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Shadowbanning Unveiled:

The Landmark Belgian MEP Case and Its Implications for Digital Rights

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DISCLAIMER

The opinions expressed in this paper are those of the author/s.

Shadowbanning, a widely used but under-acknowledged moderation tactic by platforms like Meta, has serious implications for freedom of expression across the political spectrum. Unlike overt censorship, shadowbanning restricts content visibility without users' awareness, allowing platforms to influence discourse covertly and without transparency.

With the Digital Services Act (DSA) now in effect, new standards for lawful, transparent content moderation are emerging. In a landmark move, the Belgian court system produced the first-ever legal rulings on shadowbanning in the significant Belgian MEP case. First, the Court of first instance of Bruges issued a judgment on the 4th of January 2022. That judgment was overruled by the Ghent Court of Appeal in its judgments displayed below of the 24th of October 2022 and the third of June 2024. Both of these appeal judgments are very interesting to understand the clever reasoning that's being developed to prove a shadowban. These judgments mark a turning point in EU digital rights law, setting a precedent that could redefine how platforms are held accountable for hidden censorship tactics.

This case raises crucial questions: What was the legal position on shadowbanning prior to the DSA, and how has it evolved with the DSA's implementation and this recent Belgian court decision? As the EU refines its stance on content moderation transparency, the implications of this ruling are poised to influence digital governance standards throughout Europe.

Given the quality of the legal reasoning in the judgment and the fact that it is one of the first judgments in Europe on shadowbanning, this working paper includes a scientifically controlled translation of the judgment into English.

Extract of interlocutory judgment dated 24.10.2022 court of appeal Ghent - K 7

In the matter of:

V,
appellant,
Having as counsel X,

Against:

META PLATFORMS IRELAND LTD, having its registered office at 4 Grand Canal Square, Grand Canal, Harbour Dublin 2, IRELAND,
respondent,
Having as counsel X

1. FACTS AND PRIOR JUSTICE

1.1. V is a Belgian politician and member of the Vlaams Belang.

1.2. In 2008, he created a Facebook account.

1.3. On 20 February 2019, he created a Facebook page that he says he uses to spread his political message (p. 7, nr. 6 summary conclusion V).

To create a Facebook page, one must have a personal Facebook account.

1.4. In addition, V also created an advertising account. According to META, this happened on 23 February 2018. This is a paid account that V uses to post and share ads on Facebook.

1.5. He was elected as an Member of the European Parliament on 26 May 2019 and has been in the European Parliament ever since.

1.6. According to META, V repeatedly shared content in violation of his contracts with META. In doing so, he allegedly violated the Facebook Terms of Service, among other things.

As a result, META removed the allegedly infringing content from V's Facebook page and imposed "temporary" restrictions on his Facebook page and on his advertising account (p. 6, para 6 summary conclusion META).

1.7. META has also subjected V's Facebook page to a 'shadow ban' from 19 February 2021. Specifically, according to V, this means that only a fraction of his followers will see his posts. In other words, META, according to him, limits the visibility of his Facebook page.

1.8. META acknowledges that it imposed a restriction on V's Facebook page in February 2021, which it says reduced the organic reach that content posted on the Facebook page might otherwise have experienced. This meant that the unpaid content shared on the Facebook page was less likely to be shown to the same number of users as it would have been without such a restriction (p. 23, para 81 META summary conclusion).

1.9. V argues that as a result of META's actions from 19 February 2021 to 19 August 2021, he could no longer actively use his Facebook account, could not share posts through his Facebook page and therefore could no longer post any messages on his Facebook page. Nor, he said, could he still post advertisements or manage Facebook pages.

1.10. According to META, as of the date of its summary conclusion on appeal, no restriction is still in force on V's Facebook page.

1.11. V acknowledges that META unblocked his ad account on 24 May 2021.

1.12. He further states that on 19 August 2021, he found that META had terminated the blocking of his publishing rights and that he could therefore use his Facebook account to share posts again since then.

However, according to him, META still applies a shadow ban on its Facebook page today.

1.13. Where V uses the term 'shadow ban', META uses the term 'restriction' for this purpose (see p. 23, fn. 81 META summary conclusion).

However, both terms, according to the court, are synonyms for the same phenomenon, namely a measure that reduces the organic reach of content posted on a Facebook page.

Hereafter, the court uses the term 'shadow ban' for this measure.

2. CLAIMS AND POSITIONS OF THE PARTIES ON APPEAL

2.1. For an account of the grievances, the subject matter of the claims and the parties' arguments, the court refers to the documents on appeal.

2.2. V claims in the dispositive part of his summary conclusion dated 31 August 2022:

Declare the Appellant's appeal admissible and well-founded;

Set aside the judgment a quo and reform as follows:

I. Before doing justice
Pursuant to Section 19(3) Ger.W., before doing justice, declare the application for interim measures admissible and well-founded and impose the following measure on Meta pending a final decision:

- Suspend the use of a shadow ban, imposed because of the posts that are the subject of this dispute, on posts shared on V's Facebook page (https://www.facebook.com/xxx), on pain of a penalty of EUR 1,000 per hour from service of the interlocutory judgment.

The claim for measures before doing justice to be dealt with during short debates at the initiation hearing or at a nearby date in accordance with art. 1066 Ger.W.

II. On the merits

Pursuant to the devolutive effect of the appeal, stay the claims on the merits as formulated below.

Set a conclusion calendar to enable the case and set a court date.

1. In main order

Declare V's claims admissible and well-founded as follows;

To rule that Meta violated V's right to freedom of expression with her challenged actions;

To rule that Meta committed a fault within the meaning of Section 1382 of the Civil Code with her challenged acts, which caused damage to V;

To judge that Meta abused its position of power;

2. In secondary order

To rule that V's posts did not violate Facebook's terms of service and community guidelines;

To rule that Facebook applies its terms of service and community guidelines with respect to V in a discriminatory manner;

3. In any case

Order Meta to reinstate the deleted posts on V's Facebook page (https://www.facebook.com /XXX) and V's Instagram page on pain of a penalty of EUR1,000 per hour per deleted post;

Meta to order removal of factcheck linked to 3 and 16 December message;

Order Meta to cease the sanctions it imposed because of the deleted posts.

Specifically, these are:
- The blocking of publication rights and functionalities associated with the Facebook account V (https://www.facebook.com/xxxx);
- Blocking the use of the functionalities associated with V's Facebook page (https://www.facebook.com /xxx);
- Notification that the Facebook page may violate community guidelines and the application of a shadow ban on V's Facebook page (https://www.facebook.com/xxx

Order Meta to pay damages to V, provisionally assessed at EUR 1;

order Meta to pay the costs of the proceedings, including summons costs, costs of service and procedural indemnity, the latter currently estimated at EUR 1 510.00 at first instance and EUR 1 510.00 in grade of

appeal, the judicial interest shall be equal to the legal interest rate from the date of service of the interlocutory judgment until the day of payment in full.

2.3. META claims in the dispositive part of its summary conclusion dated 15 September 2022:

- In main order, dismiss the Appellant's claims as inadmissible;

- In subsidiary order, hold that the Belgian courts have no international jurisdiction to hear the Appellant's claims against Meta Platforms Ireland;

- In more subordinate order, reject the Appellant's request for a provisional measure under section 19(3) Ger.W;

- In any event, order the Appellant to pay the costs of the proceedings, including court fees in the amount of EUR 1,560 at first instance and EUR 1,680 on appeal.

3. ASSESSMENT

3.1. General

3.1.1. As it stands, the debate is limited to the following questions:

- -Is V's appeal admissible?
- Have the Belgian courts jurisdiction ('international authority)?
  -Is the interim measure claimed by V admissible and well-founded?

3.2. The admissibility of the appeal

3.2.1. A writ of service on V is not before us. Nor is it pretended that service was made. The appeal is timely and regular according to form, which, moreover, is not disputed.

3.2.2. META submits that the appeal is inadmissible under section 1050.2e para Ger. W.

Indeed, in its view, the contested judgment is a (pure) decision before justice is done. Such a judgment can only be appealed together with the appeal against the final judgment (p. 29, marg. 105 et seq. META summary conclusion).

3.2.3. Art. 1050.2e para Ger. W. stipulates the following:

A decision on competence or, unless otherwise determined by the court of its own motion or at the request of one of the parties, a decision before doing justice may be appealed only together with the appeal against the final judgment.

3.2.4. The court does not accede to META's argument.
The second paragraph of Art. 1050 Ger. W. constitutes an exception to the general rule in the first paragraph of this article, namely that an appeal can be lodged in all cases as soon as the judgment is rendered, even if it is a judgment in absentia.

Exceptions should be interpreted restrictively.

Since the second paragraph of Art. 1050 Ger. W. makes no mention of judgments in which the court rules on its jurisdiction, such judgments are indeed subject to immediate appeal (cf. Cass. 12 May 2017, C.16.0214.N).

The result is no different if the decision on jurisdiction relates to a measure before justice is done.

META refers in vain to the judgment of the Court of Cassation of 21 June 2021 (C.17.0412.N). Indeed, this judgment refers to a situation where the court actually decides on the measure before doing justice and rules on the admissibility and/or merits of this measure.

This is not the case if the court declares itself without jurisdiction to rule on this measure.

For the above reasons, Art. 1050,2e para Ger. W. does not play in this case. Consequently, V's appeal is indeed admissible.

3.2.5. Purely for the sake of completeness, the court considers the following.

The debate before the first judge was limited to the requested interim measure (p. 3 at the bottom of the contested judgment).

However, in assessing its jurisdiction over this measure, the first court also ruled - for the sake of completeness - that it did not have jurisdiction to rule on the dispute on the merits (p. 8, nr. 6.3 of the judgment under appeal).

The first court has exhausted its jurisdiction on this point so that the judgment on this point is unmistakably a final judgment that can be appealed immediately (art. 19.1e para. Ger. W.).

That the first judge assessed his jurisdiction on the merits in the context of an application for an interim measure in no way takes away from the fact that he did make a final decision on his jurisdiction over the merits of the case. It is without significance here that he did not repeat in the dispositive part of his judgment that he was without jurisdiction to rule on the merits of the case. Unlike META argues, there can be no further debate on the merits before the first judge.

The foregoing is not affected by the fact that V filed a further submission after the contested judgment on 10 January 2022. Indeed, the characterisation of a judgment as a 'final decision' or 'decision before doing justice' does not depend on the (procedural) attitude of the parties.

3.2.6. Conclusion: the appeal is admissible.

3.3. Merits of the appeal

3.3.1. Jurisdiction

3.3.1.1. General

3.3.1.1.1. This case is governed by Regulation (EU) 1215/2012 of 12 December 2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This regulation is hereinafter referred to in abbreviated form as "Brussels Ibis Regulation".

3.3.1.1.2. V supports the Belgian court's jurisdiction over the interim measure it sought on two different legal grounds:

- In main order: on Art 35 Brussels Ibis Regulation
- In subsidiary order: on the jurisdiction of the Belgian court over the soil dispute (p. 95 ff. Synthesis Conclusion V).

3.3.1.2. Art. 35 Brussels Ibis Regulation

3.3.1.2.1. According to META, the Belgian courts have no "international jurisdiction to hear the Appellant's claims because the Appellant agreed to the Forum Selection Clauses, which confer exclusive jurisdiction on the Irish courts to hear the Appellant's claims against Meta Platforms Ireland." (p. 40, fn. 145 et seq. META Synthesis Conclusion).

3.3.1.2.2. Art 35 Brussels Ibis Regulation stipulates the following:

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter. (court's own underlining)

3.3.1.2.3. It is clear from this article that a choice-of-court clause cannot affect jurisdiction under Art 35 Brussels Ibis Regulation: even if another court has jurisdiction on the merits, for example on the basis of a valid choice-of-court clause, another court can still order provisional measures on the basis of the aforementioned article (in the same sense: M.P. SENDER, "Art. 31 EEX-Vo" in *Comm. Ger. R.*, 2003, 5).

Referring to the ECJ judgment of 6 October 2021, the first court erred in assuming that a valid choice-of-court clause prevents a court other than the designated one from ordering interim measures under Art 35 Brussels Ibis Regulation (ECJ 6 October 2021, No C-581/20, Toto).

Indeed, in his opinion for this judgment, Advocate General RANTOS expressly stated that a choice of forum clause drafted in general terms should not be assumed to waive the benefit of Article 35 Brussels Ibis Regulation (Opinion A.G. RANTOS for ECJ 6 October 2021, C-581/20, Toto, para 61).

All this is also logical: if it were held that a choice-of-court clause drafted in general terms extends the jurisdiction of the chosen court to order provisional or protective measures with the result that it has exclusive jurisdiction over such measures, this would completely erode the legal protection of Art 35 Brussels Ibis Regulation

3.3.1.2.4. For that matter, notwithstanding V's entire exposition, META also does not seem to dispute that its choice-of-court clauses cannot affect Article 35 Brussels Ibis Regulation (see p. 103, marg. 390 META's summary conclusion).

META does dispute that the conditions of Art 35 Brussels Ibis Regulation are met (p. 104, randrn. 393 META summary conclusion).

3.3.1.2.5. For Art 35 Brussels Ibis Regulation to apply, the following conditions must be met:

- the requested interim measures should be possible under Belgian law;
- they must be provisional measures of a precautionary nature within the meaning of the regulation;
- when necessary, measures will be imposed to ensure the conservatory nature of the provisional measures;
- there must be a real link between the subject matter of the provisional measures and the territorial jurisdiction of the court in the requested Member State;
- the measures must be limited to the territory of the forum state (recital 33 Brussels Ibis Regulation).

(p.91, fn. 135 summary conclusion V; p.104, fn. 393 summary conclusion META)

3.3.1.2.6. The court discusses these conditions below.

- the interim measures claimed must be possible under Belgian law

This condition is fulfilled.

Art. 19, para. 3 Ger. W. indeed allows the court, before doing justice, to order a prior measure to provisionally regulate the state of the parties.

- conservatory nature

'Provisional or protective measures' should be understood as measures intended to maintain a factual or legal situation in order to preserve rights whose recognition is sought by other means before the court hearing the main action (cf. ECJ 26 March 1992, No C- 261/90, Reichert, para 34).

This includes 'positive or anticipatory' measures, i.e. measures that actually provisionally weigh up the merits of the case and the plaintiff's claim (cf. M.P. SENDER, "Art. 31 EEX-Vo" in *Comm. Ger. R.*, 2003, 9). However, when the court orders such measures, it should impose conditions or modalities to guarantee the provisional or protective nature of the measures. In other words, he should ensure that the measures imposed are 'reversible'.
Unlike META argues, the interim measure claimed by V does, *in principle*, meet this condition. It seeks to maintain a factual situation, i.e. to *suspend* the use of the shadow ban.

As the court also explains below, it considers it plausible that this measure is necessary to ensure that a judgment on the merits retains some utility. With both parties having drafted detailed submissions with extensive argumentation, the resolution of the proceedings on the merits takes some t i m e . If V has to wait for the judgment on the merits, he will continue to suffer the negative consequences of the shadow ban throughout the proceedings. The latter obviously presupposes that it is proven that META still applies the shadow ban at this point in time (see below). According to the court, these negative consequences cannot be sufficiently mitigated by finally lifting the shadow ban in a decision on the merits and awarding damages.

- Measures to guarantee the precautionary nature of provisional measures

The court ordering measures under Article 35 Brussels Ibis Regulation must face the need to lay down conditions or modalities to ensure the provisional or protective nature of the measures (cf. ECJ 17 November 1998, C-391/95, Van Uden, para 41).

The provisional and conservatory nature of the measure claimed by V can be ensured in this case by limiting it in time, i.e. until the judgment on the merits.

Moreover, should the court rule on the merits that META was justified in applying a shadow ban, META may reinstate the shadow ban with immediate effect

(and delete all posts s h o w n to followers of V's Facebook page).

- real link between the subject matter of the provisional measure and the territorial jurisdiction of the court in the requested Member State

The grant of provisional or protective measures under Art 35 Brussels Ibis Regulation is subject to the condition that there is a genuine connection between the subject matter of the measures sought and the jurisdiction of the Contracting State of the requested court based on territorial criteria (cf. ECJ 17 November 1998, No C-391/95, Van Uden, para 40).

An interested party may apply under Art 35 Brussels Ibis Regulation for a provisional or protective measure before the courts of a Member State in which the property or person against whom the measure is to be enforced is located (cf. ECJ 6 October 2021, No C-581/20, Toto, para 58).

META argues at length that this condition is not met in this case.

It argues that "the Facebook Service for users in the European region, including Belgium, [is] operated and hosted by Meta Platforms Ireland, a company incorporated under Irish law, whose registered office is in Dublin" (p. 113, nr. 431 META summary conclusion).
Therefore, in its view, the measure requested by V can only be implemented in Ireland, where META operates. Ireland is the only place where META could impose or suspend the shadow ban.

Therefore, according to META, there is no real link between the measure requested by V and Belgium because the requested measure would not and *could not be* implemented in Belgium (p. 111, fn. 425 META summary conclusion).

In support of its claim, META refers, inter alia, to a judgment of the President of the French-speaking Court of First Instance in Brussels dated 9 March 2020 (document 11 META).

Contrary to META and the first judge, the court considers that there is indeed a real link between the measure claimed by V and Belgium.

As a Belgian politician, he addresses the Belgian electorate and participates in the Belgian political and public debate (p. 87, no. 128 Summary Conclusion V). The court considers it plausible that the vast majority of his 'followers' are Belgian voters

The shadow ban - if proven - ensures that the visibility of his posts to his followers is limited.

Moreover, without being contradicted in this by META, V argues that META itself states that it is possible to define a target group (of an advertisement) based on location (so-called 'location targeting') (p. 89, nr. 131 summary conclusion V).

Consequently, it is perfectly possible for META to suspend the alleged shadow ban only with regard to V's Belgian followers.

For this reason, the court cannot concur with the first judge where he stated the following:

In any e v e n t , the effects of the measure sought by the plaintiff are not or cannot -as required- be limited to Belgian territory. (p. 7 judgment under appeal).

Nor, according to the court, does conferring jurisdiction on the Belgian courts conflict with the legal certainty objective of the Brussels Ibis Regulation Indeed, since *de facto* provisional measures are sought in respect of V's followers based in Belgium, such measures cannot be sought in any Member State.

Based on the aforementioned link with Belgium, it was incidentally for META *foreseeable* to be summoned to the Belgian courts.

By assuming jurisdiction on the basis of the location of Facebook users, META is in no way at risk of being summoned to the courts of any Member State under Art 35 Brussels Ibis Regulation

It therefore does not upset the balance envisaged by the Brussels Ibis Regulation. On the contrary. If, in an online context, more specifically that of social media, it were to be ruled that users could only seek interim measures before the courts of the Member State where the social media company's head office is located and where it operates, this would completely erode the legal protection of Article 35 of the Brussels Ibis Regulation.

Therefore, the court does not concur with, among others, the order for interim relief submitted by META by the president of the French-speaking court of first instance in Brussels of 9 March 2020 (META's document 11, p. 14, margin 24).

3.3.1.3. For the record: jurisdiction on the merits

3.3.1.3.1. The courts with jurisdiction to hear the proceedings on the merits under the Brussels Ibis Regulation may also order provisional and protective measures (cf. ECJ 6 October 2021, No C-581/20, Toto, para 55).

Contrary to Art 35 Brussels Ibis Regulation the jurisdiction of the judge on the substance to order provisional and protective measures is not subject to the fulfilment of further conditions, such as an actual link between the subject matter of the provisional measure and the territorial jurisdiction of the court in the requested Member State (cf. ECJ 17 November 1998, No C-391-95, Van Uden, para 22).

3.3.1.3.2. V also bases the jurisdiction of the Belgian courts to order provisional and protective measures *in subordinate order* on the jurisdiction of the aforementioned courts on the merits (see his fourth grievance, p. 95 et seq. of his summary conclusion).

Purely for the sake of completeness, the court below therefore considers whether it also has jurisdiction on the merits.

3.3.1.3.3. V argues the jurisdiction on the merits of the Belgian courts rests on the following legal grounds:

- In main order: his claim is extra-contractual in nature and based on a violation of his fundamental rights and abuse of META's dominant position. Belgian courts have jurisdiction under Art 7.2 Brussels Ibis Regulation.

- Subordinate: his claim is contractual in nature. The Belgian courts have jurisdiction under Art 7.1(b) second indent Brussels Ibis Regulation.

3.3.1.3.4. META, on the other hand, invokes the exclusive jurisdiction of the Irish courts based on a choice of forum clause in Article 4.4 of the Facebook Terms of Service (p. 41, nr. 149 et seq. METAFAN Synthesis Conclusion - piece 1 META). According to it, this clause applies to all claims, both contractual and non-contractual (p. 85, nr. 306 META summary conclusion).

It also invokes its 'Commercial Jurisdiction Clause' which also grants exclusive jurisdiction to the Irish courts for any "commercial claim" (p. 95, nr. 347 et seq. META Synthesis Conclusion - piece 7 META).

3.3.1.3.5. V disputes the applicability of this choice of forum clause. To this end, he makes the following arguments:

- The forum selection clause does not apply because he is a consumer.

- META does not prove that it has read and accepted the Facebook Terms of Service.

3.3.1.3.6. V argues that he is a consumer and thus enjoys the mandatory protection of Art 17-19 Brussels Ibis Regulation.
According to META, on the other hand, as a politician and Member of the European Parliament, V makes professional use of the Facebook Service so that he cannot be considered a consumer within the meaning of Art 17.1 Brussels Ibis Regulation.

The parties dispute this condition at great length.

In settling this dispute, the court first notes that the concept of 'consumer' within the meaning of Article 17(1) Brussels Ibis Regulation must be interpreted restrictively (cf. ECJ 25 January 2018, C-498/16, Schrems, para 29).

According to the court, a politician/politician can be defined as someone who is a member of a political party, promotes the views of that party and pursues the achievement of that party's objectives (cf. https://nl.wikipedia.org/wiki/Politicus). To achieve those objectives, a politician usually seeks to hold an elected office (e.g. municipal councillor, provincial councillor, MP, etc.).

According to the court, when a person opens a Facebook account and creates a Facebook page to express his political ideas and opinions, he does not lose the capacity as a consumer if he is also subsequently elected and takes up a (paid) political office.

According to the court, support for this assertion can be found in the SCHREMS judgment (ECJ 25 January 2018, C-498/16, Schrems, in particular paragraph 41).

Whereas SCHREMS pursues the realisation of a particular social objective, namely the enforcement of the fundamental right to data protection, V too pursues the realisation of his political ideas. Both use
among others, their Facebook page while initially using their Facebook account for private purposes only.

Although SCHREMS also receives income as part of its social struggle (including through books, lectures, donations,...), according to the ECJ, this does not deprive it of its status as a consumer.

Moreover, if META's thesis were to be followed, i.e. that a politician who uses his Facebook page to spread his political ideas cannot be considered a consumer, this would result in the fact that within the European Union, the Irish courts would be the only ones able to rule on expressions of opinion by politicians on Facebook, ranging from a local councillor to a Member of Parliament (see in this sense: Synthesis Conclusion V p. 62, para 82).

For the above reason, V can be considered a consumer for the purpose of using his Facebook account and Facebook page.

As the interim measure claimed by V relates only to his Facebook page, the question of whether he may have agreed to a forum selection clause in the context of his advertising account and, if so, whether this clause is opposable to him, is immaterial.

Conclusion: even *if it were* to be assumed that V agreed to the choice-of-court clause from the Facebook Terms of Service and the 'Commercial Jurisdiction Clause', META would not be able to rely on the aforementioned clauses under Art 19 Brussels Ibis Regulation.

3.3.1.3.7. Since META's choice-of-court clause does not impede the jurisdiction of the Belgian courts, it is necessary to examine whether they have jurisdiction under any of the provisions of the Brussels Ibis Regulation.

To settle this question, the nature of V's claim must first be determined: is it contractual or extra-contractual in nature?

The parties also dispute this extensively.

The court considers the following in this regard.

The mere fact that one of the contracting parties brings a civil liability action against the other party is not in itself sufficient to speak of a claim arising out of "contractual obligations" within t h e meaning of Article 7.1 Brussels Ibis Reg.

This is the case only if the imputed conduct can be regarded as a non-performance of contractual obligations as they can be determined from the subject matter of the agreement.

This is the case a priori when the interpretation of the contract between the defendant and the applicant is necessary to determine whether the conduct which the latter accuses the former of is lawful or unlawful (cf. ECJ 13 March 2014, C- 548/12, Brogsitter, paragraphs 23-25).

By contrast, where the applicant relies in his application on the rules of tort, namely the breach of a legal obligation, and it is not necessary to examine the content of the contract entered into with the defendant in order to determine whether the conduct alleged against him is lawful or unlawful, the ground for the claim arises in tort within the meaning of Art.2 Brussels Ibis Regulation since that obligation rests on the defendant independently of the contract (cf. ECJ 24 November 2020, C- 59/19, Wikingerhof GmbH & Co KG v Booking.com BV, at paragraph 33).

V's characterisation of his claims is not decisive in determining whether they are contractual or extra-contractual in nature. The fact that V, in his summons dated 8 April 2020, argues in main order that META is violating his right to freedom of expression, which he claims constitutes a tortious act, is, as a result, not decisive.

Contrary to V's argument, the Court of Appeal held that the present case is not simply comparable to the *Booking.com* case (ECJ 24 November 2020, C-59/19, Wikingerhof GmbH & Co KG v Booking.com BV). In the aforementioned case, the plaintiff argued that Booking.com abused its alleged dominant position on the relevant market by imposing unfair contract terms on small hoteliers registered on its platform.

In the present case, according to the court, V is essentially complaining about the way META executes its agreement for the Facebook service.

According to the court, this claim does require an interpretation of the agreement between the parties.

For this reason, V's claim should be regarded as a claim in respect of contractual obligations, within the meaning of Article 7.1 Brussels Ibis Regulation.

3.3.1.3.8. In light of the above, the Belgian courts in this case can base their jurisdiction on two different grounds:

-Art. 17-19 Brussels Ibis Regulation: as a consumer, V can bring an action before the courts of his domicile, i.e. Belgium (Bruges).

- Art. 7.1(b) second indent Brussels Ibis Reg: Belgium is the place where the contract is actually performed by META (cf. e.g. Voorzieningenrechter bij de Rechtbank van Noord-Holland 6 October 2021,
r.o. 4.1, piece G.4 V; Oberlandesgericht München 4 August 2018, 18 W 1294/18, r.o. 10, piece G.8 V).

For the sake of completeness, the court also notes that V admittedly does not expressly rely on Article 17-19 Brussels Ibis Regulation (contracts concluded by consumers) to establish the jurisdiction of the Belgian courts. However, since he expressly argues that he is a consumer, this is the logical consequence of his argument.

3.3.1.4. Summary on jurisdiction

3.3.1.4.1. Belgian courts have jurisdiction to rule on V's claim for interim measures (relating to his Facebook page):

-Under Art 35 Brussels Ibis Regulation;

-By virtue of their jurisdiction on the merits derived from:

-Art. 18.1 Brussels Ibis Regulation (V = consumer);

-Article 7.1(b) second indent Brussels Ibis Regulation

Moreover, for the sake of completeness, the court notes that whether V's claim is contractual or extra-contractual in nature makes no difference to the jurisdiction of the Belgian courts.

Even if it were held that his claim was non-contractual in nature, the Belgian courts would have jurisdiction (Art 7.2 Brussels Ibis Regulation). As V is a Belgian politician and addresses the Belgian electorate, the damage he suffered due to META's alleged wrongful act is situated in Belgium.

3.3.2. Advanced measure

3.3.2.1. Is the requested measure without object?

3.3.2.1.1. According to META, as of today, the shadow ban no longer applies to V's Facebook page. The interim measure requested by him is therefore

without object and should be rejected for that reason alone (p. 116, marg. 451 et seq. META summary conclusion).

V disputes this (p. 139, fn. 224 et seq. summary conclusion V). He considers that META is still using a shadow ban.

3.3.2.1.2. To convince the court of their rightness, both parties put forward various figures and filed numerous exhibits covering different periods.

3.3.2.1.3. However, the essence of the dispute, according to the court, is as follows:

- META acknowledges that it has imposed a "restriction" on V's Facebook page from February 2021 (p. 23, nr. 81 META summary conclusion). It describes this restriction as follows:

  This limitation reduced the organic reach that the content posted on the TV Page might otherwise have experienced (...). This meant that the unpaid content shared on the TV Page was less likely to be shown to the same number of users as it would have been without such a restriction.

- META does not appear to dispute the figures quoted by V on page 139 of its summary conclusion (see pp. 116-117, nr. 455 META summary conclusion). It itself refers to V's figures but interprets them differently from V.

- Where META argues that the restriction is no longer in force 'at present', it does not specify exactly since when this has been the case. From its summary conclusion, the court believes it can infer that, according to META, this has been the case since the end of 2021.

3.3.2.1.4. Specifically, V points to the following figures:

- Average reach of its posts until 19 February 2021: 84.684

- Average reach of its posts from 19 February 2021 to June 2022: 11.861

- Average reach of his messages from January to June 2022: 24.433

(p. 139 summary conclusion V)

3.3.2.1.5. With META *acknowledging* that it had imposed a restriction from February 2021, all that remains for the court to determine is whether this restriction (shadow ban) is still in force today.

The above V figures show that the average reach of messages in the period from January to June 2022 was 24,433.

As META rightly notes, this is indeed a significant increase over the average reach during the preceding six months, i.e. from July to December 2021. Back then, the average reach was 4,824.

However, this observation does not take away from the fact that the average of 24,433 is still less than a third than the average range of 84,684 as it was prior to the introduction of the restriction in February 2021.

META does not provide any explanation for this. It limits itself to stating that this "may be the result of any number of factors affecting outreach (...)" (p. 118, no. 485 META summary conclusion).

This explanation is not conclusive. First of all, V relies on the average reach of his posts anyway, which implies that various factors are already taken into account. Moreover, META, as administrator of the Facebook service, has sole oversight of its operation, including the algorithms used thereby.

As the average reach of V's posts in the period from January to June 2022 was still less than one third compared to the average reach before the introduction of the shadow ban, the court considers it sufficiently proven that META is still applying this shadow ban on V's Facebook page today.

3.3.2.1.6. The above is not altered by the fact that during the past months (May - August 2022), according to META, the organic reach of posts on V's Facebook page "has increased significantly and regularly runs into the tens of thousands" (p. 117, nr. 456 META summary conclusion). Indeed, without being contradicted in this by META, V argues "that the posts referred to by Meta are almost all (with the exception of three posts) promoted posts" (pp. 139-140, no. 225 summary conclusion V).

META incorrectly refers to the reach of promoted messages:

-It is not disputed that the shadow ban never applied to V' s advertising account so that the reach of messages promoted in that

way (via payment) says nothing about the reach of posts shared through V's Facebook page.

- It seems plausible to the court that the reach of a promoted message is greater than that of a non-promoted message because the promoted messages are also shown to people who do not follow V.

3.3.2.1.7. Conclusion: the measure claimed by V is still relevant and not without object.

3.3.2.2. Is the requested action justified?

3.3.2.2.1. Before rendering justice, the court may, at any stage of the proceedings, order a preliminary measure to investigate the claim or settle an interlocutory dispute relating to such a measure, or provisionally settle the state of the parties (art. 19.3e para. Ger. W.).

The measure sought by V is one of the latter category and aims to provisionally settle the parties' situation.

In that case, the court must confine itself to a *prima facie assessment*: a very brief and superficial examination of the main claim (cf. S. VOET, " Stand van zaken en actuele ontwikkelingen op het gebied van kort geding en versnelde rechtspleging ", in *Themis No 113 - Judicial Law*, Bruges, Die Keure, 2020, (1) 13, no 22).

Unlike META argues, the court can indeed assess the interim measure claimed without an in-depth examination of the merits of the case (p. 121, no. 476 et seq. META's summary conclusion).

To assess the merits of the interim measure claimed, the court must consider whether the shadow ban imposed by META is still *prima facie* justified at this stage (see p. 118, no. 184 Summary Conclusion V).

3.3.2.2.2. According to META, by posting several messages on its Facebook page, V repeatedly and seriously violated both the Facebook Terms of Service and the Facebook Community Guidelines (hereinafter "the Facebook Guidelines").

According to her, these violations occurred by posting content on his Facebook page that (i) expressed hate speech; (ii) gave presence and support to, and praised the actions of, dangerous individuals and hate organisations, including

by depicting their actions, leaders and symbols; and (iii) constituted bullying and harassment (p. 124, no. 491 META summary conclusion).

3.3.2.2.3. V disputes on the merits that the Facebook Terms of Service and the Facebook Guidelines "would be enforceable, and moreover that he would have violated them" (p. 106, no 169 summary conclusion V).

3.3.2.2.4. For the purposes of the following *prima facie assessment*, the court of appeal *assumes* that the Facebook Terms of Service and the Facebook Guidelines do apply. Whether this is *actually* the case will have to be determined by the subject of the debate on the merits.

3.3.2.2.5. The parties first dispute the message(s) that prompted the imposition of a shadow ban on 18 February 2021.

According to V, META imposed the shadow ban because of a post he made on his Facebook page on 11 June 2020, which showed a picture of a Nazi book burning (p. 106, no 167 META summary conclusion).

META, on the other hand, disputes that the shadow ban was imposed as a result of a single post. According to it, the shadow ban was imposed "as a result of a combination of factors (i.e., the history of violations on the TV Page, the number of measures ('strikes') on the TV Page, the severity of the violations, etc.)" (p. 128, footnote 445 META summary conclusion; see also p. 23, footnote 44).

In its synthesis conclusion, META relies on notices from V dated 7 November 2019, 20 June 2020, "June and July 2020", 9 August
2020,23 and 24 August 2020".

3.3.2.2.6. The question of whether V violated the Facebook Terms of Service and the Facebook Guidelines -if applicable -- with these posts will have to be addressed on the merits.

However, as part of a debate on interim measures, the court may consider whether the sanction imposed by META is still *prima facie* justified today, even if there was actually a violation of the Facebook Terms of Service and Facebook Guidelines.

Regardless of the law applicable to the legal relationship(s) between V and META - which will have to be decided on the merits--, each party must behave reasonably and in good faith.

3.3.2.2.7. Based on the following elements, the court finds that it is *prima facie* manifestly unreasonable and disproportionate to maintain the shadow ban today:

- META acknowledges that the reports of the Nazi book burning of "June and July 2020" were the last reports against which action was taken before the shadow ban was imposed (p. 128, footnote 445 META summary conclusion).

  Strangely, it does not specify the exact dates of these messages.

  More than six months elapsed between the date of the notices and the imposition of the shadow ban.

  If these posts constituted a (serious) violation of the Facebook Terms of Service and Facebook Guidelines, META would have taken immediate action against them, or at least it should have done so.

  -The shadow ban was imposed in February 2021 and has already lasted more than a year and a half.

  However, in their letter of 19 March 2021, META's lawyers repeatedly wrote that these were temporary restrictions (Exhibit D.11 V).

  In those circumstances, it is therefore *prima facie* unreasonable that the shadow ban should still apply a year and a half later.

- There is no indication anywhere that META offers any procedural safeguards to the user if it takes certain action because of alleged violations of the Facebook Terms of Service or the Facebook Guidelines.

  META does not undertake in any way to immediately inform the user concerned of an intended shadow ban nor to communicate the reason for it. Nor does META offer the user the opportunity to react to that decision, with a new decision by META to follow which includes the possibility of lifting the shadow ban (cf. Bundesgerichtshof (DL), 29 July 2021, III ZR 179/20, in particular §85, regarding the deletion of a message and the temporary partial blocking of a user account (item G.5 V)).

  Even if META were entitled under the Facebook Terms of Service and Facebook Guidelines to apply a shadow ban because of the posts made by V - which will have to be settled on the merits

- it must exercise due diligence when imposing this measure. This means in any case that it must inform the user of the imposition of this measure and give reasons for it in such a way that the user can learn from the decision (cf. Rechtbank Noord-Holland (KG), 6 October 2021, [MP] v LinkedIn Ireland Unlimited Company and LinkedIn Netherlands bv - piece G.4 V, r.o. 4.21 regarding the deletion of messages, the restriction and permanent blocking of a Dutch politician's LinkedIn account).

In any case, it appears that META in this case in no way informed V in advance of its intention to apply a shadow ban (= a 'restriction') on his Facebook page.

Only after being served with a notice of default by V's lawyers on 23 February 2021, META confirmed almost one month later, by letter from its lawyers dated 19 March 2021, that it had applied "temporary restrictions" to V's Facebook page (Exhibits D.10 and D.11 V).

META also remained and remains vague about the exact reason for the measures imposed (including the shadow ban). In its lawyers' letter of 19 March 2021, META referred to V's post about a Nazi book burning and to "certain of the Page's content on V's Facebook page" ("certain of the Page's content") allegedly violating its rules, without specifying exactly what content or posts were involved.

META also remains vague in its submissions in these proceedings. It argues, as stated, that the "Restriction [was] imposed as a result of a combination of factors (i.e., the history of violations on the TV Page, the number of measures ('strikes') on the TV Page, the severity of the violations, etc.), all of which may affect the accessibility of the TV Page (i.e., whether and what restrictions are imposed) and consequently, the visibility of the content posted on the TV Page" (p. 82, no. 23 META's summary conclusion).

Consequently, META does not specify in any way *how many* violations and measures are required to trigger a shadow ban.

All this creates *prima facie* the impression of arbitrariness and is *prima facie* insufficiently motivated and unreasonable.

The principles cited above, i.e. the obligation for META to notify its measures to the user, justify them and the

opportunity to object and reconsider, apply *prima facie*, according to the court, regardless of the nature of the measure taken (removal of message, restriction of scope, blocking of account, deletion of account). For that reason, META argues in vain that certain foreign case-law cited by V, which this court also refers to, does not concern the *limitation* of the reach but a *blocking/removal* of an account (p. 142, no. 558 META's summary conclusion).

3.3.2.2.8. Each of the reasons cited above, according to the court, is sufficient in itself and individually to conclude that maintaining a shadow ban today is *prima facie* disproportionate and unreasonable. This of course applies all the more if these reasons are taken together.

3.3.2.2.9. Purely for the sake of completeness, the court below also examines whether one of the posts by V cited by META *prima facie* justified the shadow ban, i.e. the post(s) containing a picture of a Nazi book burning. *Other* messages should not be addressed in the context of the interim measure sought. Indeed, since META referred only to these messages in its lawyers' letter of 19 March 2021, *other* messages by V cannot *prima facie* justify the shadow ban (Exhibit D.11 V).

According to META, in "June 2020 and July 2020", V published eight separate posts depicting a Nazi book burning, with no comments that provided context or explicitly condemned its content (p. 127, nr. 504 META summary conclusion).

According to META, these posts constituted a violation of Article 1.2 of the Facebook Guidelines (piece 2 META).

Among other things, the Facebook Guidelines stipulate the following:

In an effort to prevent and limit offline harm, we do not allow organisations or individuals who support a violent mission or are involved in violence to have a presence on Facebook. This includes organisations or individuals involved in the following:
- *terrorist activities*
- *organised hatred*
- *mass murder (including attempted mass murder) or multiple murders*
- *human trafficking*
- *organised violence or organised criminal activities*

(...)

We do not allow symbols representing any of the above organisations or individuals to be shared on our platform without context condemning or neutrally discussing the content.

Before turning to the message in question, the court first notes that META does not present any of the eight contested messages. It includes in its summary conclusion only a photograph that it claims accompanied V's message.

This alone raises questions.

According to V, he posted the following message on his Facebook page on 11 June 2020:

(... copy of page)

He also submits this message as his piece A.6.

With META, for its part, not submitting any of the eight messages, the court considers it sufficiently proven that it is this message that (among others) gave rise to the shadow ban.

The court finds that V did not *prima facie* violate Article 1.2 of the Facebook Guidelines with this post.
Indeed, this message cannot be considered as "giving presence to, supporting and touting dangerous hate organisations". Indeed, V did not in any way glorify the Nazi regime in his post.

Moreover, his post did provide context to the photo of the Nazi book burning. Indeed, he used the photo to denounce a form of alleged contemporary censorship.

The above is all the more so since META apparently did not take action against the use of the same photo with an HP/De Tijd article shared on Facebook (piece E.3 V).

3.3.2.2.10. Having previously held that the shadow ban imposed by META today is *prima facie* disproportionate and unreasonable, the court has yet to assess whether the interim measure claimed by V is necessary (and proportionate).

According to V, these conditions are indeed met and the lifting of the shadow ban is "the only way to get [him] back into the public debate that takes place on Facebook" (p. 121, nr. 187 summary conclusion V).

In addition, he argues that the interim measure claimed is proportionate. A balancing of interests between the harm to META and the benefit to himself falls in his favour, according to him (p. 126, marg. 195 et seq. Summary Conclusion V).

The court considers the following in this regard.

The court considers it plausible that V's Facebook page is very important to him because Facebook is one of the most important social networks in terms of the number of users. Precisely for the dissemination of political programmes and ideas, access to this medium, which is not readily replaceable, is extremely important. The shadow ban severely limits V's ability to spread his political message. V would continue to suffer the harmful effects of this restriction if no provisional measures are determined. The result would be that his visibility on Facebook until a decision on the merits would be significantly impeded (cf. Bundesverfassungsgericht (DL), 22 May 2019, 1 BvQ 42/19, para 19 regarding the deletion of a user account).

If the shadow ban was upheld but it was subsequently decided on the merits that this measure was unlawful, the consequences of this for V would be much heavier than the consequences for META if it were obliged to suspend this shadow ban and it was later found on the merits that it had rightly imposed this shadow ban (cf. Bundesverfassungsgericht (DL), 22 May 2019, 1 BvQ 42/19, para 18).

Contrary to META's submission, the interim measure in no way 'deprives' it of its asserted contractual rights (p. 141, no. 552 META Summary Conclusion). These asserted rights are only temporarily *suspended* until a decision on the merits.

The foregoing is not affected by META's following arguments:

- V has numerous other media channels at his disposal that he can use to participate in the public debate and share his views on current events (e.g. communication channels of the political party Vlaams Belang, including the Vlaams Belang website, Twitter, YouTube, etc.) (p. 135, no. 528 META summary conclusion).

  As the court has already considered above, the number of users makes Facebook one of the most important social networks so that this medium is not easily replaceable.

- V can further proclaim his political views by promoting the content he posts as advertisements through his paid advertising account (pp 138-139, no 538, 540-541 summary conclusion META).

  It is not because the shadow ban currently only applies to V's Facebook page that it would not put him at a disadvantage. Indeed, it goes without saying that if a politician can only reach a wide political audience by *paying* for his posts, there is a real chance that he will choose to post *less*.

  Moreover, META's attitude *prima facie* confirms the unreasonable nature of the shadow ban still in place. If, by imposing a shadow ban, META actually strives to enforce its Facebook Terms of Service and Facebook Guidelines, it would have ensured that reach through V's ad account was also restricted.

- V waited another 11 weeks after the contested judgment to deposit his appeal certificate (p. 140, no. 546 META summary conclusion).

  While this is indeed not in V's favour, it does not alter the fact that even with more diligent action, he could never have obtained a decision on the merits within a short period of time.

3.3.2.2.11. Conclusion: the interim measure claimed by V is well-founded.

As he himself asks that "the use of a shadow ban imposed because of the posts that [are] the subject of this dispute, on the posts shared on V's Facebook page" be suspended, the court does not rule on *future* posts by V that would give rise to a shadow ban.

3.3.2.2.12. In the dispositive part of this judgment, the court also determines time limits for conclusion and a court date for assessment of the merits of the case.

4. THE DECISION

THE COURT,

-declares the appeal by V admissible and already well-founded to the following extent.

- reforms the contested judgment of the court of first instance West Flanders, Bruges of 4 January 2022 with AR number 21/1295/A,

  -declares again,

  -declares jurisdiction,

- declares V's claim under Art. 19.3^{e} para. Ger. W. admissible and well-founded to the following extent,

- Orders META PLATFORMS IRELAND LTD to suspend the use of a shadow ban, imposed because of the posts that are the subject of this dispute, on the posts shared on the Facebook page of V (https://www.facebook.com/VVB) within 48 hours of the service of this judgment until a ruling on the merits, under penalty of a fine of EUR 1,000 per hour of delay with a maximum of EUR 2,000,000.00,

- before doing justice on the merits, reopens debates ex officio,
- Determines in application of art. 775 Ger. W. the following time limits within which the parties must exchange their claims and submit them to the court by depositing them at the registry:

  – META: 15 December 2022
  – V: 15 February 2023
  – META: 15 April 2023
  – V: 31 May 2023
  – META: 15 July 2023

- Sets the case for **further proceedings** on the merits before this court, 7th Chamber, on Monday **25 September 2023** at 3 p.m. (60 minutes' pleading time).

  -Holds decision on costs.

Thus delivered by the **seventh collegiate chamber** of the Ghent Court of Appeal, sitting in civil matters,
(...)
and pronounced by the President of the Seventh Chamber in **open court**
on **24 October 2022**.

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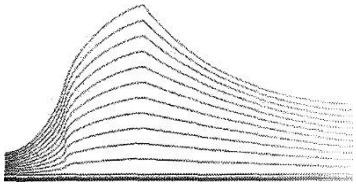

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Directory number
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Date of decision
03 June 2024
Role number
X

Uitgifte

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☐ Not to be offered to the recipient

Court of Appeal

Ghent

Judgment

seventh chamber

In the case of:

VANDENDRIESSCHE Tom, Member of the European Parliament,residing at X,
appellant,
Having as counsel X

Against:

META PLATFORMS IRELAND LTD, formerly known as "Facebook Ireland Ltd." 1 , a company incorporated under Irish law, having its registered office at Merrion Road, Dublin, D04 X2k5, IRELAND,
respondent,
Having as counsel X

The court gives the following judgment:

1. APPEAL PROCEEDINGS

1.1. On 24 October 2022, the court passed an interlocutory judgment in this case pursuant to article 19, third paragraph Ger. W. (Belgian judicial code).

For the procedural antecedents prior to this interlocutory judgment, the court refers to this interlocutory judgment.

1.2. On 27 October 2023, Mr. Tom VANDENDRIESSCHE filed a petition in application of art. 19, third paragraph Ger. W.. This petition was considered by this Chamber, differently constituted, at the session of 15 April 2024. This petition is not the subject of the present judgment.

1.3. The court observed Article 24 of the Law of 15 June 1935 on the use of languages in court proceedings.

1.4. The proceedings were conducted in an adversarial manner. The parties' lawyers were heard at the public hearing held on 6 May 2024. Mr. Tom VANDENDRIESSCHE was also present in person. The court took note of the documents of evidence and procedure.

The case was resumed in its entirety with the current composition of the seat.

1.5. The parties are hereinafter abbreviated as follows:
- Mr. Tom VANDENDRIESSCHE: VANDENDRIESSCHE
- META PLATFORMS LRELAND LTD: META

2. FACTS AND PRIOR PROCEEDINGS

2.1. For the facts, the court refers to the interlocutory judgment of 24 October 2022.

3. CLAIMS AND POSITIONS OF THE PARTIES ON APPEAL

3.1. For an account of the grievances, the subject matter of the claims and the parties' arguments, the court refers to the documents on appeal.

3.2. VANDENDRIESSCHE claims in the dispositive part of his summary conclusion of 3 May 2024 (verbatim):

Declare the appeal well-founded as follows

1. In main order

To judge that Meta has violated her agreement with Tom Vandendriessche by:

-failing to respect his right to freedom of expression;
-impermissibly discriminating against him on the basis of his political beliefs;
-not respecting the good faith performance of the contract;
-use of unfair terms.
Hold that Meta subjected Tom Vandendriessche to unlawful profiling within the meaning of the GDPR on account of his political opinions;

2.
In secondary order

(i) Regarding the alleged violation of the terms of service and community guidelines

Judging that Tom Vandendriessche's posts do not constitute a violation of Facebook's terms of service and community guidelines;

(ii) Regarding the claim for production of documents

If your seat should be of the opinion that it has not been proven with certainty that Meta did not suspend the shadowban, applicable to the messages shared on Tom Vandendriessche's Facebook page because of the messages that were the subject of the dispute before the Ghent Court of Appeal, after the notification of the judgment of that Court and after the expiry of the reprieve periods, Tom Vandendriessche requests that, in application of article 877 of the Judicial Code, Metabe ordered to provide the documents showing what the "monthly average ratio organic reach/number of followers" was for other Belgian politicians, including at least:

-Bart De Wever (https://www.facebook.com/bartdewever)
-Theo Francken (https://www.facebook.Com/frClnCkentheo)
-Alexander De Croo (https://www.facebook.com/alexanderdecroo)
-Raoul Hedebouw (https://www.faCebook.com/raouI.hedebouw.pvda)
-Petra De Sutter (https://www.facebook.com/pdsutter)
-Zuhal Demir (https://www.faCebook.com/ZuDemir)
-Vincent Van Quickenborne (https://www.focebook.com/Qfans)
-Peter Mertens (https://www.faCebook.com/peter.mertens.pvda)
-Charles MiChel (https://www.facebook.com/Charle5Michel)
-Didier Reynders (https://www.facebook.com/reyndersdidier)
-Frank Vandenbroucke (https://www.facebook.com/F.VdBroucke)
-Conner Rousseau (https://www.focebook.Com/connerousseau)
-Tinne Van der Straeten (https://www.facebook.com/TinneVdS)
-Sander Loones (htt 5://www.facebook.com/SanderLoonesNVA)
-Elio Di Rupo (https://www.facebook.com/elio.dirupo)
-Guy Verhofstadt (https://www.facebook.COm/GuyVerhofstadt)
-Paul Magnette (https://www.focebook.com/paul. magnette)
-Sammy Mahdi (htt S://www.faCebook.com/sammymahdipagina)
-Hilde Crevits (httfis://www.facebook.com/hilde. crevits)
-Gwendolyn Rutten (https://www.facebook.com/gwendolyn.rutten),

provided that the "monthly average organic reach/number of followers ratio" is calculated by dividing, for each message, the organic reach by the number of followers of the Facebook page at the time of posting the

message (i.e. the "ratio"), and then calculating the average of all these ratios on a monthly basis by adding up the ratios and dividing them by the number of organic messages posted in the month in question.

3. In any case

Order Meta to restore the removed posts back on the Facebook page of Tom Vandendriessche (https://www.facebook.com/Tom VandendriesscheVB) and Tom Vandendriessche's Instagram page (https://www.instagram.com/tomvandendriesschevb/) under periodic penalty of EUR1,000 per hour per deleted post;

Order Meta to stop the shadow ban it applied to Tom Vandendriessche's Facebook page because of the challenged acts, to be increased by a penalty of EUR 1,000 per hour of delay with a maximum of EUR 10,000,000.00;

Order Meta to pay compensation to Tom Vandendriessche in the amount of EUR 91,696.20, to be increased by judicial interest from the date of summons to the day of payment in full;

Order Meta to pay the costs of the proceedings, including summons costs, costs of service and procedural indemnity, the latter currently estimated at EUR 1 560,00 at first instance and EUR 4 200,00 on appeal, plus the judicial interests at the statutory ratefrom the date of service of the interlocutory judgment until payment in full.

3.3. META claims in the dispositive part of its summary judgment of 24 April 2024 (verbatim):

– In chief order:

o Dismiss the Appellant's claims as unfounded;

– In subordinate order:

o in case your Court orders Meta lreland to restore posts, specify that those posts should be restored insofar as technically possible;

– In any case:

o dismiss the Appellant's application for extra periodic penalty payments linked to the Interlocutory Judgment for" lack of object, at least unfounded;

o Should Your Court decide to impose penalty payments, capping the penalty payments awarded at a maximum of EUR 1 million;

o *dismiss as unfounded the Appellant's request to order Meta lreland toprovide data on other Belgian politicians and their Facebook pages; and*

o *Order the appellant to pay the costs of the proceedings, including court fees in the amount of EUR 1,560 for the proceedings at first instance and EUR 4,500 for the proceedings on appeal.*

4. ASSESSMENT

4.1. The admissibility of the appeal

4.1.1. In the interlocutory judgment of 24 April 2022, the court has already declared the appeal admissible.

4.2. Merits of the appeal

4.2.1. General - schedule

4.2.1.1. According to META, VANDENDRIESSCHE repeatedly shared content on its Facebook page that clearly violated the Facebook Terms of Service, the lnstagram Terms of Use and the Facebook Community Guidelines. For this reason, it took various measures against VANDENDRIESSCHE.

VANDENDRIESSCHE disputes that he committed violations of the aforementioned conditions. The measures imposed by META are also unlawful, according to him.

4.2.1.2. To resolve this dispute, the court below answers the following questions in turn:

- What is the applicable law?
- Did VANDENDRIESSCHE agree to the various contractual provisions relied upon by META?

- Can VANDENDRIESSCHE invoke the fundamental right of freedom of expression with regard to META (horizontal effect of fundamental rights)?

- Does META have the right to impose penalties for breaches of its contractual terms (if applicable)? Do these terms and conditions comply with consumer contract law?

- Did META violate the General Data Protection Regulation (GDPR) for unlawful profiling of VANDENDRIESSCHE based on his political beliefs?

- Did VANDENDRIESSCHE commit violations of the Facebook Community Guidelines and are the sanctions applied for this justified? Did META act in good faith when imposing sanctions (art. 1134, third paragraph old civil code (old BW)).

- If the sanctions imposed by META are unlawful, did VANDENDRIESSCHE suffer damages as a result? (claim for damages)

- Does the shadow ban still apply today? If so, is there any reason to impose an additional periodic penalty payment?

4.2.2. Applicable law

4.2.2.1. VANDENDRIESSCHE bases his claims on various provisions of Belgian (consumer) law, including art. 1134 old BW, art. I.8, °22 WER, art. VI.37§1 WER and art. VI.83,6°WER.

4.2.2.2. META put forward *substantive* defences in relation to these legal grounds, without contesting their applicability (see, inter alia, p. 62 of META's summary conclusion).

4.2.2.3. Therefore, the court deduces that both parties agree that Belgian law should apply in this case.

META also does not dispute that VANDENDRIESSCHE can invoke the provisions of Belgian consumer law. On the other hand, it does dispute that its Facebook Community Guidelines would be in conflict with them.

4.2.3. Did VANDENDRIESSCHE agree to the Facebook Terms of Service and lnstagram Terms of Use? (p. 73 summary conclusion VANDENDRIESSCHE and p. 28 summary conclusion META)

4.2.3.1. VANDENDRIESSCHE disputes that he agreed to the (updated) Facebook Terms of Service and the lnstagram Terms of Use.

4.2.3.2. According to META, VANDENDRIESSCHE agreed to the updated Facebook Terms of Service on 20 April 2018 (p. 31, no. 102 of her summary conclusion). She refersto her piece 52 for this. This is a "Screenshot ('screenshot') of VANDENDRIESSCHE's consent history ('consent history')". She submits this updated Facebook Terms of Service, version 19 April 2018, as her Exhibit 1c.

The aforementioned screenshot shows the following number at the top: XXXXXXXXXX. VANDENDRIESSCHE does not dispute that this is his Facebook user ID.

Furthermore, this screenshot contains a Consent History section.

An ID no. XXXXXXXXXX appears below with the date of 20 April 2018. This IDno., according to META, "corresponds to Meta Platforms lreland's internal evidence document of [VANDENDRIESSCHE's] consent" (p. 31, marginal 103 META summary conclusion).

4.2.3.3. The court finds that META's Exhibit 52 conclusively demonstrates that VANDENDRIESSCHE agreed on 20 April 2018 to the new Facebook Terms ofService that were effective from 19 April 2018 (Exhibit 1c META).

This is all the more true since VANDENDRIESSCHE does not indicate in any way what he would then have consented to on 20 April 2018, if not with the updated Facebook Terms of Service.

Piece 1c of META states at the very bottom 'last modified: 19 April 2018' (piece 1.c META). The court therefore considers it conclusively proven that VANDENDRIESSCHE agreed to this version on 20 April 2018 and that the date mentioned at the top left of this document ('29 January 2019') is the date on which the document was downloaded and printed, as META argues.

In their letter of 29 January 2021, META's lawyers also pointed out that in order to register for Facebook and use this service, each user must agree to the Facebook Terms of Service (Exhibit G.9 VANDENDRIESSCHE). In their reply letter dated 23 February 2021, the

VANDENDRIESSCHE's lawyers already did not dispute this fact (document G.10 VANDENDRIESSCHE).

Pursuant to Article 3.2.1, first bullet and Article 5, first bullet of the Facebook Terms of Service veFsion 19 April 2018, VANDENDRIESSCHE agreed to abide by the Facebook Community Guidelines. These guidelines are therefore binding on him as well.

4.2.3.4. The same judgment urges itself as regards the lnstagram Terms of Use. Based on 1) the screenshots META submits on p.
35 of its summary conclusion and 2) its exhibit 42, the court considers it sufficiently proven that VANDENDRIESSCHE agreed on 21 September 2019 tothe lnstagram Terms of Use, version 19 April 2018, which META submits as its exhibit 8.a.

4.2.4. Can VANDENDRIESSCHE invoke the fundamental right of freedom of expression with regard to META (horizontal effect of fundamental rights) (p. 53 et seq. summary conclusion VANDENDRIESSCHE)?

4.2.4.1. The fundamental right to freedom of expression, as enshrined in, inter alia, Article 10 ECHR, does not in principle have *direct* horizontal effect. The addresseesof this provision are the states (cf. Rb. Amsterdam (KG) 13 October 2020, p. 9 et seq., piece 57 META). The bottom line is that the right to freedom of expression then in principle does not directly oblige private parties to ensure that this right can be exercised.

4.2.4.2. In any event, the provisions of the ECHR may have an *indirect* effect on private law relationships, for example through the interpretation of private law open standards. Under Belgian law (which applies to the META- VANDENDRIESSCHE relationship - see above), META is obliged to act in accordance with the standards of good faith when performing contracts. That standard may also be coloured by the provisions of Article 10 ECHR and the other fundamental law provisions relied upon by VANDENDRIESSCHE (cf. Rb. Amsterdam (KG) 13 October 2020, p. 11 et seq., piece 57 META).

Concrete actions by META, such as deleting certain posts, can in principle be tested against open standards. Those open norms can be coloured via the indirect effect of, for instance, the right to freedom of expression. It is up to the person who relies on the fact that a removal is 'unacceptable' to state sufficiently concretely that and why that is the case - with regard to that specific content (cf. Rb. Amsterdam (KG) 13 October 2020, p. 13, piece 57 META).

4.2.4.3. This means that META's actions should not be tested directly against the conditions of Article 10 ECHR, i.e. the principles of legality, legitimacy and proportionality (see p. 71, no. 111 summary conclusion VANDENDRIESSCHE).

4.2.5. Does META have the right to impose sanctions for violations of the Facebook Terms of Service, Facebook Community Guidelines and Instagram Terms of Use? Do these terms comply with consumer contract law?

4.2.5.1. Art. 3.2 of the Facebook Terms of Service (version 31 July 2019) states among others, the following:

We want people to use Facebook to express themselves and to share content they find important, but not at the expense of the safety and well-being of others or the integrity of our community. Therefore, you agree that you will not engage in (or assist or support others in engaging in) the following behaviour:

1. You may not use our Products to do or share anything.

• That violates these Terms, our Community Guidelines and other terms and policies applicableto your use of Facebook;
• that is unlawful, misleading, discriminatory or fraudulent;
• that infringes or violates the rights of anyone else, including intellectual property rights.
(...j

Content that violates these provisions may be removed or blocked by us.

If we remove content you have shared because you have violated our Community Guidelines, we will inform you and explain what options you have to request another review, unless" you have seriously or repeatedly violated these Terms, or if we thereby expose ourselves or others to legal liability, harm our community of users, compromise or disrupt the integrity or operation of any of our services, systems or Products, if we are restricted by *technical limitations or if we are not permitted to do so for legal reasons.*

(piece 1a META, own underlining and bold by court)

Since VANDENDRIESSCHE himself also refers to this version of the Facebook Terms of Service, it follows that he does not dispute that this version also applies to his relationship with META (see p. 105, no. 170 summary conclusion VANDENDRIESSCHE).

4.2.5.2. Under this provision, META has the right to delete posts that violate its terms of use (Facebook Terms of Service and Facebook Community Guidelines).

This clause is clear and understandable and in no way grants META the right to unilaterally interpret its contractual provisions. Consequently, it does not violate Article VI.37§1 WER and Article VI.83,6° WER.

4.2.5.3. According to VANDENDRIESSCHE, this clause does not provide theconsumer with a right to a reevaluation. For this reason, in his opinion, it creates a manifest imbalance between the rights and obligations of the parties to the detriment of the consumer and consequently violates Article I.8,22° WER (p. 105, no. 171 summary conclusion VANDENDRIESSCHE).

The court cannot agree with this view.

It is true that under the aforementioned provision, the Facebook user is not entitled to a reassessment of the decision to delete a post. However, this in itself does not create an imbalance. It is perfectly permissible for parties to agree that in the event of a contractual breach, the other party is entitled to take certain sanctions as a result.

This clause is therefore legally valid.

As the court further explains below, a user may well have been able to rely on *other* legal provisions for a right to a reassessment.

4.2.5.4. The 'introduction' section of the Facebook Community Guidelines includes the following provision, among others:

The consequences of violating the guidelines for our community depend on the severity of the offence and that person's history on the platform. For example, we will first give someone an initial warning, but if that person violates our policies, we may limit their ability to post on Facebook or disable their profile. (piece 2 META)

4.2.5.5. Under this provision, META has the right to take the following actions in case of violations of the Facebook Community Guidelines:

- Limiting a Facebook user's publishing rights. The user can in other words, not publish certain posts.

- Blocking (disabling) a profile.

Moreover, under this provision, META also has the right to limit the organic reach of certain messages, i.e. the estimated number of people who received an (unpaid) message on their screen. After all, those who are allowed the more are also allowed the lesser ("qui peut Ie plus, peut le moins").

4.2.5.6. This clause is also clear and understandable and in no way grants META the right to unilaterally interpret its contractual provisions. Accordingly, it does not violate Article VI.37§1 WER and Article VI.83,6° WER nor does it create a manifest imbalance between the parties' rights and obligations to the detriment of consumers.

4.2.5.7. Art. 4.2 of the Facebook Terms of Service (version 31 July 2019) 'Suspension or termination of account' stipulates*, among other things,* the following:

We want Facebook to be a place where people feel welcome and safe to express themselves and share their thoughts and ideas.

If we find that you have clearly, severely or repeatedly breached our *Terms or guidelines, including specifically our Community Guidelines, access to your account may be suspended or permanently disabled. We may also suspend or delete your account if you repeatedly infringe the intellectual property rights of others or if we are required to do so for legal reasons.*

When we take such action, we will inform you and explain what options you have for requesting a review, unless' doing so exposes ourselves or others to legal liability, damages our community of users, compromises or disrupts the integrity or operation of our services, systems or Products, where there are technical limitations or if we are prohibited from doing so for legal reasons.

You can find more information here on what you can do if your account has beendisabled and how to contact us if you believe we have disabled your account in error.

(piece 1a META, own underlining and bold court)

4.2.5.8. Under this provision, META has the right, in case of violations of including the Facebook Community Guidelines to temporarily or permanently block access to a user's account.

This clause is clear and understandable and in no way entitles META to interpret its contractual provisions unilaterally. Indeed, in the last resort, it is the court thatwill judge whether a particular condition was 'clearly, seriously or repeatedly' breached. Consequently, this clause does not violate Article VI.37§1 WER and Article VI.83,6° WER.

Moreover, this discussion is without practical importance for the resolution of this case. Indeed, META temporarily blocked VANDENDRIESSCHE's access to its Facebook page because of his alleged repeated violations of its terms and conditions. The question of what constitutes a "repeated" violation is obvious and not open to interpretation, i.e. more than once.

As regards the absence of a right to a reassessment, the court refers to what it has explained above at n° 4.2.5.1

4.2.6. Has META breached the General Data Protection Regulation (GDPR) for unlawful profiling of VANDENDRIESSCHE based on his political beliefs?

4.2.6.1. VANDENDRIESSCHE argues that META also violates the General DataProtection Regulation (Regulation (EU) 2016/679 of 27 April 2016 - hereinafter 'GDPR'):

1) META unlawfully profiles him based on his political beliefs;

2) META also subjected him to *exclusively* automated decision-making each time it applied a sanction to his Facebook page.

3) Even if META's automated decision-making took place with human intervention, it constitutes unlawful profiling-based decision-making. After all, META's privacy policy does not comply with the information and transparency requirements on profiling and decision-making based on profiling, as stipulated in the GDPR.

(p. 120ff. META synthesis conclusion).

4.2.6.2. The First infringement, according to VANDENDRIESSCHE, is that META profiled him in its internal systems as a "Confirmed CVA"("Confirmed Civic Actor" - freely translated: "confirmed civil actor"), i.e. a person who frequently posts political content on his Facebook page (p. 125, no. 201 META summary conclusion).

According to him, this was done in violation of the rules from the GDPR regarding automated decision-making only.

However, the court finds that VANDENDRIESSCHE does not attach any legal effect to this alleged violation. Thus, VANDENDRIESSCHE does not claim the cessation ofthe use of this label on its Facebook page nor damages.

Accordingly, the court does not elaborate on this alleged violation.

4.2.6.3. Regarding the second alleged violation, the court of appeal considers the following.

Art. 22(1) GDPR contains a general prohibition on subjecting data subjects to *exclusively* automated decision-making. This means a decision-making process based on personal data where there is no meaningful human intervention that could guide the process (cf. J. MANNEKENS, A. FOCQUET and S. DEPREZ, *Handbook of Data Protection in Depth & Practice,* LeA, 2024, 145, no. 5.122).

However, this prohibition only applies to exclusively automated decisions that may have legal consequences for the data subjects or other important consequences.

Moreover, this prohibition has three exceptions (Art. 22(3) GDPR).

When the exclusively automated decision-making is based on personal data belonging to the special categories (e.g. personal data revealing political opinions), there must always be an explicit consent of the data subject or there must be weighty reasons of public interest justifying the processing (Art. 22,I paragraph 4 GDPR).

The court considers it sufficiently proven that the sanctions META took in respect of VANDENDRIESSCHE happened without human intervention and therefore constitute a decision based solely on automated processing. If for each sanction a human reviewer made the final decision, as META argues (p. 140, no. 511 of its summary conclusion), it would succeed in presenting such evidence for *each* sanction. It does not. It submits such evidence in respect of only one sanction, namely the decision of 22 February 2021 to remove a photograph of a Nazi

book burning (on this, see VANDENDRIESSCHE's argument on p. 126, no. 204 of his synthesis conclusion).

In applying sanctions against VANDENDRIESSCHE, META automatically processed his personal data, i.e. his messages, to analyse, among other things, his interests and behaviour.

Regarding the question of the applicability of the prohibition under Article 22 GDPR, the court said a distinction must be made *between* two types of sanctions that VANDENDRIESSCHE is challenging in these proceedings, i.e. (1) the deletion of posts and the posting of warnings on the Facebook page and (2) the shadow ban.

The court finds that META's decision to remove certain posts from VANDENDRIESSCHE's Facebook page and to affix certain warnings on that page does not constitute a decision which has legal consequences for him. Nor does this decision significantly affect him. This means that the prohibition in Article 22 GDPR does not apply to these sanctions.

However, the situation is different with regard to the imposition of the shadow ban. As the court will explain below, this sanction concretely resulted in a significant decrease in the organic reach of VANDENDRIESSCHE's messages. The court therefore held that such a decision "significantly affected" VANDENDRIESSCHE. After all, for a politician, the Facebook platform is a very important medium for spreading his political message.

However, according to the court, META rightly invokes the exception provided for in Article 22(2)(a) GDPR. It rightly argues that such exclusively automated decision-making is necessary for the performance of the agreement between VANDENDRIESSCHE and itself. It needs to make such decisions in order to enforce its Facebook Terms of Service and Facebook Community Guidelines and thus ensure that Facebook and Instagram are safe for all users (p. 142, no 519 META summary conclusion).

It must be further examined whether the exclusively automated decision-making is not based on sensitive personal data as mentioned in Art. 9(1) GDPR. Consequently, it must be examined whether Art 22(4) GDPR does not apply, as VANDENDRIESSCHE argues. According to him, META's exclusively automated decision-making is based on data revealing political opinions (p. 126, no. 204 VANDENDRIESSCHE).

The court cannot agree with VANDENDRIESSCHE in this regard. According to the court, the concrete circumstances in which META imposed sanctions on VANDENDRIESSCHE adequately demonstrate that these decisions were not based on VANDENDRIESSCHE's political beliefs but rather on the violations he is alleged to have committed of the Facebook Terms of Service and the Facebook Community Guidelines (see pp. 139-140, no. 511 META summary judgment).

Finally, it remains to be verified whether META took 'appropriate protective measures' when imposing the shadow ban, as required by Art 22(3) GDPR. These measures include at least a way for the data subject to obtain human intervention, make their views known and challenge the decision. Human intervention is a crucial element. Any review must be conducted by someone who is competent and capable of changing the decision. The reviewer should thoroughly evaluate all relevant data, including any additional information provided by the data subject (cf. Data Protection Working Party Article 29, *Guidelines on automated individual decision-making and profiling for the purposes of Regulation (EU) 2016/679* (WP251rev.01- version 6 February 2018), 33).

Recital 71 of the GDPR states, among other things, the following in this regard:

In any case, appropriate safeguards should be provided for such processing, including specific information to the data subject and the right to human intervention, to make his or her point of view known, to receive an explanation of the decision taken following such an assessment and to challenge the decision.

Although VANDENDRIESSCHE could object to some of the *other* measures, nowhere does it appear that he could also do so against the imposition of the shadow ban. META refers in vain here to VANDENDRIESSCHE's objection to sanctions other than the imposition of the shadow ban (see p. 59, footnote 142 META summary conclusion). That the lawyers of VANDENDRIESSCHE
a.o. on 23 February 2021 have served META with a notice of default, moreover, does not mean that VANDENDRIESSCHE had the right to challenge the decision to impose a shadow ban in accordance with Art. 22,I(3) GDPR, resulting in a new formal decision. Moreover, META does not in any way indicate which provision of its Facebook Terms of Service or Facebook Community Guidelines gives the user the right to challenge the decision to impose a shadow ban. Nor does it show that it has provided in its contractual terms or in its privacy statement the contact details for the purpose of requests for reconsideration of rejection decisions in accordance with the provisions of Article 22(3) GDPR (cf. Data Protection Working Party Article 29, *o.c.*, 31}.

Interim decision: just because of the violation of Art 22(3) GDPR, META's decision to impose a shadow ban is indeed unlawful.

4.2.6.4. Regarding the third alleged infringement (the META privacy policy violates information and transparency requirements), the court considers the following.

According to VANDENDRIESSCHE, META's privacy policy "in no way meets the information and transparency requirements on profiling and decision-making based on profiling, as provided for in the GDPR" (p. 127, no. 205 et seq. summary conclusion VANDENDRIESSCHE). For that reason too, he argues, META's decision-making is unlawful even if it would have taken place with human intervention.

META, for its part, does not dispute that the information and transparency requirements under Articles 12-14 GDPR apply to it. However, it argues that its privacy policy does comply with the legal requirements (p. 143, no. 527 et seq. META's summary conclusion).

META submits its privacy policy as its piece 69 in Dutch, VANDENDRIESSCHE submits it as its piece F.15 in English.

The court discusses below the arguments put forward by VANDENDRIESSCHE in support of his claim.

1) The privacy policy is not concise (Art. 12(1) GDPR)

It is true that META's privacy policy is long, being 148 pages in the Dutch-language version and 125 pages in the English-language version.

However, in analysing this privacy policy, the court finds that META correctly argues that its privacy policy is "visually intuitive" and that the clickable subheadings make it accessible.

Intermediate decision: META's privacy policy was indeed drafted in a "concise, transparent, understandable and easily accessible form and in clear and simple language".

2) There is no clear legal basis (Art. 13,lid 1 c) and Art. 14,1 c GDPR)

As the court explained above, META did not make decisions based on VANDENDRIESSCHE's political beliefs and opinions (p. 127, no. 205 META summary conclusion).

The privacy policy contains both a section "How do we use your data?" and a section "What is our legal basis for processing your data and what are your rights?" It also contains, under the chapter "Information on legal grounds", a clear table showing the data processed by legal basis (Exhibit 69, p. 78 et seq. META).

Intermediate decision: META does clearly state the legal grounds as well as the purposes for processing in its privacy policy.

3) Useful information is missing on the underlying logic of automated decision-making, on the significance and on the expected consequences of such processing for data subjects (Art. 13(2f) and Art. 14(2)
(g) GDPR).

META argues that it is not obliged to provide the aforementioned information because it does not use exclusively automated decision-making, as defined in Article 22 GDPR (p. 145, no. 535 META summary conclusion).

As the court has already considered above, META does use exclusively automated decision-making within the meaning of Art 22 GDPR, namely when imposing a shadow ban.

Interlocutory decision: as META neither argues nor proves that it provides the aforementioned information as required by Art 13(2)(f) and Art 14(2)(g) GDPR, its decision to impose a shadow ban on VANDENDRIESSCHE is unlawful also for that reason.

4) The privacy policy does not inform the data subject of the existence of automated decision-making (Art 13(2)(f) and Art 14(2)(g) GDPR)

As already explained above, the court does consider it proven that META relies on automatic decision-making.

META incidentally acknowledges this implicitly but certainly where it states the following:

Undeniably, (automated) decisions around enforcement are crucial to enforcing and implementing the contract with Appellant (i.e. the Facebook Terms of Service and Instagram Terms of Service), under which Meta Ireland must ensure that Facebook and Instagram are safe f o r all users, including Appellant. (p. 142, no. 519 summary conclusion META).

Contrary to META's argument, Article 13(2)(f) GDPR requires it to inform the data subject of the existence of *any* form of automated decision-making and thus not only of *exclusively* automated decision-making (see p. 145, no. 536 META summary conclusion) (cf. also D. DE BOT, *The application of the General Data Protection Regulation in the BelgisChe context,* Kluwer, 2020, 631, 1550).

Purely for the sake of completeness, the court notes that there is no status difference between the information to be provided under paragraphs 1 and 2 of Article 13 GDPR. All information under these paragraphs is equally important and must be provided to the data subject (cf. Data Protection Working Party Article 29, *RlCh Guidelines on Transparency pursuant to Regulation (EU) 2016/679,* (WP 260 rev.01 - 11 April 2018), 16, no 23).

As META does not dispute that its privacy statement does not contain this information, it is in breach of aforementioned Article 13(2)(f) GDPR. It is not sufficient to mention 'automated processing' in the privacy statement if automated decision-making takes place. META should have at least mentioned the existence of automated decision-making in its privacy statement, which it failed to do.

5) Automated decision-making applied by META is unfair, as META applies sanctions for certain posts by VANDENDRIESSCHE while posts by others with the same content are not sanctioned

Even if this were correct, it does not constitute a violation of the GDPR.

4.2.6.5. The question arises what is the sanction of the privacy notice's breach of the information obligation under Art 13(2)(f) GDPR.

The right to information (from Article 13 GDPR) is the basic right and should make it clear to the data subject not only that personal data are being processed, but also for what purposes, by whom, on what basis and so on. As such, this right forms the basis not only for (the exercise of) all other rights, but also for all other provisions (cf. D. DE BOT, *O.c.,* 623, no. 1526).

It follows, according to the court, that automatic decision-making that is not adequately disclosed in a processor's privacy notice, as is the case in this case, is unlawful.

Specifically, this means in this case that the automatic decision-making that META applied to the other sanctions it imposed on VANDENDRIESSCHE also

imposed (deleting posts, notifications on his Facebook page) are unlawful for the aforementioned reason.

4.2.7. Examination of alleged infringements by VANDENDRIESSCHE and penalties applied by META

4.2.7.1. General

4.2.7.1.1. Below, for the sake of completeness, the court discusses various sanctions imposed by META on VANDENDRIESSCHE and considers whether they were/are justified.

The court does specify that it will only examine those sanctions to which VANDENDRIESSCHE attaches a concrete legal consequence, such as reparation in kind (e.g. reinstatement of deleted messages) or damages. The other sanctions do not require such an investigation. For example, VANDENDRIESSCHE does not seek any measure, such as damages, because of the temporary blocking of its publication rights.

4.2.7.2. Removal of posts regarding “Zwarte Piet" in the form of "blackface" on VANDENDRIESSCHE's Facebook page (p. 36, no. 119 META summary conclusion).

4.2.7.2.1. According to META, on 23 August 2020, 24 August 2020 and 7 November 2019, VANDENDRIESSCHE posted messages on his Facebook page depicting Zwarte Piet" in the form of "blackface" ("black face"). He allegedly did the same on 20June 2020 on his lnstagram Account (p. 38, no. 126 META summary conclusion).

According to META, VANDENDRIESSCHE thereby violated Article 3.12 of the Facebook Community Guidelines (p. 35, no. 117 META summary conclusion).

VANDENDRIESSCHE does not dispute that he posted the aforementioned messages but rather that these would be violations of the aforementioned guidelines.

4.2.7.2.2. Art. 3.12 of the aforementioned directives states, inter alia, the following:

You may not post the following:

Level 1
Content that targets a person or a group of people (including all subsets, excluding people who have violent crimes or sex offences

committed) on the basis of the above protected characteristic(s) or immigration status with:

• deliberately degrading comparisons, generalisations or assertions about behaviour (written or visual), including:
o caricatures of coloured people in the form of blackface

(piece 2 META, own underlining and bold court)

4.2.7.2.3. On this basis, it is outright forbidden to depict people in blackface on Facebook.

The three aforementioned Zwarte Piet posts shared by VANDENDRIESSCHE on his Facebook page undeniably constitute a violation of the literal ban on depicting people of colour in the form of blackface

4.2.7.2.4. The same applies to the image VANDENDRIESSCHE posted on hisInstagram account on 20 June 2020. Indeed, the Instagram Community Guidelinesrefer to the Facebook Community Guidelines mentioned above
on hate speech (piece 9 META).

4.2.7.2.5. VANDENDRIESSCHE argues in vain that META can only act when Zwarte Piet is effectively used in a racist context, which would not be the case in the aforementioned posts (p. 130, no. 207 summary conclusion VANDENDRIESSCHE). The images of Zwarte Piet posted by VANDENDRIESSCHE are, as stated, plainly prohibited. VANDENDRIESSCHE adds a condition ('racist context') that the guidelines do not contain.

4.2.7.2.6. Purely for the sake of completeness, the court adds the following.

VANDENDRIESSCHE rightly argues that there is a debate on the figure of Zwarte Piet today in which he has a conservationist position and others have a progressive one (p. 130 summary conclusion VANDENDRIESSCHE). This is his full right.

Although VANDENDRIESSCHE, as argued with regard to META, cannot rely on a direct effect of the fundamental right to freedom of expression, the aforementioned prohibition does not constitute an infringement of this fundamental right anyway, according to the court of appeal. After all, nothing prevented VANDENDRIESSCHE from expressing his opinion on Facebook in this discussion, without using pictures of coloured people in the form of blackface.

4.2.7.2.7. VANDENDRIESSCHE also argues in vain that META does not act against "the normal use of Zwarte Piet" by others (p. 131 summary conclusion VANDENDRIESSCHE). Indeed, the only question that arises is whether the image used by VANDENDRIESSCHE constitutes a violation of the guidelines, which, as stated, is the case. Only if this could be disputed could its resolution depend in part on how META assesses similar cases.

4.2.7.2.8. Intermediate decision: with his posts about Zwarte Piet, VANDENDRIESSCHE indeed violated the Facebook Community Guidelines. However, as explained above, its removal is unjustified because it was done in disregard of Article 13(2) f GDPR.

4.2.7.3. Removal of message about the attack on Mr Samuel PATY

4.2.7.3.1. According to META, on 17 October 2020, VANDENDRIESSCHE shared a message on his Facebook page with a screenshot of a tweet shared by the perpetrator of a 16 October 2020 terrorist attack that killed Mr Samuel PATY (hereafter 'PATY'). The tweet included a picture of PATY's decapitated head (p. 44, no 147 META summary conclusion).

According to META, VANDENDRIESSCHE thereby violated Article 2.2.1 of the Facebook Community Guidelines (p. 44, no 148 META summary conclusion).

VANDENDRIESSCHE does not dispute that he posted the aforementioned message but does dispute that it would violate the aforementioned guidelines. According to him, this message was accompanied by a picture of PATY and a screenshot of a tweet from the person who claimed the attack (p. 18-19 summary conclusion VANDENDRIESSCHE).

4.2.7.3.2. Art. I, 2 "Violence and criminal behaviour - dangerous individuals and organisations" of the Facebook Community Guidelines stipulates, among other things, the following:

We do not allow any content that praises the above organisations or individuals or actions carried out by the above organisations or individuals.

We do not allow content that praises, supports or depicts events considered by Facebook as terrorist attacks, hate events, mass killings or attempted mass killings, serial killings, hate crimes or violent events.(own underline court)

4.2.7.3.3. VANDENDRIESSCHE argues that his message clearly shows that he offered context and explicitly condemned the attack. That in doing so he made a

shared screenshots of the message of the person claiming the attack is not an error, according to him. "He wished to inform his followers of the attacker'swords, even condemning those words"(p. 132, no. 208 summary conclusion VANDENDRIESSCHE).

4.2.7.3.4. The court considers the following in this regard.

META does not dispute that VANDENDRIESSCHE shared the aforementioned screenshot with a tweet and a photo as part of a wider message (p. 45, no. 150 and p. 53 META summary conclusion). Nor does it dispute that VANDENDRIESSCHE condemned the murder of PATY in his message. This is also evident from the message itself, as reproduced on page 53 of META's summary conclusion.

META argues that it deleted the offender's tweet and the photo of the murdered PATY "because it depicted a violent event" (p. 54 META summary conclusion).

META consequently argues - at least implicitly but surely - that its guidelines prohibit the mere depiction of a violent event. Whether the Facebook user approves or disapproves of this event would then be irrelevant.

The question then arises what is the point of the words in the above provision that prohibit "praising or supporting" such events if the mere *portrayal* of such events with *disapproving* comments is also prohibited.

The court is therefore of the opinion that the above-mentioned provision from Article I, 2 of the Facebook Community Guidelines is unclear within the meaning of Article VI.37§1 WER as applicable at the material time (17 October 2020). At the very least, this provision should be interpreted in VANDENDRIESSCHE's favour under Article VI.37§2 WER, namely that it only prohibits *approving* violent events and depicting such events *without context* but not *disapproving.*

This interpretation, incidentally, finds support in META's own argumentation regarding the reports on the Nazi book burning (see below). On that, META itself argues that these violate its guidelines because they were allegedly posted without providing context or explicitly condemning their content (p. 39, no. 133 META Synthesis Conclusion). Thus, condemning a terrorist attack does amount to providing context.

Moreover, in its own e-mail of 19 October 2020 at 17.46h, META explicitly acknowledged that it is allowed(ated to share "terrorist content" when condemned (Exhibit G.2 VANDENDRIESSCHE).

4.2.7.3.5. Intermediate decision: the 17 October 2020 post about PATY's murder does not constitute a violation of the Facebook Community Guidelines.

For that reason too, META wrongfully removed this message. It also wrongly blocked VANDENDRIESSCHE's publication rights for one month on the basis of this message. That it did so is conclusively demonstrated by its e-mail of 19 October 2020 (Exhibit G.2 VANDENDRIESSCHE).

With VANDENDRIESSCHE acknowledging that this post can be accessed again on his Facebook page, there is no reason to condemn META for reposting it (p. 116 summary conclusion VANDENDRIESSCHE).

4.2.7.4. Removal of posts on Nazi book burning

4.2.7.4.1. According to META, in June and July 2020, VANDENDRIESSCHE published "(at least) eight separate posts depicting a Nazi book burning, without comments that provided context or explicitly condemned its content" (p. 39, no. 133ff. META summary conclusion).

4.2.7.4.2. The parties argue extensively about exactly which message VANDENDRIESSCHE shared:

— According to VANDENDRIESSCHE, it concerns the following message:

(Exhibit B.6 VANDENDRIESSCHE, p. 23 summary conclusion VANDENDRIESSCHE).

He argues that he shared the text of the message on 11 June 2020 and added the photo to it on 12 June 2020 (p. 25, no 36 summary conclusion VANDENDRIESSCHE). According to him, META deleted this message on 20 June 2020.

— According to META, VANDENDRIESSCHE posted the photo of the Nazi book burning without comment on his Facebook page on (at least) the following dates: (i) 11 June 2020 (three times), (ii) 13 June 2020, (iii) 14 June 2020, (iv) 20 June 2020, (v) 1 July 2020, and (vi) 6 July 2020 (Exhibit 59 META, p. 40 META Synthesis Conclusion). According to META, its own exhibits B.6, B.8 and B.9 of VANDENDRIESSCHE that he also did so on 12 June 2020.

In the interlocutory judgment of 24 October 2022, the court noted that META did not submit any of the eight challenged messages at that time (marginal 4.3.2.2.9 interlocutory judgment).

In the current state of the proceedings, META does submit these eight notices (piece 59 META).

Although VANDENDRIESSCHE disputes the probative value of piece 59 of META, the court does consider it proven that he shared the aforementioned photo of a Nazi book burning eight times. This appears not only from this document itself but also from the letter from META's lawyers dated 19 March 2021 in which they mentioned photographs ("images") (plural) of the Nazi book burning (document G.11 VANDENDRIESSCHE). VANDENDRIESSCHE did not dispute this letter.

This is furthermore confirmed by piece D.5 of VANDENDRIESSCHE. This shows that on 18 February 2021, he received two different notifications that the aforementioned photo violated the Facebook Community Guidelines. This means in any case that VANDENDRIESSCHE published the aforementioned photo *at least* twice.

4.2.7.4.3. As the court ruled above on the PATY-related post, Article I.2 of the Facebook Community Guidelines only prohibits praising dangerous hate organisations or giving presence to them without providing context.

The photos posted by VANDENDRIESSCHE of the Nazi book burning do fall within this category. He does not dispute this either, but only argues - as allegedly wrongly - that he posted the aforementioned photo with a text that

condemns this event. Merely posting these pictures, without accompanying text, does not imply that this also condemns censorship.

According to the court, VANDENDRIESSCHE's exhibit B.6, on the other hand, does show that on 11 June 2020 he posted a message condemning the Nazi book burning as censorship. However, this does not detract from the infringements constituted by the eight photos shared where no accompanying text had been posted.

4.2.7.4.4. Interjection: by posting a picture of the Nazi book burning on his Facebook page eight times without any accompanying text, VANDENDRIESSCHE violated art. 1.2 of the Facebook Community Guidelines.

4.2.7.4.5. The parties argue at length about the time when META applied a sanction for this and exactly which message(s) it removed.

META does not dispute that it removed on 26th of June 2020 a photograph of the Nazi book burning posted by VANDENDRIESSCHE (p. 43, footnote 90 META summary judgment). According to the court, it is conclusive from VANDENDRIESSCHE's documents B.6 and B.8 that VANDENDRIESSCHE posted a photograph of a Nazi book burning on 12 June 2020 at 7.31pm, which META removed at 10.40am on26 June 2020.

However, META argues that exhibit B.6 of VANDENDRIESSCHE does not show that on 26 June 2020, it removed the photograph attached to the 11 June 2020 message (p. 43, no 142 META's summary conclusion).

The court is of the opinion that it cannot be deduced from piece B.6 of VANDENDRIESSCHE that he only published a text on 11 June 2020 at 16.55h and that he added this photograph to the aforementioned text on 12 June 2020 at 19.31h. Page 1 of piece B.6 by VANDENDRIESSCHE contains one composite message consisting of a text and a photograph. It cannot be inferred from this that they were posted at different times. Nor can it be inferred from p. 2 of this piece B.6 that META removed the photo that was part of the composite message (text + photo) on 26 June 2020.

However, this entire dispute has little relevance, according to the court. As already ruled above, VANDENDRIESSCHE shared a picture of a Nazi book burning at least eight times without comment.

4.2.7.4.6. Interlocutory decision: as VANDENDRIESSCHE did not conclusively demonstrate that the photograph he posted on 12 June 2020 was an integral part of the text he posted on 11 June 2020, this photograph, like the other eight photographs of the Nazi book burning, constitutes a breach of the Facebook Guidelines

community. However, as explained above, META's removal of this is unjustified because it was done in disregard of Article 13(2) f GDPR.

4.2.7.5. Removing post of a person urinating or defecating in a public location

4.2.7.5.1. According to META, on 9 August 2020, VANDENDRIESSCHE shared a post on his Facebook page of a person who appeared to be urinating or defecating in public, accompanied by the caption "The joys of cross-cultural enrichment have now reached Knokke too." (p. 45, no. 151 META summary conclusion).

VANDENDRIESSCHE does not dispute that he posted this notice (p. 13, no. 18 summary conclusion VANDENDRIESSCHE).

4.2.7.5.2. META argues that this post violates Article 2.9 of the Facebook Community Guidelines which would prohibit "addressing private individuals or known persons of limited scope":
(...)
• *Content that further* demeans *persons they depict while menstruating, urinating, vomiting or defecating or is an expression of disgust towards those persons.*

4.2.7.5.3. META does not submit the text of the aforementioned Article 2.9. Indeed, this article is not part of its Exhibit 2. However, VANDENDRIESSCHE does not dispute that this is the text of Art. 2.9.

According to VANDENDRIESSCHE, this message related "to the riots taking place at that time on the coast".

However, this is in no way evident from the aforementioned report.

Therefore, this post indeed violates Article 2.9 of the Facebook Community Guidelines.

4.2.7.5.4. Intermediate decision: with this post, VANDENDRIESSCHE indeed violated the Facebook Community Guidelines. However, as explained above, its removal is unjustified because it was done in disregard of Article 13(2) f GDPR.

4.2.7.5.5. However, the court did not address VANDENDRIESSCHE's claim to order META to reinstate the deleted posts.

First, META argues that this is not technically possible for the majority of the messages (p. 68, no. 210 META summary conclusion). For the reasons set out in its summary conclusion, the court considers this explanation plausible. VANDENDRIESSCHE moreover fails to refute this explanation.

Moreover, the court fails to see what topicality value these messages could have more than three years after their posting now.

4.2.7.6. Shadow ban

4.2.7.6.1. According to VANDENDRIESSCHE, META imposed a number of sanctions on him (on 18 and 19 February 2021), including:

- blocking his publication rights,
- blocking his Ad Account,
- shutting down a range of other functionalities, preventing him from creating groups or events,
- permanent threat of removal from Facebook page,
- shadowban,
- publication of warning that content might be shared in violation of the Facebook Community Guidelines,

(p. 23, no. 32, p. 30, no. 40 et seq. and p. 38, no. 49 summary conclusion VANDENDRIESSCHE
– see also piece A.2 VANDENDRIESSCHE "timeline sanctions").

On 24 May 2021, according to VANDENDRIESSCHE, META appeared to have unblocked his Ad Account so that he could again promote messages (for a fee) from then on (p. 34, no 45 summary conclusion VANDENDRIESSCHE).

VANDENDRIESSCHE finally argues that on 19 August 2021, he found that META had stopped blocking his publishing rights and that he could therefore use his Facebook account to share posts again since then (p. 38, no. 50 summary conclusion VANDENDRIESSCHE).

4.2.7.6.2. The court notes that META does not dispute this explanation. In other words, it does not dispute that it imposed the aforementioned sanctions on or around 18 February 2021. As for the shadow ban, META also expressly acknowledges that it imposed it as of 22 February 2021 (see p. 42, footnote 83 METAFAN summary conclusion - the year (2022) is undoubtedly a material mistake).

META argues that it imposed this shadow ban as a result of a combination of factors (i.e., the history of violations on the

VANDENDRIESSCHE Facebook page, the number of measures ('strikes') on the Facebook page, the severity of the violations, etc.) (see p. 42, footnote 83 META summary conclusion).

According to META, the shadow ban was in force between 20 February 2021 and the end of 2021 (p. 123, no. 436 META summary conclusion).

4.2.7.6.3. As the court already considered in the interlocutory judgment, VANDENDRIESSCHE uses the term "shadow ban" while META uses the term "restriction" for this purpose. However, both terms, according to the court, are synonyms for the same phenomenon, namely a measure that reduces the organic reach of content posted on a Facebook page.

Hereafter, the court uses the term 'shadow ban' for this measure.

4.2.7.6.4. According to VANDENDRIESSCHE, by imposing a shadow ban, among other things, META acted in breach of good faith (violation of section 1134, third paragraph old BW). According to him, this is evidenced by the following specific circumstances:

- lack of prior notice of the post (or posts) that gave rise to it, of the reasons for it and its final duration,

- Imposition of shadow ban more than 6 months after the post that triggered the shadow ban,

- apply a "strike system" (or: "dash system"), without informing VANDENDRIESSCHE of the number of dashes that give rise to the application of a sanction, or the number of dashes achieved,

- lack of substantive response to VANDENDRIESSCHE's objections,

- Absence of real appeals. (pp. 115-120 summary

conclusion VANDENDRIESSCHE).

Finally, VANDENDRIESSCHE argues that, among other things, the sanction of the shadow ban also cannot be applied "in a totally arbitrary, discretionary and discriminatory manner" (p. 120, no. 192 summary conclusion VANDENDRIESSCHE).

4.2.7.6.5. Taking into account all the concrete circumstances of this case mentioned below, the court *is of* the opinion that META did not act in accordance with the principle of good faith performance of contracts (art. 1134.3e paragraph old BW) when imposing the shadow ban:

- META acknowledges that the reports of the Nazi book burning of "June and July 2020" were the last posts against which action was taken before the shadow ban was imposed (p. 42, footnote 83 META summary conclusion).

  More than six months elapsed between the date of the posts and the imposition of the shadow ban.

  If these posts constituted a (serious) violation of the Facebook Terms of Service and Facebook Community Guidelines, META would have taken immediate action against it, or at least should have done so.

  This is not affected in this case by the notice-and- takedown ("notice and action") regime of the E-Commerce Directive ("e-Commerce Directive") (as implemented in Articles XII.19-XII.20 of the IPR) to which META refers (p. 43, no. 144 META's summary conclusion).

  The crux of the matter is that META already had *actual* knowledge of at least one photo of the Nazi book burning on 26 June 2020. Indeed, it removed this photo on that date (Exhibit B.8 VANDENDRIESSCHE, see above). Only two of the eight other photographs posted by VANDENDRIESSCHE date from after 26 June 2020, i.e. those dated 1 and 6
  July 2020.

  In the light of these concrete circumstances, the court does not find it credible that META would not have become aware of the eight remaining photographs until 18, 19 and 22 February 2021. Moreover, META neither argues nor proves that during that period it would have received notification from a third party that would have drawn its attention to these photographs.

  Contrary to META's argument, the foregoing also does not mean that it can no longer remove messages with dangerous content if it only learns of them a long time after they were published (p. 44, no. 145 META's summary conclusion). The foregoing only means that if META has *actual* knowledge of allegedly unlawful content, it must respond to it within a reasonable time.

- The shadow ban was imposed in February 2021 and lasted until the end of 2021, according to META. This is more than 10 months.

  However, in their letter of 19 March 2021, META's lawyers repeatedly wrote that these were temporary restrictions (document D.11 VANDENDRIESSCHE).

  A shadow ban is a sweeping measure. VANDENDRIESSCHE's figures, which have not been disputed by META, show that the average reach of VANDENDRIESSCHE's messages in January 2021 was still 54,376.08 while in March 2021 it dropped to 2,681.75 (see Exhibit E.22, p. 22 VANDENDRIESSCHE). This is less than 5% of the range before the introduction of the shadow ban.

- META does not provide sufficient procedural safeguards to users if it takes certain actions because of alleged violations of the Facebook Terms of Service or the Facebook Community Guidelines.

  META does not undertake in any way to immediately inform the user concerned of an intended shadow ban nor to communicate the reason for it. Nor does META offer the user the opportunity to respond to that decision, with a new decision by META to follow which includes the possibility of lifting the shadow ban (cf. Bundesgerichtshof (DL), 29 July 2021, III ZR 179/20, in particular §85,
  regarding the deletion of a message and the temporary, partial blocking of a user account (piece K.5 VANDENDRIESSCHE)).

  META notified its decision to impose a shadow ban only at the time it was imposed and not before. It also failed to give sufficient reasons for this decision. It limited itself to referring to 'repeated violations of the community guidelines' (see piece D.5 VANDENDRIESSCHE). This is too vague.

  The foregoing cannot be affected by the fact that META *subsequently* provided further explanations in correspondence between the lawyers. META must adequately explain a drastic measure such as a shadow ban on its own motion.

  Although VANDENDRIESSCHE could object to some of the other measures, nowhere does it appear that he could also do so against the imposition of the shadow ban (see above).

META must exercise due care when imposing this measure. This means, in any event, that it must inform the user of the imposition of this measure and give reasons for it in such a way that the user can learn from the decision (cf. Rechtbank Noord-Holland (KG), 6 October 2021, [MP] v Linkedln lreland Unlimited Company and Linkedln Netherlands bv - piece K.4 VANDENDRIESSCHE, r.o. 4.21
regarding the deletion of messages, the restriction and permanent blocking of a Linkedln account of a Dutch politician).

- As already stated, META said it imposed the shadow ban "as a result of a combination of factors (i.e., the history of violations on the TV Page (...), the number of measures ('strikes') on the TV Page, the severity of the violations, etc.), all of which may affect the accessibility of the TV Page (i.e,whether and what restrictions are imposed) and consequently, on thevisibility of the content posted on the TV Page" (pp. 48-49, no. 164 META summary conclusion).

  VANDENDRIESSCHE argues that this 'strike system' ('dash system') is opaque and gives META complete discretionary power to decide when a user has suffered a dash and what the consequences are (p. 116 summary conclusion VANDENDRIESSCHE).

  META disputes this. To this end, it submits the following (in summary):

  - It provides extensive information on its enforcement policy in the Transparency Centre ('Transparency Centre'). In it, it describes among other things, the "system of measures" ("strike system") it uses (p. 16-18 META Synthesis Conclusion).

  - It is not obliged to provide users comprehensive information about its stripe system. Indeed, doing so would allow users to strategically plan harmful behaviour (p. 52 at the bottom of summary conclusion META).

  This interpretation of META does not convince the court.

  Having itself stated that it uses a 'system of dashes', it should hereby transparently indicate 1) when someone incurs a dash (infringement + number of dashes), 2) how many dashes lead to which measure and 3) how long a given measure lasts.

While META does indeed notify a user when it violates its terms and conditions, this in no way allows it to know how many dashes a particular violation leads to.

Above all, META does not provide any justification for the duration of the shadow ban imposed (regarding the duration of the sanction imposed, see p. 120, no. 192 summary conclusion VANDENDRIESSCHE). The lack of transparency therefore creates the impression of arbitrariness.

– According to VANDENDRIESSCHE, despite the shadow ban, he was able to continue proclaiming his political views by promoting (from 25 May 2021) the content he posts as advertisements through his paid advertisement account (p. 35, no. 47 ff. synthesis conclusion VANDENDRIESSCHE). META does not dispute this (p. 91, no. 300 summary conclusion META).

If META, by imposing a shadow ban, actually strives to enforce its Facebook Terms of Service and Facebook Community Guidelines, it would have ensured that reach through VANDENDRIESSCHE's ad account was also limited.

By its actions, it therefore creates the impression that it only imposes those sanctions that it does not suffer (and even benefit from) financially itself.

In assessing whether META imposed the shadow ban in good faith, the court attaches great importance to the latter element.

4.2.7.6.6. Interlocutory decision: due to the precise circumstances in which META imposed a shadow ban on VANDENDRIESSCHE in this case, it acted in breach of good faith. In addition to the violation of Article 13(2)(f) and Article 22(3) GDPR already cited, the shadow ban imposed by META on VANDENDRIESSCHE is also unlawful for that reason.

For the record, the court specifies that this judgement obviously does not extend unreservedly to *other* cases of violations of the Facebook Community Guidelines.

4.2.7.6.7. Having held that the imposition of a shadow ban was unlawful, the court should not Further examine whether the shadow ban *also* violates anti-discrimination law, as VANDENDRIESSCHE argues (p. 97, no. 149 summary conclusion VANDENDRIESSCHE).

After all, this is without practical importance.

Purely for the sake of completeness, the court further held that VANDENDRIESSCHE did not demonstrate such a violation. As the court considered above, META imposed sanctions on VANDENDRIESSCHE only for breaches of the Facebook Terms of Service and the Facebook Community Guidelines. None of these contractual terms prohibits or restricts the expression of political opinions.

4.2.7.7. Warnings on VANDENDRIESSCHE's Facebook page and in the ad library (p. 138 onwards summary conclusion VANDENDRIESSCHE)

4.2.7.7.1. VANDENDRIESSCHE argues that META posted the following warning on its Facebook page:

This page may (sic) share content that is in violation of our community guidelines.

In his view, this communication is unlawful for two reasons:

- He did not share any content in violation of the Facebook Community Guidelines.

- Putting such a 'label' on its Facebook page is a sanction not provided for by contract.

4.2.7.7.2. The foregoing shows that VANDENDRIESSCHE posted several messages on his Facebook page in violation of the Facebook Community Guidelines (including messages related to Zwarte Piet, pictures of the Nazi book burning and a picture of a person urinating in Knokke).

In these circumstances, META rightly argues that this notification was justified in principle (p. 146, no. 543 META summary conclusion).

However, the court finds that META does not answer VANDENDRIESSCHE's second argument. It gives no contractual basis allowing it to apply such a sanction.

Therefore, by posting this notification, META did commit a contractual breach. In addition to the violation of Article 13(2)(f) GDPR cited above, this sanction is also unlawful for that reason.

4.2.7.7.3. According to VANDENDRIESSCHE, META has without justification labeled his post of 3 December 2021 entitled "EU wants to abolish Christmas" on both Facebook and Instagram with astatement that the post was "partially incorrect" based on the assessment of independent fact-checkers. META also allegedly posted several warnings in relationto this message in its long-standing ad library that the ads it had made from it hadbeen removed for violating its advertising policy (p. 139, no 228 summary conclusion VANDENDRIESSCHE).

4.2.7.7.4. A fact check by KNACK has labelled the aforementioned post on'Christmas' as 'partially incorrect'. With META arguing that "any mention in the ad library regarding the Appellant's message titled 'EU wants to abolish Christmas' [was] immediately removed", it thereby implicitly but surely acknowledges that this fact check was incorrect (p. 146, no. 543 META summary conclusion).

However, the screenshot of VANDENDRIESSCHE's ad library dated 3 March 2022 shows that this ad also contained the following entry at that time:

This ad was removed because it violated Facebook's advertising policy. (p. 143, no 231 summary conclusion VANDENDRIESSCHE)

This also constitutes a contractual breach on the part of META. It should have removed this notification *immediately*. In addition to the aforementioned violation of Article 13(2)(f) GDPR, this sanction is also unlawful for that reason.

4.2.8. Damages

4.2.8.1. Shadow ban

4.2.8.1.1. VANDENDRIESSCHE argues that, as a result of the shadow ban, he had to incur more advertising expenses to reach his own followers (p. 134, no. 216 et seq.). For this, he claims (provisional) damages of €91,696.20.

META disputes this claim (p. 145, no. 540 et seq. META's summary conclusion).

4.2.8.1.2. VANDENDRIESSCHE' s argument rests entirely on the following two premises:

- Before the shadow ban was in place, he usually directed his ads to non-followers.

- Since the shadow ban, he also had to target ads to his followers to reach them.

(p. 134, no. 217 summary conclusion VANDENDRIESSCHE).

He submits as his piece I.1.a a summary of all advertisements placed between 18 February 2021 and 15 February 2023.

4.2.8.1.3. META succeeds in showing that these assumptions are not *fully* correct:

- VANDENDRIESSCHE also placed an ad at least once before the shadow ban that also targeted followers (see, e.g., ad no 2488767228094586 "Vlaams Belang Europa zoekt 5 medewerkers". This ad ran from 18 January 2021 to 14 February 2021 and targeted both followers and non-followers. See p. 150, footnote 472 META summary conclusion, piece 72 META).

- Even after the imposition of the shadow ban, VANDENDRIESSCHE targeted several ads purely at non-followers (see the six 2021 ads from after the introduction of the shadow ban as mentioned on p. 150, footnote 473 META summary conclusion and included in piece 72 META). The aforementioned six ads explicitly excluded those who liked VANDENDRIESSCHE's Facebook page (i.e. its followers):

  - Excluding custom audience: people who currently like your page: Tom Vandendriessche

(freely translated: "excluded target audience":...)

META, however, managed to submit only one advertisement from before the shadow ban that was also addressed to VANDENDRIESSCHE's own followers. If this occurred *repeatedly*, it could easily submit *other* advertisements from the period before 18 February 2021. Having failed to do so, the court assumes that the aforementioned ad no. XXX was an exception.

This means that only the six ads that were only targeting non-followers since the shadow ban should be excluded from the review. META does not submit examples of ads that were targeted at both followers and non-followers since theshadow ban.

The ads VANDENDRIESSCHE has directed to his own followers since the shadow ban are indeed causally related to the shadow ban. It is exactly

to reach his own followers, that VANDENDRIESSCHE was forced to run ads (paid posts).

4.2.8.1.4. The above cannot be affected by META's following arguments:

- Virtually all the advertisements included in VANDENDRIESSCHE's papers were paid for with the 'General Expenditure Allowance' (VAU) he received as an EU MP (p. 147, no. 550ff. META summary conclusion).

  Without the shadow ban, VANDENDRIESSCHE would have used his VAU for *Other* professional expenses.

- VANDENDRIESSCHE benefited from the advertisements (pp. 149-150, no. 555 META summary conclusion).

  This is not an advantage VANDENDRIESSCHE enjoyed because of META's mistake but rather because of the extra advertising expenditure he had to incur to enjoy the same advantage he would have enjoyed without the shadow ban. Withoutthe shadow ban, VANDENDRIESSCHE could have reached his followers through non-paid posts.

- It was VANDENDRIESSCHE's own choice to engage in ad spending. VANDENDRIESSCHE does not show that these advertising expenses were unavoidable (p. 150, no. 556 META summary conclusion).

  With the organic reach of the posts posted significantly reduced by the shadow ban, VANDENDRIESSCHE was indeed forced to reach his followers through paid posts (ads).

- It is unclear how ad spending since the introduction of the shadow ban compares with ad spending on VANDENDRIESSCHE's Facebook page in earlier periods (p. 150, no. 558 META summary conclusion).

  It is correct that VANDENDRIESSCHE does not list its ad spending in the years before the shadow ban (2020 and previous years).

  However, as VANDENDRIESSCHE rightly points out, META, as administrator of the Facebook platform, is itself in possession of these data(p. 136, no. 222 summary conclusion VANDENDRIESSCHE). It can submit them at the push of a button, so to speak.

4.2.8.1.5. As the court explained below, VANDENDRIESSCHE does not show that the shadow ban continued beyond 2021.

This means he can only charge for the ads he placed from 18 February 2021 to 31 December 2021 that were targeted at his followers.

VANDENDRIESSCHE's exhibit I.1a shows that he paid a sum of €34,031.58 for the advertisements he placed during the period from 18 February 2021 to 31 December 2021.

The same document shows that for the aforementioned six ads, he paid his non-followers the following amounts: €1,000.00 + €1,485.01 + €1,750.00 + €1,460.48 + €906.06 + €651.00 = €7,252.55.

VANDENDRIESSCHE is therefore entitled to the following damages: €34,031.58 minus €7,252.55 = €26,779.03.

4.2.8.2. Reputational damage resulting from the warnings on VANDENDRIESSCHE's Facebook page and in the advertising library (p. 138 et seq. summary conclusion VANDENDRIESSCHE)

4.2.8.2.1. For this, the court held that META wrongly posted the following warning on VANDENDRIESSCHE's Facebook page:

This page may share content that violates our community guidelines.

The court considers it sufficiently plausible that VANDENDRIESSCHE suffered reputational damage as a result. The fact that the number of his followers has since increased cannot detract from this, according to the court of appeal.

4.2.8.2.2. The same applies to the notification placed by META in VANDENDRIESSCHE's ad library with its post of 3 December 2021: "EU wants to abolish Christmas".

Damages must be assessed at the time they are suffered. Facts that date from *afterwards,* such as subsequent correctly imposed fact checks, cannot affect this. META therefore refers in vain to a fact check of a notice dated 19 March 2023.

4.2.8.2.3. The court awards fair compensation of EUR 500.00 for the reputational damage caused by the two unjustified mentions mentioned above.

4.2.9. Does the shadow ban still apply today? If yes, is there cause to imposing an additional periodic penalty payment?

4.2.9.1. Both parties go into great detail as to whether a shadow ban applies to VANDENDRIESSCHE's Facebook page on today.

4.2.9.2. According to VANDENDRIESSCHE, this is the case.

Specifically, he points to the following figures:

- Average reach of its posts until 19 February 2021: 81,720 people per message
- Average reach of his messages from 19 February 2021 to the interlocutory judgment of 24 October 2022: 22,018 persons per message
- Average reach of its messages from 5 January 2023 to 31 August 2023: 21,246 people per message

(p. 151ff. synthesis conclusion VANDENDRIESSCHE).

Although his Facebook page has allegedly gained more than 12,140 *additional* followers, according to VANDENDRIESSCHE, not even a third of the number of people who saw his posts before the subpoena now see the posts (pp. 151-153 summary conclusion VANDENDRIESSCHE)

In support of his contention, VANDENDRIESSCHE refers, among other things, to two reports by engineer X (documents E.22 and E.23 VANDENDRIESSCHE). According to him, these show that other parameters of dispersion also indicate that META did not suspend the application of the shadowban after 8 January 2023 (p. 155 META summary conclusion).

Moreover, according to VANDENDRIESSCHE, this decline in organic reach is also evident in the *ratio* of number of followers and number of followers reached. In 2020, he says he had about 217,000 followers and an average organic reach per post of 89,345, meaning he reached an average of 41% of his followers. By 2023, the number of followers of his Facebook page would have risen to 230,000, while the average organic reach stagnated. So on average, he would still have reached only 9% of his followers. Again, according to VANDENDRIESSCHE, this is a significant decline that can only indicate the existence of a shadow ban (p. 181, no. 283 summary conclusion VANDENDRIESSCHE).

VANDENDRIESSCHE does not dispute that organic reach has increased slightly after 2021. However, in his view, this is still nowhere near the range in 2020 (p. 182 summary conclusion VANDENDRIESSCHE).

He also points out that META wrongly compares the figures for 2022 and 2023 with those for 2021. According to him, this is an erroneous comparison because in2021, all kinds of sanctions applied to his Facebook page ("namely the shadow ban, but also the blocking of publication rights, the permanent threat to delete the Facebook page and the public warning to other Facebook users that the Facebook page would violate the Community Guidelines") (p. 180, no. 282 summary conclusion VANDENDRIESSCHE).

According to VANDENDRIESSCHE, META, as the administrator of Facebook, is perfectly placed to provide concrete evidence that it would have suspended the shadow ban and *when it* would have done so. lf the severely reduced organic reach compared to the períod before the shadow ban was due to "multiple complex factors", he said META should be able to prove that *other* politicians were experiencing the same. In the absence of cooperation by META to gather evidence, VANDENDRIESSCHE checked whether other politicians were experiencing the same problem. This, according to him, does not appear to be the case. VANDENDRIESSCHE claims he has also been able to refute all the other alleged factors that META said were "likely" to have such an impact on the organic reach of his messages (p. 188, nos. 294-295 META summary conclusion).

4.2.9.3. META disputes this narrative by VANDENDRIESSCHE. According to her, the shadow ban ("feature limits") has not been in force since the end of 2021 (p. 102, no351 et seq. META's summary conclusion).

To this end, it cites several arguments:

- META's data and entries on VANDENDRIESSCHE's Facebook page ("Page quality", "Page status") confirm that the restriction is no longer in place (p. 102, no. 353 et seq. META summary conclusion).

- Between May and December 2023, VANDENDRIESSCHE's Facebook page had a total organic page reach of more than 1.8 million people while this page has only about 235,000 followers. This page thus reaches almost 1.6 million more people than those who follow VANDENDRIESSCHE's Facebook page (p. 106, no. 369-370 META summary conclusion).

According to META, to fully understand a page's organic reach, it is useful to look at total organic page reach. This is the estimated number of people who received unpaid content from a page on their screen (pp. 105-106, no. 368 META Synthesis Conclusion).

- Organic message reach is influenced by the ranking of a message. In turn, ranking is influenced by a combination of dynamic, complex and nuanced factors (p. 113, no. 392 META Synthesis Conclusion).

- Organic message reach includes views ("views") from both followers and non-followers of VANDENDRIESSCHE's Facebook page (p. 114, no. 398META summary conclusion)

- In 2021, META implemented a 'platform-wide change' that reduces the distribution of societal content (p. 113, no 395 META Synthesis Conclusion).

- Organic message reach takes into account a large number of factors, including the frequency of posting and the extent to which a page's followers actually interact with the content (pp. 115- 116, no. 405 META Synthesis Conclusion). The organic message reach of content from other Facebook pages depends not only on the individual pages in question, but also on the type of content they share, how often they post, who their followers are, how engaged their followers are, etc.

4.2.9.4. The court considers the following in this regard.

The court first notes that META acknowledges that the monthly average organic message reach on VANDENDRIESSCHE's Facebook page *is* now *lower* than it was before the shadow ban was in place. However, in its view, this does not prove that the shadow ban is still in force today (p. 110, no 378 META summary conclusion). It argues that VANDENDRIESSCHE does not prove that the current lower average organic message range is caused by the "shadow ban" imposed because of the messages that are the subject of the dispute (p. 128, no. 442 META summary conclusion).

VANDENDRIESSCHE, for his part, does not dispute that the organic range *increased* somewhat after 2021 (p. 182 summary conclusion VANDENDRIESSCHE).

4.2.9.5. Based on expert X's report of 25 September 2023, the court notes the following figures (Exhibit E.22 VANDENDRIESSCHE):

- Average reach of messages in 2020: 89,345 people per message (p. 21)
- Average reach of messages from March 2021 to December 2021: 4.614,17 (p. 22). Averages for January and February 2021 cannot be taken into account because the shadow ban only came into effect on 18 February 2021.
- Average reach of messages in 2022: 24,284.27 people per message (p. 23)
- Average reach of messages in 2023 up until. 31 August 2023: 21,198.55 (p. 24)

(see also p. 122, no. 429 META summary conclusion)

4.2.9.6. Thus, based on these figures, according to the court, there can be no dispute about the following findings:

- Even after the shadow ban is lifted according to META (end 2021), the average reach of posts is still quite a lot lower than before the introduction of the shadow ban. It is about one-third of the reach before (89,345 in 2020 versus 24,284.27 in 2022).

- After the shadow ban was lifted according to META (end 2021), the average reach of posts increased compared to the period when the shadowban was uncontested (4,614.17 in March-December 2021 versus 24.2g4.27in 2022).

Nor do the parties dispute these trends.

In summary, it can consequently be concluded that the average reach increased again after the end of 2021, but without even approaching the average reach in 2020.

4.2.9.7. According to the court, contrary to VANDENDRIESSCHE's argument, the comparison should be made not only to the year 2020 but also to the year 2021.

After all, the court does not see how the *other* 2021 sanctions could have affected the average reach of posts, as VANDENDRIESSCHE claims (p. 180, no. 282 summary conclusion VANDENDRIESSCHE). Indeed, during the period (in 2021) when VANDENDRIESSCHE's publishing rights were blocked, the other administrators of his Facebook page were still able to share posts (p. 30, no. 41 summary conclusion VANDENDRIESSCHE). The average reach therefore also takes into account the messages posted by the other administrators during that period.

4.2.9.8. META attaches particular importance to the change it made in 2021, which it says has the effect of reducing the amount of societal content in users' news feed (p. 113,no 395 META summary conclusion).

According to the court, this change is confirmed by the press articles submitted by META among others as its exhibits 84.a and 84b. VANDENDRIESSCHE does not dispute this change in itself either. However, as argued, he argues that META should submit figures on the average reach of *other* politicians so that it can be ascertained whether their average reach has also declined since 2021.

4.2.9.9. When settling this point of contention, the following legal principles should be taken into account:

- VANDENDRIESSCHE bears the burden of proof in principle that the shadow ban is still in force today (Art. 8.4(1) BW).

- META must cooperate with the evidence (art. 8.4, third paragraph BW). This is all themore true in this case since (1) it does not dispute that a shadow ban applied until the end of 2021 and that even after 2021 the average organicreach of VANDENDRIESSCHE's posts is still lower than before the shadow ban was in force (2) it is the only one that has full insight into the operation of its platform and the algorithms applied to it.

  Specifically, the burden of proof on VANDENDRIESSCHE must be met with reasonableness.

- He who bears the burden of proving a negative fact, namely that the shadow ban has not been in force since 2022, may be content with proving the likelihood of that fact (Art. 8.6 Civil Code).

- In case of doubt, he who has to prove the legal acts or facts alleged by him shall be put in the wrong (Art. 8.4(4) BW).

4.2.9.10. As stated, the parties have concluded at great length on the question of whether a shadow ban is still in force on VANDENDRIESSCHE's Facebook page from 2022 until today. To this end, they each put forward numerous arguments, each also using their own figures and ratios.

The court is not sufficiently versed in the complex workings of the Facebook platform to be able to judge with sufficient certainty whether the reduced average reach of posts on VANDENDRIESSCHE's Facebook page is the

result of a shadow ban. Only an expert investigation (by a social media expert and an IT expert) could be conclusive on this.

However, such a costly and time-consuming measure can only be taken if VANDENDRIESSCHE makes the applicability of a shadow ban sufficiently *plausible*.

4.2.9.11. Taking into account the factual (numerical) findings and legal principles presented above, the court finds that VANDENDRIESSCHE does not succeed on the basis of the following considerations:

- After the end of 2021, the average reach of messages from VANDENDRIESSCHE increased compared to the período of during the shadow ban (18 February 2021- end of December 2021), even though it is still only about one-third of the average reach before the shadow ban.

- META reveals that it made a change to its platform in early 2021 that reduced the amount of societal content users see in their news feeds.

  While the court considers it plausible that the average reach of posts depends on a multitude of factors, this change may well be one of the explanations for the decline in the average reach of posts on VANDENDRIESSCHE's Facebook page.

- VANDENDRIESSCHE rightly argues that if this change explains the drop in average reach, the drop must also occur for *other* politicians (p. 202, no. 320 summary conclusion VANDENDRIESSCHE).

- As META rightly points out, VANDENDRIESSCHE could easily demonstrate, by looking at the evolution of the average reach of posts by other politicians, that this has not decreased with them. This would allow him to refute META's claim that its 'platform-wide change'
  regarding the distribution of societal content (implemented in early 2021) may explain the decrease in the average reach of posts on VANDENDRIESSCHE's Facebook page.

  VANDENDRIESSCHE, however, submits no such figures. He submits as his exhibits E.45 to E.48 only figures of the average coverage of messages of four other politicians in the period from September or October 2023 to December 2023. However, it is noteworthy that under section 877 Ger. W. he*does* demand the submission of documents regarding "the monthly average ratio organic reach/number of followers" in the

period from 1 january 2020 to 31 December 2023 (p. 210 summary conclusion VANDENDRIESSCHE).

The figures presented by VANDENDRIESSCHE say nothing about the evolution of the average reach of these four politicians' messages from 2020 to the present day.

According to the court, however, it could not be difficult for VANDENDRIESSCHE to at least submit these figures from a number of party colleagues, which VANDENDRIESSCHE, as stated, does not do.

For the sake of completeness, the court notes that VANDENDRIESSCHE additionally refers to the average number of followers reached by the aforementioned four politicians (p. 175, no. 274 summary conclusion VANDENDRIESSCHE). While the reach/number of followers ratio is noteven an adequate ratio according to META, the documents submitted by VANDENDRIESSCHE do not even show the number of followers of these four politicians.

4.2.9.12. Based on the foregoing, the court finds that VANDENDRIESSCHE does not make it sufficiently plausible that from January 2022 until today, his Facebook page was still subject to a shadow ban.

The court does not order an expert examination in these circumstances.

For the same reason, VANDENDRIESSCHE's claim pursuant to art. 877 Ger. W. In order for the court to have ordered the production of the documents requested by VANDENDRIESSCHE concerning other politicians, he should have at least first submitted similar documents concerning his own party colleagues. For the same reason, it cannot be inferred from META's refusal to produce the documents requested by VANDENDRIESSCHE that the shadow ban would still be in force today.

4.2.9.13. Interlocutory decision: on the basis of a thorough analysis of the arguments and documents in the current state of the proceedings, the court reaches a different conclusion regarding the shadow ban than the *prima facie* judgment of 24 October 2022. On the merits, the court considers thatVANDENDRIESSCHE does not conclusively prove that META applied a shadow banon its Facebook page after 2021.

4.2.9.14. Pursuant to art. 1385quinquies, third paragraph of Ger. W., VANDENDRIESSCHE also claimed in the proceedings on the merits to impose a *additional* periodic penalty payment, in addition to the one imposed by the court in the interlocutory judgment of 24 October 2022 (p. 189, no. 297 et seq. summary judgment VANDENDRIESSCHE).

As VANDENDRIESSCHE does not prove that META is still applying a shadow ban on its Facebook page after 2021 - and thus also after the interlocutory judgment on 24 October 2022 - this claim is also unfounded.

5. COURT COSTS

5.1. With VANDENDRIESSCHE's claim being only partially upheld, both parties are partly in the right and partly in the wrong.

Taking into account all the concrete circumstances of the case, it appears appropriate to order META to pay three-fourths of the legal costs of both citations and VANDENDRIESSCHE to pay one-fourth thereof.

5.2. The litigation fee must be determined for each instance on the basis of the applicable rate on the date of judgment, regardless of the amount claimed by the parties (cf. Cass. 13 January 2023, C.22.0158.N).

Both parties apparently agree that the claim at first instance is not monetisable and that the claim on appeal is in the bracket between EUR 60,000.01 and EUR 100,000.00. This means that the court fees for the proceedings at first instance and for the proceedings on appeal are EUR 1,560.00 and EUR 4,500.00 respectively.

5.3. The title (i.e. the judgment or decree) pursuant to which enforcement is carried out is considered a sufficient basis for the recovery of execution costs (cf. Cass. 27 February 1995, S.94.134.N). Accordingly, the present judgment constitutes a title for the costs of service and execution incurred or to be incurred by the parties.

6. THE DECISION

THE COURT,

- Further elaborates on the interlocutory judgment of 24 October 2022.
- Taking the case to itself for assessment of merits (art. 1068 Ger. W.).
- Declares VANDENDRIESSCHE's application admissible and well-founded to the following extent,

- Orders META to pay VANDENDRIESSCHE compensation of EUR 27,279.03, to be increased by compensatory interest from the summons to the present day and, from the present day, by default interest until the day of payment in full, with both compensatory and default interest calculated at the legal interest rate determined in accordance with the law of 5 May 1865.

- Dismisses VANDENDRIESSCHE's other claims as unfounded.

- Orders VANDENDRIESSCHE and META to pay one-fourth and three-fourths, respectively, of the legal costs of both citations, determined as follows:

  - VANDENDRIESSCHE side:
    - Subpoena: €827.63
    - Court fee first instance: €1,560.00
    - Appeal court fee: €4,500.00
    - Contribution for the Budget Fund for the Second-level legal assistance: EUR 22.00

  - On META's side:
    - Court fee first instance: €1,560.00
    - Appeal court fee: €4,500.00

- VANDENDRIESSCHE and META must also pay - after invitation - one-fourth and three-fourths, respectively, of the rolling fees of €400.00 to the Belgian State, FOD Finance.

Thus delivered by the seventh collegiate chamber of the Ghent Court of Appeal, sitting in civil matters,
composed of:
- X councilor, acting chamber president,
- X, councilor,
- X assisted by: counselor,
- X,

, Registrar

and pronounced by the Acting President of the Seventh Chamber in public hearing on 3 June 2024.