligated to implement them, unless doing so would violate the law.¹⁰²

In addition to making binding decisions, the OB also provides policy recommendations. These recommendations are aimed at guiding Meta in refining its content moderation policies and practices.¹⁰³ While these recommendations are not obligatory, Meta is required to publicly respond, facilitating a continued dialogue between the OB and Meta that could lead to substantive policy changes.¹⁰⁴

In its evaluations, the OB adheres to Meta's Community Standards, which define what is permissible on the platform, ensuring that content aligns with the company's values and rules.¹⁰⁵ Furthermore, the OB integrates international human rights standards into its decision-making process.¹⁰⁶ The goal in this approach is not only ensures that Meta's practices are consistent with global norms on freedom of expression and privacy but also to helps the OB navigate the complex interplay between upholding free speech and ensuring user safety on a vast, diverse platform.¹⁰⁷

¹⁰¹ Facebook, "Responding to the Oversight Board's First Decisions," January 2021, accessed May 19, 2024, <https://about.fb.com/news/2021/01/responding-to-the-oversight-boards-first-decisions/>.

¹⁰² *Ibid.*

¹⁰³ Oversight Board, "How We Do Our Work," accessed May 19, 2024, <https://www.oversightboard.com/our-work/>.

¹⁰⁴ Facebook, "Responding to the Oversight Board's First Decisions," January 2021, accessed May 19, 2024, <https://about.fb.com/news/2021/01/responding-to-the-oversight-boards-first-decisions/>.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

4.2 Case Review: Knin Cartoon (Case 2022-001-FB-UA)

In the *Knin Cartoon* case, formally known as Case 2022-001-FB-UA, the Meta Oversight Board overturned Meta's original decision to leave a post on Facebook.¹⁰⁸ This content, viewed over 380,000 times and reported 397 times, was initially deemed non-violating by Meta's moderators.¹⁰⁹

The user who reported the content and appealed to the Oversight Board argued that the depiction was a form of ethnic hate speech, fostering intolerance between Croats and Serbs.¹¹⁰ Despite multiple reviews by Meta's moderators, who consistently found the content non-violating, the Oversight Board selected the case for full review in January 2022. The entire process took place during a period when the DSA had not yet been adopted. After the process, the Meta Oversight Board made a very detailed decision, based on reasoning that leaves no room for complicated legal interpretations.

The Oversight Board's review process involved a detailed analysis of Meta's content policies, the company's values, and international human rights standards.¹¹¹ The Board found that the content violated both Meta's Hate Speech and Violence and Incitement Community Standards. Meta's Hate Speech policy prohibits attacks against people based on protected characteristics, including

¹⁰⁸ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

ethnicity.¹¹² The content, which compared ethnic Serbs to rats and celebrated past discriminatory acts, was deemed dehumanizing and hateful.¹¹³ It was observed that, although the post did not explicitly mention ethnic Serbs, the historical references made the connection clear.¹¹⁴ The Board identified the replacement of "Hamelin" with "Knin," the identification of the piper with Čavoglave (a reference to an anti-Serb song by the band Thompson), and the imagery of rats fleeing on tractors as direct references to the Croatian military's "Operation Storm" in 1995, which resulted in the displacement and violence against ethnic Serbs.¹¹⁵

Moreover, the Board noted that about 40 Croatian-speaking moderators had found the content non-violating, which indicated a systemic issue in interpreting the Hate Speech policy.¹¹⁶ They interpreted the policy as requiring an explicit comparison between ethnic Serbs and rats before finding a violation.¹¹⁷ The Board clarified that even implicit references that would be reasonably understood as targeting protected groups are prohibited by the policy.¹¹⁸

Additionally, and most importantly, the Board determined that the content violated Meta's Violence and Incitement Community Standard.¹¹⁹ The post, according to OB, by referring to the events of "Operation Storm", aimed to remind people of past conflicts and contained an implicit violent threat.¹²⁰ Therefore, the Oversight Board suggests that celebrating "Operation Storm",

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

outside the specific context of the video, carries an implicit threat of violence. Moreover, the OB emphasized that the video celebrated the violent removal of Knin's ethnic Serb population, potentially contributing to a climate where attacks against this group could be justified.¹²¹ In the end, the Board disagreed with Meta's initial assessment that the content did not constitute a violent threat, finding that the forced expulsion of people is inherently violent and that threats can be effectively conveyed through metaphors.¹²²

The Board's analysis also considered Meta's values and human rights responsibilities. Meta's values of "Dignity" and "Safety" were deemed to supersede the value of "Voice" in this context, as allowing such dehumanizing and threatening content could contribute to a discriminatory environment and increase the risk of real-world harm.¹²³ The Board noted the continuing increase in physical violence against ethnic Serbs in Croatia, which justified limiting the user's "Voice" to protect others' rights to safety and dignity.¹²⁴

In terms of compliance with international human rights standards, the Board concluded that removing the content aligned with Meta's commitments under the UN Guiding Principles on Business and Human Rights (UNGPs) and the International Covenant on Civil and Political Rights (ICCPR).¹²⁵ Besides, in referring to General Comment No. 34, the Board emphasized that

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*; United Nations Human Rights Office of the High Commissioner. "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." Accessed June 15, 2024. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf; United Nations General Assembly. "International Covenant on Civil and Political Rights," December 16, 1966. United Nations Treaty Series. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

restrictions on expression must be appropriate to achieve their protective function, the least intrusive means to achieve that function, and proportionate to the interest being protected.¹²⁶

Ultimately, the Board overturned Meta's original decision to keep the content online, mandating that the post be removed.¹²⁷ This means that the post, which was initially available on the platform, has been permanently deleted and is no longer accessible to users. In their approach and reasoning, the Board did not consider Croatian legislation but instead referenced historical facts about “Operation Storm” and international human rights standards.¹²⁸ Based on such considerations, they decided that the content must be removed from Facebook.¹²⁹

¹²⁶ Oversight Board, "Knin Cartoon," accessed June 15, 2024, <https://www.oversightboard.com/decision/fb-jrq1xp2m/>. Quoting United Nations Human Rights Committee, "General Comment No. 34, Article 19: Freedoms of Opinion and Expression," September 12, 2011, para. 34. CCPR/C/GC/34. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹²⁷ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

5 CONCLUSION

The approach taken by the self-regulatory mechanism, Meta Oversight Board (OB), and the framework provided by the EU's Digital Services Act (DSA) in the *Knin Cartoon* case highlight significant differences in handling controversial content, interpreted differently depending on historical, cultural, political and legal perspectives. The OB's decision, detailed under the "Key findings" section, emphasizes that by „referring to the events of ‘‘Operation Storm,’’ the post aims to remind people of past conflicts and contains a violent threat.¹³⁰” Therefore, according to OB, „the cartoon celebrates the violent removal of Knin's ethnic Serb population and may contribute to a climate where people feel justified in attacking this group.”¹³¹ This implies that any celebration of Operation Storm, is itself a violation of the standards the OB considers. The question that might appear here is if celebrating “Operation Storm” in the case where the author explicitly dissociates it from celebrating the crimes committed during the operation would be justified. Given the OB's acknowledgement that “Operation Storm” resulted in ethnic cleansing, it is challenging to separate the celebration of the operation from the celebration of the violent removal of Knin's ethnic Serb population.¹³²

On the other hand, the DSA's approach to illegal content is unclear and non-specific. Arguably, the broad yet vague definition of illegal content under the DSA can protect content celebrating “Operation Storm” from being removed or disabled. Since such content is not illegal in Croatia,

¹³⁰ Oversight Board, "Knin Cartoon," 2022-001-FB-UA, April 10, 2022, accessed June 15, 2024, <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>.

¹³¹ *Ibid.*

¹³² *Ibid.*

and considering the c, it would be difficult to classify such content as illegal at the EU level. Article 3(h) of the DSA defines illegal content as any information that is not in compliance with Union law or the law of any Member State.¹³³ Given that Croatia celebrates “Operation Storm” as a national holiday, content glorifying this event is legal within Croatian law and thus complicates the EU-wide application of the DSA.¹³⁴

Even if we assume that such content would be illegal within the jurisdictions of EU Member States but not in Croatia, the question remains as to what should be done within the scope of Article 6 of DSA.¹³⁵ The option to remove the content is immediately excluded, while disabling the content becomes debatable since Croatians living in those jurisdictions would not have access to content that represents one of the most important holidays of their nation.¹³⁶

Therefore, the practice established by Meta's “Supreme Court” to remove such content, even before the DSA was enacted, now becomes questionable with the DSA in force. Facebook is obligated to adopt the decisions of the Oversight Board (OB), but at the end of the day, the OB is the final instance of content moderation for Facebook itself.¹³⁷ Meanwhile, the entire organization must comply with the provisions of the DSA.¹³⁸ The provisions of the DSA, as illustrated by the *Knin Cartoon* example, prove to be ineffective in handling such content. It appears that there is no

¹³³ Regulation (EU) 2022/2065 (Digital Services Act), Article 3(h).

¹³⁴ “5 August - Victory and Homeland Thanksgiving Day and the Day of Croatian Defenders,” Croatian Parliament. Accessed June 15, 2024. <https://www.sabor.hr/en/about-parliament/history/important-dates/5-august-victory-and-homeland-thanksgiving-day-and-day>.

¹³⁵ Regulation (EU) 2022/2065 (Digital Services Act), Article 6(b).

¹³⁶ See Chapter 2.3.

¹³⁷ See Chater 4.1.

¹³⁸ Regulation (EU) 2022/2065 (Digital Services Act), Article 6(b).

clear answer as to what should be done with such content; it seems that the DSA's provisions are inert regarding this type of content since the Treaty on European Union renders this content immune to the term "illegal."¹³⁹

In essence, this signifies that a well-established self-regulatory mechanism, such as the one implemented by Meta, is being overshadowed by the public content moderation rules established by the DSA. The *Knin Cartoon* serves as an example of this conflict, but it is just one instance among many. Every new development on the geopolitical stage brings new challenges and creates events and facts that different cultures, traditions, nations, and legal systems will interpret differently. Under these circumstances, it seems that the DSA will be found ineffective in handling such content and will have to search for a more nuanced approach to content moderation that respects both international human rights standards and the diverse cultural contexts within the EU.

¹³⁹ See Chapter 3.3.; Consolidated Version of the Treaty on European Union, Article 4(2), October 26, 2012, Official Journal of the European Union, C 326, p. 18. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M004>.

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