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THE ECtHR JURISPRUDENCE ON “FAKE NEWS”: SEARCHING FOR TRUTH

Abstract:

With the development of the internet and social networks, the dissemination of “fake news” has become much easier and faster than it was in the past. Although this phenomenon is not new, its current effects on democratic political processes and human behavior during some emergencies demonstrate that “fake news” can have a significant impact on public behavior. In view of these considerations, the article will analyze the phenomenon of “fake news” through the lens of Article 10 of the European Convention on Human Rights (ECHR) and the circumstances under which freedom of expression may be limited in instances of “fake news” publication. The first section will consider the definition and the concept of fake news. In addition, the authors will analyze the relevant jurisprudence of the European Court of Human Rights (ECtHR), with special attention devoted to the ECtHR’s landmark decision in *Brzeziński v. Poland*. The goal of this paper is to clarify the role of ECtHR’s approach to fake news, particularly in the context of modern information environments.

Keywords: *fake news, freedom of expression, European Convention on Human Rights*

“A lie can travel halfway around the world while the truth is putting on its shoes.”

Mark Twain

INTRODUCTION

In a democratically governed state, freedom of expression is one of the most significant aspects of the legal system. The significance of freedom of expression should not be limited to the protection of verbal and non-verbal communication; rather, it should be considered in a broader context, as it is a necessary condition for the exercise of other rights

and freedoms.¹ In the digital era, freedom of expression has achieved a completely new dimension, transforming our methods of communication and self-expression in ways that were previously unimaginable.² While the internet has the potential to expand people’s ability to express themselves freely, it also poses risks to other fundamental rights.³

Innovations in media content dissemination models, particularly online, have introduced the concept of “fake news”, which has since become a notable feature in international and national policies and regulations.⁴ With the development of the internet and social networks, the dissemination of “fake news”, disinformation, and misinformation has become much easier and faster than it was in the past. Although this phenomenon is not new, its current effects on democratic political processes and human behavior during some emergencies demonstrate that “fake news” can have a significant impact on public behavior.⁵

In view of the above considerations, this article will analyze the phenomenon of “fake news” through the lens of Article 10 of the European Convention on Human Rights (ECHR) and the circumstances under which freedom of expression may be limited in instances of “fake news” publication. The first section will consider the definition and the concept of “fake news”. In addition, the authors will analyze the relevant jurisprudence of the European Court of Human Rights (ECtHR), with special attention devoted to the ECtHR’s landmark decision in *Brzeziński v. Poland*. The goal of this paper is to clarify the role of ECtHR’s approach to “fake news”, particularly in the context of modern information environments.

2. “FAKE NEWS”: CONCEPTUAL CLARIFICATION

The concept of “fake news” is global in scope and has historical roots extending back centuries.⁶ However, there is still no consensus in the doctrine regarding the meaning of this phenomenon.⁷ According to one approach, “fake news” could be considered as “*spreading outrageous, distorted information to discredit opposition or create divisiveness between opposing groups*”.⁸ This definition is effective as it emphasizes the purpose and impact of “fake news”, accurately differentiates it from mere factual inaccuracies, and

1 Medović, V., Mladenov, M., Galetin, M. (2025). *Primena vrednosti Evropske unije i digitalna transformacija: perspektiva Srbije* [Application of EU values and digital transformation: Serbian perspective], Novi Sad: Univerzitet Privredna akademija u Novom Sadu, p.225.

2 Mladenov, M., Stapski, T. (2024). “Liability of Online Platforms for Content Moderation from the Perspective of the European Court of Human Rights – Challenges and Recent Developments”. *Pravo - Teorija i Praksa*, 41(4), p. 153.

3 See: ECtHR, *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, Application No. 33014/05, Judgment of 5 May 2011,

4 Richter, A. (2018). “Fake news and freedom of the media”. *Journal of International Media and Entertainment Law*, 8(1), p.2.

5 Muhvić, D. and Rešetar Čulo, I. (2022). ““Fake News” in Times of Crisis in the Context of Article 10 of the European Convention on Human Rights”. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 43 (1), p.190.

6 Gielow Jacobs, L. (2022). Freedom of speech and regulation of fake news. *The American Journal of Comparative Law*, 70(Supplement_1), i278-i311.

7 See: Tandoc Jr., Edson C. Z. W. L. and Richard Ling. (2018). “Defining “fake news”: A typology of scholarly definitions”. *Digital Journalism* 6(2)(2018), 137-153.

8 Nielsen, G. (2020). Populism, fake news, and the flight from democracy. In *Navigating Fake News, Alternative Facts, and Misinformation in a Post-Truth World* (pp. 238-257). IGI Global.

illustrates its significance in a post-truth context characterized by emotional manipulation and social polarization. However, it appears to concentrate on political motives, specifically the discrediting of opposition. Although this is a principal motivating factor, “fake news” is also generated for monetary profit or social manipulation.

According to another approach, “fake news” is “a type of online disinformation (1), with (2) misleading and/or false statements that may or may not be associated with real events, (3) intentionally created to mislead and/or manipulate a public (4) specific or imagined, (5) through the appearance of a news format with an opportunistic structure (title, image, content) to attract the reader’s attention, in order to obtain more clicks and shares and, therefore, greater advertising revenue and/or ideological gain”.⁹ This definition is quite comprehensive, including both false statements and misleading information, while underlining the dual objectives of financial and ideological gain.

The term “fake news” is also defined in various dictionaries. In the Cambridge Dictionary, this phenomenon is defined as “false stories that appear to be news, spread on the internet or using other media, usually created to influence political views or as a joke,”¹⁰ while in Collins English dictionary it is defined as “false, often sensational, information disseminated under the guise of news reporting”¹¹.

Furthermore, misinformation and disinformation are frequently used equally with the term “fake news”. Misinformation is a term that denotes misleading information that is generated or disseminated without the intention of manipulating or harming others. In other words, misinformation is information that is inaccurate but is believed to be true by the individual who is disseminating it. Disinformation is typically employed to describe intentional endeavors to confuse or influence individuals by providing them with fake information. It is a deliberate and flagrant untruth that implies individuals who act maliciously are actively misleading the public. Disinformation is particularly hazardous due to its frequent organization, well-resourced nature, and reinforcement by automated technologies.¹² The primary distinction among these terms lies in their intent and dissemination. Misinformation refers to false information shared without malicious intent, while disinformation involves the intentional dissemination of false information to deceive and cause harm.

For the goal of this paper, the concept of “fake news” is defined as publishing information that is either entirely untrue or that has not been confirmed using the editorial standards and procedures of news media, in a format that appears to be real news, in order to misinform readers.¹³

As a human rights issue, although “fake news” could be considered from the perspective of several human rights, e.g., it can pose a significant threat to the right to life or freedom from discrimination¹⁴, the dilemmas regarding the countermeasures against “fake

9 Baptista, J. P., & Gradim, A. (2022). A Working Definition of Fake News. *Encyclopedia*, 2(1), 632-645.

10 Cambridge Dictionary, “Fake News” Definition, <http://dictionary.cambridge.org/us/dictionary/english/fake-news> (June 7, 2025);

11 Collins Dictionary, “Fake News” Definition, <https://www.collinsdictionary.com/dictionary/english/fake-news> (July 3, 2025)

12 Faizan, N. and Hussain, E. (2024). Conceptual Understanding of Fake News: An Overview. *Issue 2 Int’l J.L Mgmt. & Human.*, 7, 3299.

13 Benedek, W., and Kettemann, M. C. (2020). *Freedom of expression and the internet: Updated and revised 2nd edition*. Council of Europe, p.94.

14 Fake news was used to fuel ethnic violence in certain conflicts. See: Allen, T., & Seaton, J. (Eds.).

news” are centered on the principle of freedom of expression. Therefore, any response to “fake news” must be carefully balanced, in line with international human rights standards that require such restrictions to be necessary, proportionate, and non-discriminatory.

3. JURISPRUDENCE OF THE ECTHR ON “FAKE NEWS”

The term “fake news” is not explicitly defined in the ECHR or in ECtHR case-law. The ECtHR analyzed the concept of “fake news” in the light of Article 10 of the ECHR, which guarantees freedom of expression.¹⁵ The ECtHR supports an expansive interpretation of the concept of expression while employing a balancing approach in its methodology to establish certain exceptions beyond the fundamental aspects of this human right.¹⁶ In its jurisprudence, the ECtHR has specified the positive obligations of States regarding the protection of freedom of expression. The positive obligations require that the States establish an effective mechanism for the protection of authors and journalists. This mechanism is intended to foster a conducive environment for the participation of all parties involved in public debate, allowing them to express their opinions and ideas without fear, even if they are in opposition to those defended by the official authorities or an important part of public opinion, or if they are irritating or shocking to the latter.¹⁷

The ECtHR interpretation of Article 10 of the ECHR extends beyond its literal meaning; freedom of expression encompasses not only the right to hold and share information but also the reception of ideas through various forms of communication. The framework includes: the freedom to produce, exhibit, and distribute artworks; the liberty to conduct public artistic performances; access to relevant public information; the freedom to display images, icons, and symbols of religious or political significance; the preservation of cultural heritage, broadcasting, and satirical expression; and protection against self-incrimination.¹⁸

Article 10 of the ECHR does not provide absolute protection for freedom of expression. It permits Contracting States to intervene in the exercise of this right, based upon the limits meeting the criteria outlined in paragraph 2, that are prescribed by law,

(1999). *The media of conflict: War reporting and representations of ethnic violence*. Zed Books.

15 “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS No. 005).

16 See: Macovei, M. (2004). A guide to the implementation of Article 10 of the European Convention on Human Rights. *Human rights handbooks*, (2), Council of Europe.

17 Council of Europe, 2022, Guide to Article 10 of the European Convention on Human Rights– Freedom of expression, <https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6>, (June 9, 2025), p.12.

18 Sardo, A. (2020). Categories, balancing, and fake news: The jurisprudence of the European Court of Human Rights. *Canadian Journal of Law & Jurisprudence*, 33(2), 437, 438.

have a legitimate aim, and are necessary in a democratic society.¹⁹ Furthermore, when referring to the press, the restrictions specified in the Second Paragraph of Article 10 must be interpreted strictly.²⁰

The ECtHR introduced the term “fake news” in its *Brzeziński v. Poland* judgment.²¹ The ECtHR unanimously determined that Article 10 of the ECHR was violated in relation to the applicant’s right to freedom of expression as a politician during the election period. The case specifically addresses the provision in Poland’s election legislation that permits the court to evaluate, within 24 hours, the publication of untrue information and to prohibit its further dissemination.

The case emerged before the 2006 local elections in Poland and concerned Mr Zenon Brzeziński, a candidate for local government in southern Poland. In a leaflet urging the public to vote for his electoral party, Brzeziński criticized the administration of the municipality. The complaints mostly focused on the mayor and the local council members. Brzeziński stated that the local council members had reached an agreement to exploit their positions. The mayor and a local politician included in the brochure initiated legal action against Brzeziński, seeking a court order to prohibit the distribution of the brochure and compel its author to amend the incorrect content and issue a public apology. The Court ordered Brzeziński to suspend future distribution of the booklet and required him to print an apology in two local newspapers, stating that he regrets having distributed the aforementioned false content, as it might have misled public opinion. The Court mandated Brzeziński to donate a certain amount to charity, together with associated charges. The Katowice Court of Appeal finally confirmed the decision of the Regional Court.²²

Brzeziński submitted an application to the ECtHR in 2007, claiming the violation of his right to freedom of expression. The ECtHR found that the interference with the freedom of expression was ‘prescribed by law’ and aimed at the legitimate objective of ‘protecting the reputation or rights of others,’ with the key question being whether the restriction was ‘necessary in a democratic society.’

The ECtHR observed that the campaign booklet was released within a local election campaign, aimed at local government and elected officials, and addressed a matter of significant public interest: the management of local government. Moreover, the Court emphasized that Article 10 allows for minimal restrictions on public interest expression. It noted that elected officials are subject to broader limits regarding acceptable criticism. Additionally, since Brzeziński was addressing the public as an election candidate, the government’s ability to impose restrictions on such expression was significantly limited.²³ The ECtHR reviewed the decisions of the national courts and noted, in particularly critical terms, that Brzeziński’s statements were immediately classified as untrue by these courts. Furthermore, it observed that the justifications of the national courts did not indicate

19 Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms*, op.cit.

20 See: Bychawska-Siniarska, D. (2017). Protecting the right to freedom of expression under the European convention on human rights: A handbook for legal practitioners. Council of Europe, 87-90.

21 ECtHR, *Brzeziński v. Poland*, Application no. 47542/07, Judgment of 25 July 2019.

22 Fathaigh, O., R. (2019). *Brzeziński v. Poland: Fine over ‘false’ information during election campaign violated Article 10*, Strasbourg Observers, <https://strasbourgobservers.com/2019/08/08/brzezinski-v-poland-fine-over-false-information-during-election-campaign-violated-article-10/> (June 20, 2025).

23 Voorhoof, D. (2019). European Court of Human Rights: *Brzezinski v. Poland*. IRIS - Legal Observations of the European Audiovisual Observatory, (8), 1-2.

an examination of whether the contested remarks had a valid factual basis. The ECtHR determined that Brzeziński was clearly engaged in a public discourse on a significant matter, and it found itself unable to endorse the domestic courts’ perspective that the applicant needed to prove the truth of his claims. Furthermore, it stated that by adopting this stance, the domestic courts effectively deprived Brzeziński of the guarantees provided by Article 10. The ECtHR determined that the language in the booklet did not constitute ‘vulgar or insulting’ speech, but rather fell within the bounds of ‘exaggeration and provocation’ typical of the ‘ordinary tone’ found in political debate at the local level. The ECtHR concluded that the justifications provided by the Polish courts for the rulings against Brzeziński lacked any pressing necessity. Finally, the ECtHR reviewed the sanctions imposed. The Court determined that the cumulative application of these sanctions would likely exert a chilling effect on individuals participating in local political discourse. The ECtHR reached a unanimous decision that Brzeziński’s free expression had been disproportionately interfered with, constituting a violation of Article 10.²⁴

Brzeziński is the first ECtHR ruling that includes the phrase “fake news”. Neither the respondent state nor the applicant used the term in their submissions. Even though this case was met with criticism due to the term controversy, it established the key standards with regard to this issue.

Although the phrase “fake news” is a recent addition to the ECtHR terminology, several significant ECtHR rulings concerning freedom of expression have established principles that are pertinent to the Court’s approach to this phenomenon in contemporary contexts.

In *Delfi AS v. Estonia*, the ECtHR determined that an online news portal might be held liable for defamatory remarks made by its users.²⁵ The Court determined that Delfi, as a commercial news entity that controlled its content and benefited from reader interaction, had the obligation to implement steps to avoid or eliminate harmful remarks. This decision is significant to the issue of “fake news”, as it established the concept that internet platforms are not merely passive transmitters of information. Conversely, they may possess a duty of caution, particularly as commercial companies, which might encompass moderating disinformation to safeguard the rights of others.

In the recent judgment *Novaya Gazeta and 161 Others v. Russia*, the ECtHR addressed the Russian government’s use of “fake news” legislation to suppress opposition.²⁶ The term “fake news” in this instance was not developed by the Court as a novel legal concept, but was employed since it was the precise terminology already in the Russian internal legislation under scrutiny. The ECtHR determined that these restrictions were an abuse of authority and an excessive limitation on freedom of expression. The ECtHR determined that employing “fake news” as a justification to suppress media organizations and punish journalists constituted an unlawful method of suppressing criticism of governmental acts. This case is significantly relevant to the overarching issue of fake news: it underscores that, although deception poses a challenge, legislation intended to address it can also jeopardize press freedom and democratic dialogue if employed to restrict reporting and punish journalists for legitimate activities.

24 Ibid.

25 ECtHR, *Delfi AS v. Estonia*, App. No. 64569/09, Grand Chamber, Judgment of 16 June 2015.

26 ECtHR, *Novaya Gazeta and 161 Others v. Russia*, App. No. 11884/22 and 161 others, Judgment of 11 February 2025.

The *Novaya Gazeta* ruling served as the foundation for the later *Borovinskikh and Others v. Russia* decision.²⁷ In *Borovinskikh*, the ECtHR explicitly examined Russia's implementation of "fake news" and "discrediting the military" legislation as a form of censorship that violated Article 10. The ECtHR determined that Russian legislation criminalizing information that opposes the official state narrative of the military represented a "systemic and widespread pattern of reporting restrictions" aimed at suppressing criticism. The Court determined that this was not a valid method to address a threat to national security, but instead a concerted attempt to suppress critics. The ruling also criticized the national courts for failing to reconcile the conflicting interests involved, including the significant public interest in a major armed conflict and claims of war crimes. This case serves as a strong precedent against states that implement broadly and vaguely defined "fake news" regulations that restrict freedom of expression, particularly regarding issues of political and public significance.

The preceding analysis indicates that, despite the diverse terminology employed by states, including "false information," "disinformation," and "misinformation," statements that could ultimately be classified as "fake news," in accordance with the previously provided definition, fundamentally fall under the protection of Article 10(1) of the ECHR. Nonetheless, like other forms of communication, "fake news" is governed by the limitations outlined principally in Article 10(2) of the ECHR, in line with the discussed principles.

4. CONCLUSION

The significance of reliable informational resources for the protection of human rights is emphasized by the potential for "fake news" to compromise an accurate understanding of freedom of expression. Building on the importance of reliable information, the analysis of relevant case law of the ECtHR illustrates the Court's complex and developing stance on managing "fake news" under Article 10 of the ECHR. Each case presents a unique context—political speech by a candidate, third-party remarks on a commercial news platform, and state-sanctioned suppression of war reporting. These cases collectively highlight the fundamental tension between protecting freedom of expression and limiting the dissemination of harmful or false information. The analyzed judgments indicate that certain limitations on expression are acceptable, particularly for safeguarding the reputation of individuals or preventing violence. However, such restrictions must not create a "chilling effect" on public discourse or function as a mechanism for the state to suppress opposing views.

The deliberate dissemination of "fake news" is not a novel phenomenon; however, the digital era has significantly increased its scope and enhanced its impact, posing a pressing threat to human rights. It seems that this contemporary form of disinformation is committed to the active undermining of the fundamental pillars of democratic society, rather than merely inaccurately informing. "Fake news" fosters a conducive environment for the violation of rights by gradually eroding public trust in institutions, journalism, and the fundamental concept of verifiable truth. At the same time, it has the potential to be used to justify censorship as well as restrict freedom of expression.

Consequently, combating "fake news" is not merely a matter of revising the facts; it represents a crucial aspect of the protection of human dignity and the fundamental principles that are enshrined in international human rights law. A collective dedication to

²⁷ ECtHR, *Borovinskikh and Others v. Russia*, App. No. 50074/18 and 25 others, Judgment of 12 June 2025.

media literacy, accountability, and the tenacious defense of a shared, fact-based reality is essential for the future of human rights in an exponentially digitalized world.



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PRAKSA EVROPSKOG SUDA ZA LJUDSKA PRAVA O „LAŽNIM VESTIMA“: U POTRAZI ZA ISTINOM

Sažetak:

Usled razvoja interneta i društvenih mreža, širenje „lažnih vesti“ postalo je mnogo lakše i brže nego što je to bilo u prošlosti. Iako ovaj fenomen nije nov, njegovi trenutni efekti na demokratske političke procese i ljudsko ponašanje tokom određenih vanrednih situacija pokazuju da „lažne vesti“ mogu imati značajan uticaj na ponašanje javnosti. U svetlu navedenih činjenica, predmet analize u radu predstavljaće fenomen „lažnih vesti“ kroz objektiv člana 10 Evropske konvencije o ljudskim pravima (EKLJP) i okolnosti pod kojima sloboda izražavanja može biti ograničena u slučajevima objavljivanja predmetnih vesti. Prvi deo rada će razmotriti definiciju i koncept „lažnih vesti“. Pored toga, autori će analizirati relevantnu sudsku praksu Evropskog suda za ljudska prava (ESLJP), pri čemu će posebna pažnja biti posvećena značajnoj odluci ESLJP u predmetu *Brzeziński* protiv Poljske. Cilj ovog rada je da razjasni pristup ESLJP predmetnom fenomenu, posebno u kontekstu savremenog informacionog okruženja.

Ključne reči: „lažne vesti“, sloboda izražavanja, Evropska konvencija o ljudskim pravima

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