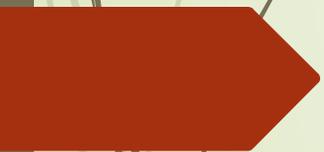


The Overview of legal standards regarding disinformation in Europe and in Serbia.



Dr Jelena Surculija Milojevic

Disinformation/Misinformation

- ▶ Opposite to “information”, factual and truthful?
- ▶ Misleading information?
- ▶ True information explained in the wrong context?
- ▶ Who deals with disinformation? And who deals with misinformation?
 - ▶ Governments?
 - ▶ Parliaments?
 - ▶ Prosecution offices/Courts?
 - ▶ Regulatory bodies?
 - ▶ Media themselves?
 - ▶ Social media themselves?
 - ▶ What about “Mark Zuckerberg calls for stronger regulation of the Internet“ (Guardian, 2019):
<https://www.theguardian.com/technology/2019/mar/30/mark-zuckerberg-calls-for-stronger-regulation-of-internet> ?

The recommendation not to use “fake news” phrase in the UK (2019)

- ▶ DCMS Committee released an interim report that warned of a “democratic crisis founded upon the manipulation of personal data which targeted users with pernicious views, particularly during elections and referenda”.
- ▶ “We recommend that the Government rejects the term ‘fake news’, and instead puts forward an agreed definition of the words ‘**misinformation**’ and ‘**disinformation**’. With such a shared definition, and clear guidelines for companies, organisations, and the Government to follow, there will be a shared consistency of meaning across the platforms, which can be used as the basis of regulation and enforcement,” it stated.
- ▶ The government urged Ministers to avoid term “fake news” and to use “misinformation” or “disinformation” instead.

(<https://publications.parliament.uk/pa/cm201719/cmselect/cmcmmeds/1791/1791.pdf>)

European Commission

- ▶ European Commission, together with the Council of Europe and the OSCE have put a lot of effort trying to define and fight disinformation:
- ▶ Some of the first attempts were:
 - ▶ European Commission [EC], 2018, A multi-dimensional approach to disinformation – Report of the independent High level Group on fake news and online disinformation, Luxembourg: Publications Office of the European Union;
 - ▶ European Commission [EC], COM(2018) 236 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling online disinformation: a European Approach, 26.04.2018, Brussels;
 - ▶ European Commission [EC], JOIN (2018) 36 final, Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: “Action Plan on disinformation: Commission contribution to the European Council (13–14 December 2018).” 05 December 2018, Brussels.
 - ▶ European Commission Digital Single Market (ECDSM). 2018. “Code of Practice on Disinformation.” Digital Single Market. 26 September 2018. <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>
 - ▶ European Commission, European External Action Service (EC EEAS). 2019. “Action Plan Against Disinformation: Report on Progress.” June 2019. https://ec.europa.eu/commission/sites/beta-political/files/factsheet_disinfo_elex_140619_final.pdf
 - ▶ European Commission, „Fighting Disinformation“, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/fighting-disinformation_en

ECHR: Protocol 1: Article 3

Right to Free Elections

29 April 2022

- ▶ The High Contracting Parties undertake:
 - ▶ To hold **free elections**
 - ▶ at **reasonable** intervals
 - ▶ by **secret ballot**,
 - ▶ under conditions which will ensure the **free expression of the opinion** of the people in the choice of the legislature.

CoE Rec. CM/Rec (2007) 15 on measures concerning media coverage of election campaigns: **Opinion polls**

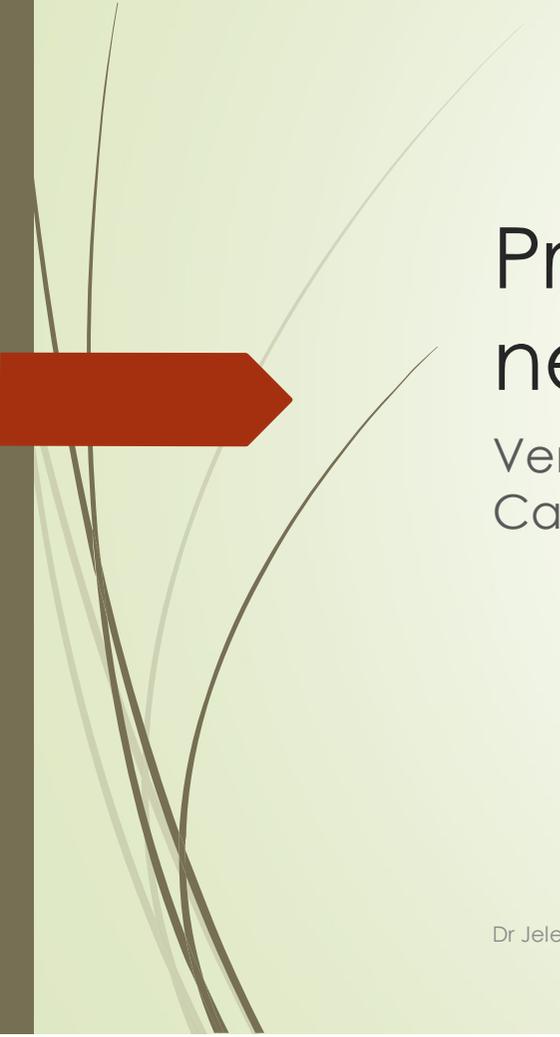
- ▶ Regulatory or self-regulatory frameworks should ensure that the media will, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular :
 - ▶ name the political party or other organisation or person which commissioned and paid for the poll;
 - ▶ identify the organisation conducting the poll and the methodology employed;
 - ▶ indicate the sample and margin of error of the poll;
 - ▶ indicate the date and/or period when the poll was conducted.
- ▶ All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.
- ▶ **Any restriction by member states forbidding the publication/dissemination of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10** of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.
- ▶ Similarly, in respect of exit polls, member states may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

Free airtime and equivalent presence for political parties/candidates on public service media

- ▶ Member states may examine the advisability of including in their regulatory frameworks provisions **whereby public service media may make available free airtime** on their broadcast and other linear audiovisual media services and/or an equivalent presence on their non-linear audiovisual media services to political parties/candidates during the election period.
- ▶ Wherever such airtime and/or equivalent presence is granted, this should be **done in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.**
- ▶ Although the political parties/candidates may have equivalent presence in „electoral part of the PSB programmes“, the actual airtime of candidates may be very discriminatory in practice.

News and current affairs programmes

- ▶ Where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be **fair, balanced and impartial** in their news and current affairs programmes, including discussion programmes such as interviews or debates.
- ▶ No privileged treatment should be given by broadcasters to public authorities during such programmes. This matter should primarily be addressed via appropriate self-regulatory measures.
- ▶ **Member states might examine whether, where practicable, the relevant authorities monitoring the coverage of elections should be given the power to intervene in order to remedy possible shortcomings.**
- ▶ News and current affairs programmes are, in particular, interesting for easy spreading of disinformation.



Programmes different from newscasts/current affairs programmes

Venice Commission Guidelines on Media Analysis during Election
Campaigns

Entertainment and other programmes

- ▶ Programmes that are not directly linked to the elections, such as talk shows, political parodies with puppets or “politically-motivated” feature films **should also be given attention because they might have an influence on voting intentions and give a candidate or a political party an unfair advantage.**
- ▶ **Entertainment programmes or other programmes should have high editorial control of the media, both Public and Private Electronic Media:**
 - ▶ These kinds of programmes should not offer candidates a platform to campaign and they should consider not covering political communication on election-related issues.
 - ▶ Politicians often use entertainment programmes to avoid domestic Electoral laws and regulation.

Infotainment programmes

- ▶ **There should be High editorial control of both private and public electronic media**
- ▶ Infotainment is a format that mixes entertainment formats with some informative contents.
- ▶ These programmes should follow the same guidelines outlined with regard to the informative programmes for its informative segments.
- ▶ Entertaining parts of the programmes should be guided by the principles regulating entertainment.
- ▶ Infotainment programme requires the same amount of disinformation prevention, as the information programme.

Satirical Programme

- ▶ **There should be High editorial control of both public and private electronic media.**
- ▶ Satirical programmes tend to, and should be allowed to, target political subjects. A certain degree of unfairness and unbalance is innate in the very nature of satire: its mission has much to do with challenging those in authority by making fun of them. Members of the executive should be the main targets for this negative coverage;
- ▶ Satirical programmes represent an occasion in which the incumbent party finds a limit or a counterbalance to its advantage.
- ▶ In repressive regimes, a matter of concern is when satire attacks only members of the opposition or independent candidates; in these cases satire loses its original function by becoming an instrument, rather than an adversary, of the political authorities.
- ▶ Targeted subjects have the right to appeal to the judiciary, under the civic defamation law, if they think their rights (i.e. privacy or reputation) have been violated. However, international and comparative jurisprudence increasingly recognises that there is a wider margin of criticism of public figures, such as politicians, than of private individuals. Any restrictions to the content of satirical programmes should be carefully defined in order to guarantee genuine freedom of expression. Such provisions should not leave margins of interpretation leading to censorship or self-censorship.



Manipulation with disinformation in the region (two recent examples, of many, many more)

- ▶ Montenegro: One of the characteristics of Montenegrin media landscape, as seen by the US State Department, was the “disinformation from Serbian outlets” (<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/montenegro/>);
- ▶ Croatia: The right-wing portals “accused the country’s main fact-checking media organization, Faktograf, of censorship.” [...] “Faktograf was the target of a hacker’s attack, with more than 27 million attempts – most from Russia and Indonesia – to access its website in less than a day. Some Faktograf staff also reported receiving death threats.” (<https://balkaninsight.com/2022/03/24/croatian-fact-checkers-war-on-fake-news-draws-bias-charge/>)

Regulatory Framework for disinformation in the Republic of Serbia

- ▶ There is no explicit legal document that forbids spreading of disinformation in Serbia.
- ▶ However, the Law on Public Information and media prescribes that “the rules on public information provide and protect the release, receipt and exchange of information, ideas and opinions through the media with a view to improving the values of a democratic society, preventing conflict and preserving peace, authentic, timely, reliable, and complete informing and enabling free personal development.” (Article 2, Law on Public Information and Media). In addition, media have “to get true, complete and timely information about the issues of public importance and the means of public importance shall honor that right” (Article 5, Para 2 of the Law on Public Information and Media)
- ▶ Article 9 of the same Law on Public Information and Media prescribes that Editor in chief and a journalist have the obligation, “prior to publishing the information about an occurrence, an event or a person, to check its origin, authenticity and completeness with due diligence appropriate for the circumstances.” Finally, the public interest is accomplished by “authentic, unbiased, timely and full information available to all citizens of the Republic of Serbia”.
- ▶ Public service media have a special obligation to obey the public interest (Article 17, Law on Public Service Broadcasting, 2014).
- ▶ The Law on Electronic media (2014, Article 47) obliges providers of media services to enable “free, accurate, objective and timely information”.



Self-Regulation in Serbia

- ▶ Serbian Journalists' Code of Ethics prescribes that “A journalist is obliged to report on the events of public interest accurately, objectively, comprehensively and in a timely fashion, while respecting the public’s right to know the truth and respecting the basic standards of the journalistic profession.”
- ▶ The sanction for non-respecting Code of Conduct is moral.

The Conclusion

- ▶ No proper regulatory framework to fight disinformation in Europe and in the Balkan region.
- ▶ Main issues to be addressed by international community:
 - ▶ Media spreading disinformation - institutions do not react;
 - ▶ Online “media” (without any information about the owner) spread disinformation – institutions do not react;
 - ▶ Opposite information broadcast on state-owned/state-controlled media vs. independent media.
 - ▶ Social networks/spreading disinformation;
 - ▶ Institutions do not use any legal tools to prevent/sanction spreading of disinformation.
 - ▶ As a result:
 - ▶ The audience is confused.
 - ▶ Media literacy is urgently needed.
 - ▶ Legal standards are needed, together with strong enforcement mechanisms.