**I. Case summary and outcome**

On January 20, 2022, The Paris Court of Appeal upheld the judgment of the Paris Tribunal ordering Twitter International Company to submit to the plaintiff associations within two months all documents and data related to human and material resources deployed to fight against the spread of hate speech, condoning of crimes against humanity, incitement to racial and gender-based hatred, incitement to sexual and gender-based violence and abuses of human dignity online. The Court also ruled that Twitter must disclose information on the number, location, nationality, and spoken language of its staff employed to tackle reports from the users of the French Twitter Platform as well as the number of tweets reported for condoning crimes against humanity and inciting to hatred. Twitter was also required to disclose the criteria of its withdrawal policy and to submit the record of tweets communicated to the French public authorities, in particular to the Public Prosecutor’s Office.

**II. Facts:**

The plaintiffs are six associations, namely UEJF (Union des Etudiants Juifs de France), SOS Homophobie, SOS Racisme, AIJP (J’accuse! Action Internationale Pour la Justice) MRAP (Le Mouvement contre le Racisme et pour l’Amitié entre les Peuples) and LICRA (La Ligue Internationale contre le Racisme et l’antisémitisme), all fighting against racism, anti-Semitism and homophobia. They denounce Twitter International Company and Twitter France for not removing systematically and promptly racist, anti-Semitic or homophobic messages posted on Twitter and reported by its users. Their claims are based on several reports and bailiff’s findings carried out in 2019 and 2020, which allegedly established that only 9 to 28 % of hateful messages posted on Twitter were removed within 48 hours. On May 26, 2021, relying on Article 145 of the Code of Civil Procedure, the plaintiff associations sued Twitter International Company and Twitter France before the Paris Tribunal. Under Article 145 of the French Code of Civil Procedure, if there is a legitimate reason to preserve or to establish, before any legal process, the evidence of the facts upon which the resolution of the dispute depends, legally permissible preparatory inquiries may be ordered at the request of any interested party, by way of a petition or by way of a summary procedure. French Law for Trust in the Digital Economy (LCEN) requires Internet service providers under Articles 6- I. 3 and 6- I. 7 to act promptly to remove manifestly illicit content, to put in place a mechanism allowing Internet users to report hateful messages, and to make public the resources it devotes to fighting against online hate.

The associations who prepared to sue Twitter Int. Company under Article 6-I. 3 and 6-I. 7 of LCEN asked the Tribunal to appoint an expert whose task would be to obtain all administrative, contractual, technical or commercial documents related to the material and human means put in place to fight against dissemination of condoning crimes against humanity, homophobic hatred, incitement to gender-based violence as well as abuses against human dignity. The plaintiffs also demanded the tribunal to order Twitter to submit information on Twitter staff assigned for treatment of complaints related to above-mentioned offenses and data on how these complaints were processed by the Company. This must include the number of withdrawals and cases transmitted to the public prosecutor’s office over the last three years concerning offences of condoning crimes against humanity and incitement to racial hatred. With a decision dated July 6, 2021, Paris Tribunal ordered Twitter Int. Company to submit the required documents and data within two weeks and to pay 1.000 euro to each plaintiff association per day if it would not comply with the judgment, holding that the plaintiff associations who demanded this interim injunction did have a legitimate reason to obtain information on how the defendant company complied with its legal obligation of fighting against online dissemination of hateful content.

As to the second defendant in the case, Twitter France, the Tribunal struck it from the case on the grounds that that it did not have a role in moderating online content.

Twitter Int. Company appealed against this decision, arguing that the injunction decided by the Paris Tribunal was not based on precise, objective and verifiable facts under Article 145 of the Code of Civil Procedure. It further submitted that a measure requested under Article 145 must rely on a legitimate reason, meaning that it must be relevant and useful for the purpose of a future proceeding. However, the defendant company alleged that research reports submitted by the plaintiffs did not establish the deficiency of Twitter’s moderation system, that the required documents would not enable the plaintiffs to engage the responsibility of Twitter under the relevant articles of the LCEN. As to the obligation to make public the means employed to fight against online hate, the Company argued that such an obligation was not specified in the texts and that in any case, Twitter published annual reports on reporting of hateful content on social media.

The Attorney General at the Paris Court of Appeal was of the view that the judgment of the Paris Tribunal should be confirmed by the Court.

**III. Decision Overview**

The Paris Court of Appeal reminded in the first place that under Article 6.- I. 7 of the LCEN, Internet service providers are required to implement an easily accessible and visible mechanism enabling any person to bring to their attention hateful content on Internet, to inform the public authorities at the earliest opportunity of such alerts received and to make public the means that they will be employing in the fight against online illicit activities. The subject of the future legal action the plaintiffs intended to initiate was precisely establishing non-compliance by Twitter with its legal obligations under this Article. The Court noted in this regard that the plaintiffs were not required to demonstrate non-compliance at this preliminary stage, the interim injunction under Article 145 of the Code of civil procedure being legitimate in case the factual elements provided by the plaintiff were sufficiently plausible. The Court recapitulated the studies, observations and testimonies by members of the associations submitted in the case file including an inquiry by *l’Union des étudiants juifs de France* and *SOS Racisme*, establishing that between March 17 and May 26, 2022, only 126 out of 1.110, namely 11,4 % of the allegedly hateful tweets were removed from the online platform. This inquiry was accompanied by bailiff’s observations drawn on a testing on Twitter, which concluded that despite having been reported by the associations, a large number of racist, anti-Semitic and homophobic tweets had not been removed from the platform on the 7th day. Additionally, testimonies by the members of the plaintiff associations indicated that the overwhelming majority of the tweets they had reported remained online.

In these circumstances, the Court of Appeal held that the plaintiff associations disposed of factual elements supporting the allegation that Twitter did not efficiently remove hateful content on Internet. The data and information requested under the legal procedure provided by Article 145 of the Code of civil procedure would thus provide the associations with the necessary evidence for a future legal action whose aim would be to engage civil liability of Twitter for non-compliance with its legal obligations under Article 6- I. 7. of LCEN. According to the Court, the requested information and data were perfectly capable of establishing whether Twitter was committed to counter hate speech and in particular whether it promptly informed the public authorities of reported illicit activities and made public the means it deployed for fighting against online offences. The Court once again emphasized that the aim of the present procedure was not to establish whether Twitter failed to meet its legal obligations but to preserve the evidence of the facts upon which the plaintiffs would rely their future legal claims. Finally, the Court added that the interim injunction was proportionate in that the Tribunal of first instance limited the scope of the interim injunction between May 18, 2020 and July 6, 2021.

In the light of the foregoing, the Court of Appeal of Paris confirmed the judgment of the Paris Tribunal and condemned Twitter International Company to pay 1.500 euros to each of the plaintiff associations.

**IV. Global Perspective**

**National Law**

Article 145, Code of Civil Procedure

Article 6-I. 7, Law for Trust in the Digital Economy (LCEN)

**4. Expands expression**