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PLATFORMS AS COURTS? PROCEDURAL JUSTICE IN PLATFORM COMPLAINT PROCEDURES

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The rise of Platform Online Dispute Resolution

When you buy a product on Amazon or eBay, when you use Instagram or Facebook or TikTok or any other social media, when you use Uber or Airbnb to obtain services, you are interacting with online platforms that (also) operate as intermediaries. These platforms bring suppliers and consumers into contact for provision of services or products, and allow content to be distributed. Like any activity, this can lead to disagreement between consumers and suppliers or other individuals. The product you bought might be defective, a post on Facebook can violate your privacy, the Airbnb guest may trash your apartment. You would like to report such issues. E-commerce platforms and social media platforms routinely offer complaint handling procedures. These may lead to quick and effective (non-binding) resolution of disputes, but also tend to be untransparent about their operation, and may leave users dissatisfied.

Given the fact that in many cases individuals will not start a costly court procedure, platform-based complaint procedures are often the only recourse available, which raises the question whether such procedures should be held to certain standards. How can procedural justice be ensured, in the context of widely-used complaint procedures on online platforms? How does online dispute resolution (ODR) cater to the legal needs of those who are looking to resolve their problems or disputes? And, more broadly, what is the relation between these types of procedures and the legal protection offered by the law in terms of substantive remedies and procedural safeguards?

To explore these questions, it is useful to acknowledge that one size does not fit all. Different conflicts call for different techniques, procedures and institutions. Public courts may not be well equipped to deal with an extremely high number of low-value disputes, such as certain types of consumer cases. Along similar lines, arbitration may be attractive for sophisticated commercial actors, but may be unsuitable for private citizens lacking the necessary expertise or financial means. Digitalization has magnified the gap between formal and informal justice systems: from social media to e-commerce, many facets of our online lives generate conflicts, which do not fit with the traditional avenues and procedures for conflict resolution.

Fundamental procedural rights fit for the digital age?

Access to justice, the right to a fair trial and the right to an effective remedy are not new concepts: they can be traced back to the constitutional traditions of many States, and they are enshrined in both the European Convention on Human Rights (Arts. 6 and 13) and the EU Charter of Fundamental Rights (Art. 47). Yet, these guarantees were initially conceived having public courts (rather than ODR) in mind. The question arises whether and to what extent fundamental procedural rights are fit for the digital age. For instance, when social media users file a notice, asking the platform to review specific content and take appropriate action, they may care more about [a speedy decision than a motivated decision](#). It is necessary to re-think the applicability of fundamental procedural rights to out-of-court dispute resolution, and to reflect on whether and how to inject procedural safeguards into the rapidly evolving ecosystem of ODR.

Adapting fundamental procedural rights to ODR is, undoubtedly, a challenge. EU regulation and literature tends to uphold high-quality procedural standards (e.g., independence and impartiality, transparency, contestation), and, to some extent, model out-

of-court dispute resolution after public courts. Several existing ODR mechanisms, however, choose a different approach, prioritising fast outcomes over procedural standards, in the light of the fact that they are not legally binding unless parties accept them. Simultaneously, newer EU rules tend to look at platform complaint procedures as a way to resolve or even prevent disputes (e.g. Art. 20 [DSA](#), Art. 11 [P2B Regulation](#); Art. 10 [Data Act Proposal](#)). While these procedures may be understood as new forms of adjudication, it is not clear whether they should indeed be subject to similar principles of procedural justice as public courts or offline arbitration. It could be argued instead that ODR mechanisms should provide quick and pragmatic solutions.

[Provisional results from empirical research](#) suggest that strict procedural requirements are not actually necessary for all ODR formats to preserve what are perceived as their comparative advantages as opposed to traditional court procedures. People choosing these solutions may be looking for something else than what is legally seen as the fundamental right of access to court and a fair trial. Indeed, non-binding ODR does not detract from access to court and might be better viewed as a supplemental instrument to relieve the case load of the official court system instead as a replacement (as binding ADR/ODR is). This requires a different design, from a broader perspective taking into account all available instruments, rather than looking at each procedure as if it should be a self-contained solution.

In this context, ODR mechanisms provide access to justice in a broader sense, with looser procedural guarantees, but seeking to deliver effective remedies which parties are able to accept in certain circumstances. Hence, easy access and effectiveness seem to trump the parties' right to present their case in all of its potential complexity. Interestingly, the right to an effective remedy has recently been [relied upon by prominent ODR bodies](#) as a normative basis justifying their growing role in the resolution of Internet-related disputes. At the same time, access to justice requires processes and outcomes that are seen as just not only by the parties involved, but by society as a whole. The central question, thus, is what role procedural justice should play in this setting.

The need for a fresh look at ODR

The advent of new, platform-based forms of ODR calls for a fresh look at our expectations concerning dispute management and resolution, particularly given the massive amount of (potential) disputes handled by platforms and the new regulatory framework that is being established in the EU. On the one hand, it is necessary to acknowledge the important differences between platform-based ODR and public courts, in terms of institutional features, procedural design, and nature of the solutions they offer. On the other hand, inasmuch as platforms emerge as conflict resolution institutions, providing access to relief in a broader sense, they should be expected to guarantee a certain degree of due process, proportionate to the role they play in preventing and resolving disputes. For some types of conflicts, platforms may be the main viable avenues through which a wide range of subjects seek redress. Therefore, it is crucial to look at ODR through the lens of procedural rights, so as to gauge what degree of due process can and should be expected of these online procedures.

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