Litigating Human Rights of the Mind

U.S. Social Media Litigation as a Wake-Up Call for Human Rights

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Last week, two U.S. courts for the first time found Meta and Google (YouTube) liable for inflicting harm on users and for violating consumer protection law. These judgments come at a time when European digital policy is under geopolitical pressure and, at the same time, social media bans for children and adolescents are being discussed in several countries, including Germany. These rulings therefore have a signalling effect on Europe, and initial reactions have already placed great hope in them. Human rights organisations celebrated them as a "watershed" for big tech accountability. The rulings were based on consumer protection law and negligence (tort law) and did not address potential violations of constitutional rights. Nonetheless, they could arguably be a potential driver for human rights litigation.

The Judgments in New Mexico and Los Angeles

On 24 March 2026, the First Judicial District Court of New Mexico ordered Meta to pay a penalty of $375 million for violating consumer protection law on Instagram, Facebook and WhatsApp in the case *State of New Mexico v. Meta Platforms, Inc.* The jury found thousands of violations of consumer protection laws regarding the treatment of children on the company's social media platforms.

Just one day later, the jury of the Superior Court of Los Angeles County foundMeta (Instagram, Facebook and WhatsApp) and Google (YouTube) liable for negligence and defective design on their platforms in the case *K.G.M. v. Meta Platforms, Inc. et al.* A 20-years old women sued both companies, alleging that they made her addictive to their products thereby caused her serious psychological harm. The woman began using the platforms as a child and attributes her depression, body dysmorphia and anxiety to them. The companies argued that the plaintiff's condition was caused by her personal social and familial circumstances and that there was no proof that she was actually addicted to the platforms.

This argument, however, did not convince the jury. The jury concluded that both companies acted negligently regarding the design and operation of their platforms, marking a shift from content to design in their consideration. They awarded the plaintiff $6 million in compensation (a combination of compensatory and punitive damages), with Meta bearing 70 %.

Meta and Google will appeal the judgments, but they could set a precedent, as over a thousand similar lawsuits are pending.

A Wake-up call for human rights litigation?

This latest U.S. social media litigation focused on consumer protection law and on tort law (product liability and negligence). Both judgments appear, at first glance, to have nothing to do with human rights. Yet, they constitute a first step towards the legal recognition of the negative mental effects of social media and might therefore also have implications for human rights litigation.

The human rights protection of the mind is still rather underdeveloped in case law and legal scholarship. There even appears to be a certain reluctance to conceptualise psychological harm in legal terms and to recognise negative mental effects as a violation of human rights (see Bublitz/Merkel). Against this background, there have been even calls for introducing new human rights to protect the mind (so-called neurorights). Yet, even without new rights, there is a rich legal stock that could be activated.

There is, first of all, the *right to mental integrity* enshrined in Article 8 ECHR (cf. ECtHR Guide) and

arguably Article 17 ICCPR. The EU Charter even explicitly codifies this right in Article 3 CFR. The right protects mental health, but also mental well-being more broadly. Furthermore, in the European context, the right arguably also protects against unwanted interferences into one's mind and thus also safeguards mental self-determination (Ligthart; Michalowski).

Besides mental integrity, there is the *right to freedom of thought* explicitly recognized in most human rights treaties, such as Article 18 ICCPR, Article 9 ECHR, Article 13 ACHR, and Article 10 CFR (on this right in various jurisdictions, including Germany, cf. O'Callaghan/Shiner). Yet, this right has been rather neglected in case law so far and is underdeveloped. It could be interpreted broadly as protecting mental experience and mental being as a whole, including mental features such as attention. In this regard, it is often linked to mental autonomy, ensuring a self-determined use of technologies and the absence of manipulative features (cf. Istace; Keese/Leiser; UN Report Shaheed) – specifically on social media (see Bublitz).

Henceforth, established rights are protecting against negative or unwanted impacts on the human mind. Yet, the crucial question remains whether the social media practices in question amount to an interference with these rights. The addictive design features of social media, such as infinite scroll, algorithmic recommendations, and autoplay videos, are widely discussed (see Pałka/Ilczuk). Still, the legal recognition and attribution of a causal harm remain disputed. The negative effects are often not caused by a single intervention but results from an accumulation over time (cf. Bublitz). Furthermore, as Meta argued in the *KGM* case, one could contend that it is not the platform's design that is the main factor, but rather the individual user behaviour and their social and family environment. Hence, one faces both conceptual and empirical difficulties.

This reminds of the challenges faced in the context of climate change, where diffuse damages and a complex interplay between various actors takes place (see Heri). In the context of climate change, litigation has increased following the initial court victories, such as the *Urgenda* case (cf. Maxwell et al.). Last week's U.S. rulings could mark such a moment for big tech litigation, as the courts recognised for the first time that the mental effects caused by social media are legally relevant. This is not only important for civil proceedings but also for human rights. Courts may be more inclined to classify these social media practices as human rights interference, for example with the right to mental integrity or freedom of thought, thereby introducing new positive obligations on the states.

Why human rights?

Yet why should one engage in human rights litigation when there are other legal avenues available? In Europe, the Digital Services Act (DSA) provides a comprehensive regulation of social media platforms. The competent authorities could impose sanctions under Article 52 DSA et seq. for insufficient risk assessment and mitigation (Article 34, 35 DSA) by social media platforms regarding mental well-being (cf. Baranowska/Malgieri). Additionally, users could seek compensation for damages or loss they suffered as a result of provider's non-compliance with the DSA (Article 54 DSA). These are promising avenues to explore.

Still, human rights litigation may prove increasingly valuable in the years to come. Private actors are not directly bound by human rights and human rights have only an indirect effect between them through their positive dimension (cf. Bjorge). States are obliged to protect individuals from human rights infringements by other individuals and to redress and punish such behaviour (cf. Akandji-Kombe; HRC GC 31). Yet, they enjoy a wide margin of appreciation as to how to fulfil these obligations. They can do so by adopting or effectively enforcing regulations to prevent harm, or by ensuring redress through civil remedies or criminal law. Human rights can thus create positive duties on states to regulate platforms. This is particularly promising for jurisdictions that, unlike the EU, do not yet regulate social media. Even where regulation exists, states may have a positive obligation to ensure its effective implementation and enforcement. Human

rights, in their positive dimension, thus go beyond individual compensation and allow to consider the broader regulatory structure. Human rights litigation can reveal gaps and enforcement deficits in existing regulation, such as the DSA, and oblige states to address them.

Furthermore, many jurisdictions, notably the EU, follow a different approach to the U.S., which is not only a common law system but also traditionally relies on liability as a corrective mechanism in a relatively unregulated market. The EU, however, along with most of its member states, pursues a regulatory and rights-based approach (cf. Bradford). Fundamental rights are explicitly referred to and integrated in regulation such as the DSA (e.g. Article 34(1)b DSA). Clearer human rights standards established through litigation can therefore also strengthen the interpretation and application of legislation such as the DSA or domestic civil law, for instance by prompting a reconsideration of liability rules, which have traditionally been reluctant to award damages for purely psychological harm (see Pałka/Ilczuk; Wendehorst). Litigation can clarify the scope of existing rights and delineate states obligations even if ultimately no violation is found.

Outlook

The two U.S. judgments are but a small first step forward, particularly as they focus on children's health as well as serious psychological effects. Although they do not address broader issues of mental well-being and autonomy, they are a first legal recognition of the harmful mental effects of social media, encompassing both the systemic and the personal dimension. These initial legal victories will likely trigger further litigation within and beyond the U.S. In Europe, mobilisation of the DSA may be the preferable first option, particularly as the European Commission appears increasingly willing to enforce it rigorously. Yet human rights offer a broader playing field. In their positive dimension, they extend beyond individual compensation by considering the wider regulatory structure. They could therefore provide an additional pathway towards creating a liveable digital environment for all users.

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