

Queer Children's Digital Rights and Commission v Hungary

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The internet, especially social media, plays a crucial role in children's lives, while, at the same time, subjecting them to a growing number of risks. In response, the EU has enacted various laws and initiatives to safeguard children online in recent years. More recently, several Member States have drawn inspiration from Australia's social media ban for under 16-year-olds and [have begun advancing national restrictions on children's access to social media and/or smartphones](#). Much like the regulatory fragmentation that prompted the adoption of the Digital Services Act (DSA), these developments raise concerns about divergent national approaches within the EU single market. Thus, [the Commission is currently exploring the possibility of an EU-wide social media ban for children](#), advocating for a harmonised approach that ensures uniform protections across the Union.

However, unlike the DSA, a social media ban would regulate users, rather than platforms. This shift is both surprising and concerning. Surprising because the [DSA Guidelines on the protection of minors online](#) already outline recommendations for platforms to improve online safety for children and young people. Concerning because, as [the digital environment was not originally designed for children](#), a ban risks further restricting children's rights rather than asking how they can be realised online. It also sits uneasily with the European Declaration on Digital Rights and Principles, which highlights the [participation of children and young people in the digital environment](#).

A ban may appear to advance protection, but what does it do to children's provision and participation rights? What happens to their digital rights when we regulate children rather than transforming digital spaces in line with existing legislation? And whose voices are included in determining what the best interests of the child are? These questions become particularly urgent when we consider children who already experience marginalisation offline. Especially [for LGBTQI+ children, digital spaces may provide important avenues for identity development, access to information, community-building and self-expression](#). A blanket restriction on access to social media therefore does not affect all children equally. It may protect some children from some harms, while deepening isolation or exclusion for others. This is where Commission v Hungary (Valeurs de l'Union), C-769/22 becomes important.

1. What Commission v Hungary Problematises

On 15 June 2021, the Hungarian Parliament adopted [Law LXXIX of 2021, officially titled the law on taking more severe action against paedophile offenders and amending certain laws for the protection of children](#). While introduced as a child protection measure, amendments made during the legislative process introduced several provisions across Hungarian child protection, media, advertising and public education law restricting the dissemination of, and minors' access to, content deemed to promote or display deviations from the self-identity corresponding to the sex at birth, gender reassignment, or homosexuality. In response, [the Commission referred Hungary to the Court of Justice of the European Union \(CJEU\)](#), arguing that the amendments infringe several instruments of EU secondary law relating to services, including the e-Commerce Directive, the Audiovisual Media Services Directive, the GDPR and the Services Directive. It further argued that they contravene rights guaranteed by the Charter, including human dignity, private and family life, freedom of expression and information, and non-discrimination. In an unprecedented move, it also contended that the amendments infringe Article 2 TEU, which sets out the fundamental values on which the Union is founded. This is significant not only for EU constitutional law, but also for digital constitutionalism in the EU. The case shows how the EU's digital acquis may become a shield against selective adaptation of EU norms, while simultaneously raising questions about ambiguities within that acquis itself.

The problem is not that Hungary invoked child protection, but that "child protection" was mobilised to restrict access to information, erase the existence of already marginalised groups and deny the perspectives of those who need "special protection" in the first place. Rather than including LGBTQI+ children in the discussion of what protection should mean, the law denied their existence as children whose lives, identities and rights matter. [Advocate General Ćapeta's Opinion \(2025\)](#) made this tension visible as she emphasised that «the stigmatising effects of the legislation, which create a climate of hostility towards LGBTI persons», including minors. For minors belonging to the LGBTI community, «the removal of information about LGBTI lives from the public sphere prevents them from realising that their life is not abnormal». In Ćapeta's words: «Rather than protecting minors from harm, the contested legislation expands such harm».

With that, Commission v Hungary can be seen as problematising the terms on which the debate on social media bans is taking place. If the EU moves from regulating platforms to restricting children's access, what

happens to its commitment to children's participation in the digital environment? How might a social media ban be weaponised by governmental anti-gender actors? If parents are positioned as the primary intermediaries of queer children's digital lives, what happens to children whose guardians do not accept their identities or cannot provide meaningful support? If platforms remain central infrastructures of social life, can exclusion from them really be framed as protection?

2. Digital constitutionalism and queer children's digital rights

The 1989 adoption of the UN Convention on the Rights of the Child recognised children as autonomous rights-holders just as the World Wide Web was emerging. Since then, the CRC has become the most widely ratified human rights treaty in UN history, while the internet has become central to everyday life. Despite this co-occurrence, the internet(s) were not originally designed with children in mind. They have «[been largely conceived, implicitly or explicitly, as an adult resource in terms of provision, regulation and ideology](#)» (Livingstone & Third, 2017, 658). Still, [concerns over children's engagement with the Internet emerged quickly](#), particularly in relation to the protection of their innocence, privacy and human frailty. Many of these concerns predated this newest technological revolution; nonetheless, most remain unresolved today.

Contemplating this status quo, Livingstone & Third (2017, 660) expressed disappointment over the fact that children only featured marginally in the wave of so-called [Digital Bills of Rights](#), pointing to

«[deeper problems in society's digital imaginary, in which the 'digitally enabled child' is configured as a site through which cultural anxieties about both 'children' and 'the digital' play out](#)».

Indeed, if digital constitutionalism is understood not only as the translation of constitutional norms into digital spaces, but as a socio-legal process through which different societal actors co-create visions of how the digital space and internet(s) ought to be governed, then children's perspectives cannot remain peripheral. They must be part of the conversation about what kind of internet is being built, for whom, and according to whose understanding of safety, dignity, participation and rights.

Yet, children are at once imagined as already covered by existing frameworks and as requiring exceptional protective intervention. This is problematic because if children are absent from imaginaries of how to regulate the digital sphere, they are constructed as objects of governance rather than participants in it. If digital constitutionalism is a process through which institutions, courts, platforms, civil society, and users more generally co-create visions of how the internet ought to be governed, where are children in that process? Do Digital Bills of Rights and EU digital law and policy sufficiently account for different groups of children's distinct digital experiences? Or do they continue to view them as a homogenised group and rely on adult-centred ideas of the rights-bearing user?

Ultimately, *Commission v Hungary* reminds us that "child protection" «[provides a series of opportunities for a diverse set of actors to leverage to meet their own objectives and agendas](#)» (Datta, 2025, 156). As such, it is not only technical but also deeply contested. Thus, the question is not only how to protect children online, but also which children are imagined in the process, who gets to define harm and whether different children are allowed to participate in shaping the digital environments that shape them.

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