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## Introduction

The necessity for this research is conditioned by the advancement of two related draft laws, which are aimed at countering the phenomena of “fake news”. The first one was first introduced on December 2<sup>nd</sup> of 2019 when an independent member of parliament Arman Babajanyan submitted the draft law amending the Criminal Code of RA with new article titled “Spreading False Information” to the Parliament of the Republic of Armenia.<sup>1</sup> The aim of the initiative is to counter disinformation by means of punishing the subjects (both legal entities and natural persons) who disseminate such information in exchange for remuneration as well as those who offer material benefits for spreading disinformation. The initiative is justified by the assumption that false information has significant impact on society via influencing its behavior, ideas, morals in a way favorable for the person or entity behind manipulations. Moreover, disinformation communicated through fake news (the term is used in the justification of the draft law) can influence the electoral campaigns, which makes the issue of countering fake news crucial for national security. The reason for anxiety lies is that fake news may be used to influence the outcome of the elections. One of the most eminent cases of alleged electoral manipulations is the US elections of 2016. The controversies around the elections resulted in investigation by FBI. Although the investigation did not result in criminal case<sup>2</sup> it contains analysis on how fake news were used to alter the elections’ results. In particular, a Russian-based company called “Internet Research Agency” used thousands of fake “bot” accounts and misleading advertising to damage Hillary Clinton’s reputation.<sup>3</sup>

Previously another initiative was enunciated to fight “fake news”. The Ministry of Justice of RA initiated the discussions of the draft of “Criminal Code” of RA<sup>4</sup> The draft contains update of the crime of “False denunciation”. The revised version includes in the *corpus delicti* false

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<sup>1</sup>Draft law on amendments to the Criminal Code of the Republic of Armenia.

<<http://parliament.am/drafts.php?sel=showdraft&DraftID=55386>>

<sup>2</sup> Jeremy Herb, Katelyn Polantz, Laura Jarrett, “Mueller: If we had had confidence that the President clearly did not commit a crime, we would have said so”,

<<https://edition.cnn.com/2019/05/29/politics/robert-mueller-special-counsel-investigation/index.html> >

<sup>3</sup> Martin Matishak, What we know about Russia’s election hacking,

<<https://www.politico.com/story/2018/07/18/russia-election-hacking-trump-putin-698087> >

<sup>4</sup> The Draft of the Criminal Code of the Republic of Armenia.

<<https://www.e-draft.am/projects/2115/about>>

denunciation through informing public officials about a committed crime through mass media. The issues concerning the two laws will be discussed later in this paper.

The government criticized the draft law by stating that the potentially harmful activities covered by the suggested article are already in the focus of existing Criminal Code.<sup>5</sup>

It is important to note that the problem of “fake news” is present all over the world. For example, Craig Silverman, the founder of famous news site focused on social media research, in his inquiry on 2016 US presidential elections found that in the last three months of presidential campaign “top-performing fake election news stories on Facebook generated more engagement than the top stories from major news outlets such as the New York Times, Washington Post, Huffington Post, NBC News, and others”.<sup>6</sup> Although there is no proof of whether it was possible to circumvent the election results via disseminating “fake news” further in this research we will show that at least in some countries false information is regarded as a threat to the legitimacy of elections. Although “fake news” is a threat to each and every aspect of modern society we shall stress that the main reason for anxiety is the damage that media manipulations may cause to the legitimacy of elections. The main concern is that elections are the fundament of any democratic regime. If the results of elections are compromised, the country will immerse into a long-lasting crisis.

In addition to purely political agenda, “fake news” sometimes create tangible threat to the integrity of public order. One of the most vivid examples of this is the so-called “Pizzagate”. The incident occurred because of a false statement by a fake news publisher from Macedonia claiming that democratic leaders, among them Hilary Clinton, were coordinating the child trafficking business from pizzeria in Washington D. C. Subsequently, a man from North Carolina decided to “investigate” the case and to this end shot the door of the pizzeria open in the search of conspiracy headquarters of child traffickers.<sup>7</sup> Although the police arrested the man, this incident clearly shows the potential threats that “fake news” may cause to the society. In other

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<sup>5</sup> Suggestion of the Government of the Republic of Armenia on the draft law amending the Criminal Code. <[http://parliament.am/draft\\_history.php?id=11096&Suggestion=1364&do=showSuggestion&lang=arm](http://parliament.am/draft_history.php?id=11096&Suggestion=1364&do=showSuggestion&lang=arm)>

<sup>6</sup> Craig Silverman, This Analysis Shows How Viral Fake Election News Stories Outperformed Real News on Facebook’, 16 November 2016, <<https://www.buzzfeednews.com/article/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>>.

<sup>7</sup> David O. Klein and Joshua R. Wueller, Fake news: A legal perspective, Journal of Internet law, Volume 20, Number 10, April 2017, p. 5.

words, informational manipulations are able of not only compromising the results of elections but also of destabilizing the public order via provoking aggressive behavior.

The current research constitutes a comparative legal inquiry into the necessity of criminalization of spreading false information. The data for the research was collected through the examination of existing literature on the issue of criminalization of false speech or communicating false information (although the wording may be different the essence is the same) as well as the analysis of the current legal landscape of Armenia. The aim of the analysis was to understand the existing international approaches, identify the regulation adopted in Armenia (if any) and recommend the most appropriate solution for the issue at hand. The said scheme of analysis was employed due to the field specific factors of law in general: the identification of the best approach necessitates an inquiry into the existing practices. The current analysis includes references to different inquiries undertaken in recent years, i. e. the regulations implemented in France, Germany, USA, Singapore. Secondly, papers prepared by international organizations, namely Council of Europe's report titled "Information disorder: Toward an interdisciplinary framework for research and policy making", as well as Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe addressed to member states. The Recommendation clarifies issues concerning the rights of journalists not to disclose their sources of information. Subsequently, the research includes opinions expressed by the European Court of Human Rights, in particular, in cases of *Handyside v UK*, *McVicar v UK* etc. Lastly, the norms of Civil, Criminal laws and legislation on mass media are used to discover the state-of-the-art in Armenia.

All the above mentioned raises the issue of whether it is necessary to criminalize the spread of false information (fake news). To answer this question, the following aspects will be discussed: Chapter 1 will discuss the notion of "fake news" the way it is understood in international practice. Chapter 2 focuses on the existing regulatory approaches towards the issue of "fake news". Chapter 3 discusses the case-law of European Court of Human Rights. Chapter 4 focuses on the current Armenian legislation and existing instruments, which may protect society from the impact of fake news. Chapter 5 will consolidate the previous findings and offer the solution for the problem at hand.

## CHAPTER 1: The concept of “fake news” in literature.

It is obvious that the problems connected to unreliable information have always existed.<sup>8</sup> Anyway, in modern society the issue of “fake news” becomes more crucial to the democratic order due to its potential influence on society. The importance of the problem at hand is increased by the advent of modern technology which:

1. Made it possible to edit and publish information for anyone, even without having necessary professional skills.
2. Made the consumption of information public, which means that now there are social media outlets where every article is simultaneously accessible to a wide array of people and that they have possibility to comment and share that information thus forming public opinion. Additionally, any information which is shared via social media platforms can easily be accessed/“activated” even after significant amount of time have passed of time. The reason is that the is shared multiple times and therefore is kept in multiple storages.
3. The speed at which information is communicated to the consumer has changed significantly because the latter does not have to wait until the newspaper will be delivered to him personally. Instead he receives a notification on his widget. Such paradigm of information transmission makes dissemination of any type of information, including harmful ones, irreversible because it is impossible to stop its dissemination as it was done in previous decades of media.
4. Information is spreading through networks of ideologically close subjects, which may be physical persons or organizations. Therefore, it is cumbersome to critically revise or somehow overview it. The best example is the information favorable for a distinct group with certain ideological preferences. Often such group start to share the said information just because it corresponds to their ideas independently on its veracity.<sup>9</sup>

Taking into account these factors and tendencies, it is crucial to understand the concept behind the term “fake news”. Without having precise concept of the phenomena at hand it is impossible to decide on the necessity of criminalizing spreading “fake news”. However, it is important to note that there is no common definition to this term in academic literature. Subsequently, some

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<sup>8</sup> Edson C. Tandoc Jr., Zheng Wei Lim & Richard Ling (2018) Defining “Fake News”, *Digital Journalism*, 6:2, 137-153, DOI: 10.1080/21670811.2017.1360143, p. 2.

<sup>9</sup> Claire Wardle PhD, Hossein Derakhshan, *Information disorder: Toward an interdisciplinary framework for research and policy making*, Council of Europe report DGI (2017)09, September 27, 2017, p 11-12.

approaches to this issue will be presented to better explore the problem at hand. In particular, Edson C. Tandoc et al define fake news not as one distinct phenomena but as a body of manipulative techniques and methods such as news satire, news parody, news fabrication, photo manipulation, advertising and public relations, propaganda.

1. News satire: are the humorous presentation of actual news
2. News parody: are close in its nature to the previous type but with additional element of presentation format which mimics mainstream news media.
3. News fabrications: contrary to the previous two types, news fabrications have no factual background and are tailored in the fashion of news to create an impression of legitimacy. In this case there is no common understanding between the consumer of the information and the one who produces it that the information depicted in the article is not real.
4. Photo manipulations: these type of fake news have the same functional role as the previous types and play supplemental role, so there is no necessity to focus on them.
5. Advertising and public relations: fake news are sometimes generated by marketing specialists to create an impression of actual news in order to insert certain idea in public discourse. Such manipulations are done in the interest of hiring company. This type of informational content is no issue if it does not infringe, for example, the norms of competition law.
6. Propaganda: the last type of fake news may be referred to as externally objective but, in essence, subjective type of informational content which aims more at persuading rather than informing the consumers of information. It may be assumed that propaganda bears more official stance than previous types of fake news and is more prone to manipulating the content of the facts rather than creating entirely new reality.<sup>10</sup>

According to the authors the mentioned terms have in common the quality that they all "... appropriate the look and the feel of real news".<sup>11</sup>

Other bids to concretize the "fake news" phenomena are found in literature, which shed further light on the concept in question such as "...fake news publications are intentionally and knowingly false".<sup>12</sup>

In its recent report on informational issues titled "Information disorder: Toward an interdisciplinary framework for research and policy making" Council of Europe decided to refrain from using the

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<sup>10</sup> *Supra*, note 6 p 141-147.

<sup>11</sup> *Ibid.*, p. 147.

<sup>12</sup> *Supra*, note 5, p 6.

term “fake news” as far as deems it vague and considers it to be a tool for certain politicians to depreciate their political opponents and unfavorable opinions, in general.<sup>13</sup>

Instead the authors of the report suggest different notion, which is “Information disorder”. Information disorder is divided into three sub-types: misinformation, disinformation and malinformation.<sup>14</sup> The said elements have the following content:

1. Misinformation is a type of unreliable information but the subjects behind it have no objective to cause damage.
2. Disinformation is when certain information is intently spread to cause harm.
3. Malinformation is publicizing private information with the aim of causing harm.

Additionally, the authors of the report distinguish “elements” of information disorder, which may be interpreted as the “pillars” on which the former is created. In other words, the interplay of those “elements” make the phenomena of information disorder (fake news) distinguishable and possible to analyze. Three “elements” are listed by the authors: Agent, message, the interpreter. Subsequently 3 phases of information disorder are distinguished such as creation of the message, transformation of the message into media product and distribution which infers the publication of the media content. This type of classification is better suited for understanding the anatomy of “fake news” or information disorder as the authors name it. It gives possibility to distinguish between different types of false information which is important for the aim of limiting its impact on the society including the possible criminalization. Additionally, the report supports us with the “structure” of “fake news” in particular equip us with the weaponry to identify “who”, “when” and “how” creates the fake news. This is a crucial element in our inquiry as far as when criminalizing this or that action it is important to understand the full picture with all constituent parts to be able to draft effective legal instrument.

The analysis of the draft submitted by MP Arman Babajanyan adds no clarity to the understanding of the concept of “fake news”. The justification of the draft contains no definition of the phenomena. Nevertheless, the general argumentation presented in the draft purports that the main concern in question is preventing the media manipulations from undermining the political and constitutional stability. As to the rest of Armenian legislative field it does not directly target the issue in question and therefore is of no help in the matter of understanding the meaning of “fake news”.

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<sup>13</sup> *Supra*, note 7, p 5.

<sup>14</sup> *Ibid.*



From the aforementioned analysis we may assume that the term “fake news” is not a proper term for delineating the phenomena of false information. Therefore, we will proceed with the term “spreading false news” and its derivatives as well as we will make use of the aforementioned report’s methodological approaches to better grasp the possibility of criminalization of false statements. The mentioned term will include news fabrications, photo manipulations and propaganda. As far as the content of these notions may be controversial, further in this paper we will discuss the notions of opinion and value judgments in order to distinguish between “spreading false news” and the former two terms. The delineation of the mentioned terms will be useful as far as in practice it may be quite difficult to identify the differences between false news expressing opinion and value judgements.

## Chapter 2: International regulatory approach

This chapter will focus on the existing regulations in different countries aimed at combating the threat of spreading false information. In the course of chapter 2 we will consider both the existing regulations and the underlying policy. Ideological component is important to understand the logic of regulations and perceive which country’s regulations may be exemplary for Armenia if any and why.

### 2.1 United States of America

In order to understand the US approach to the issue at hand we need to consider general legal framework including the question whether there are any statutes criminalizing spreading false information. Additionally, we need to understand the approach of the judiciary and whether there are any alternative remedies to the problem.

First of all, it is necessary to address the First Amendment of the US Constitution which reads as follows: ***Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.***<sup>15</sup>

As far as it is difficult to identify per se what is false speech and what forms may have the communication of one’s thoughts we need to understand whether any restriction on false speech

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<sup>15</sup> First Amendment of US constitution.

<[https://www.constituteproject.org/constitution/United\\_States\\_of\\_America\\_1992?lang=en](https://www.constituteproject.org/constitution/United_States_of_America_1992?lang=en)>

could be regarded as abridging the freedom of speech. In order to better grasp the scope of the First Amendment we will address the existing case law which interprets the norm at hand.

### 2.1.2 United States v. Alvarez

The case at hand focused on the criminalization of distinct type of false speech: the false statement of possessing Congressional Medal of Honor.<sup>16</sup> According to the facts of the case the respondent Xavier Alvarez made a false statement that back in 1987 he was awarded the Congressional Medal. As a result, the respondent was indicted under the Stolen Valor Act which criminalizes false claims of the receipt of military decorations. Though the respondent pleaded guilty he challenged the constitutionality of the Act. The cornerstone of the respondents' allegation was that the Act performs content-based speech restrictions which do not fall under the existing categories of speech that may be limited.<sup>17</sup> The government defended the constitutionality of the Act stating that it helps to preserve the integrity and purpose of the medal which is eradicated by false statements.<sup>18</sup>

The court in its turn stated that the government has no authority to restrict messages based on their content be it ideas expressed or subject-matter. The court said that such restrictions are per se unconstitutional unless the executive proves the contrary.<sup>19</sup> Thus the burden of proof was shifted on the government. Simultaneously, several types of speech were cited which could be restricted. Among these types were defamation, obscenity, speech integral to criminal conduct etc. Subsequently, the Court states that the concept of free debate purports that incorrect statements are inevitable if there is a desire to preserve the freedom of speech guaranteed by the First Amendment. It is worth noting that the basis for restricting certain types of speech is that they have certain historic and traditional background which is familiar to the Court. When analyzing the Stolen Valor Act the Court identifies that the act applies abstractly to a certain type of false statement without specifying the time, place or other elements which may form the context and without due regard as to whether the statement was made with the aim of obtaining financial gain.<sup>20</sup> Bearing all the said in mind the Court stated that if the Act is sustained as constitutional the executive would get an opportunity to pass other laws which would criminalize diverse types of false statements.

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<sup>16</sup> United states v. Alvarez, 567 U. S. \_\_\_\_\_ (2012),  
<<https://www.supremecourt.gov/opinions/11pdf/11-210d4e9.pdf>>

<sup>17</sup> *Ibid.*, p. 4, paras 1

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, paras 2.

<sup>20</sup> *Ibid.*, p. 10, paras 3.

In the course of its inquiry the court utilizes the test known as “most exacting scrutiny” which requires establishing direct causal links between the regulations/measures offered by the statute and the desired goal.<sup>21</sup> In particular, the court stated that nevertheless the aim declared by the government is important the latter failed to show that false statements dilute the perception of the medals on behalf of society. Second, the government failed to show why mere counter speech is not enough to achieve the aim set forth by the Act. The Court supports this point by the fact that the respondent was widely ridiculed for his false statement and that this countermeasure imposed by the society itself would effectively increase the respect towards the medal and its bearers as well as will decrease the desire to steal the “valor”. This approach is consistent with the ideological presupposition of the Court that the suppression of the false speech would only aggravate the situation and that it is the “right and civic duty” of the society to fight the false speech in the course of free public debate.<sup>22</sup> The court proceeds further with its analysis setting out another important criterion which provides that when restricting the speech, the government must select “least restrictive means among available, effective alternatives.”<sup>23</sup> The court offers such alternative of creating a special database which would be accessible online and could be used to verify the statements made by alleged veterans. In summing up its deliberations the Court struck the Act as unconstitutional.

In the context of the presented deliberations another important concept is mentioned by the Court which is fundamental to understand the US approach towards the issue of spreading false information. The concept of “marketplace of ideas”.<sup>24</sup> The idea was advanced by judge of the Supreme Court Oliver Wendell Holmes. The essence was that the perfect test for identifying the truth is the said market of the ideas where the former is found through debate. In this paradigm the state interferes only when it “so imminently threaten[s] immediate interference with the lawful and pressing purpose of the law that an immediate check is required to save the country.”<sup>25</sup>

The analysis of the said cases shows that the approach of the US legislature and judiciary disapproving the idea of granting the executive possibility to regulate issues concerning the free discourse. In the opinion of judicial power such instrument would chill the freedom of speech.

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<sup>21</sup> *Ibid.*, p. 12, paras 4.

<sup>22</sup> *Ibid.*, p. 16.

<sup>23</sup> *Supra*, note 14, p 17.

<sup>24</sup> *Abrams v. United States*, 250 U. S. 616, 630 (1919) (Holmes, J., dissenting).

<sup>25</sup> *Timothy J. O'Neill, Abrams v. United States*,

<<https://www.mtsu.edu/first-amendment/article/328/abrams-v-united-states> >

## 2.2 France

French approach to the issue of spreading false information is much more direct in the sense that French government aims at immediately regulating the challenges posed by informational manipulations. In this regard, the national Assembly of France has adopted the law N 2018-1202 of December 22, 2018 on “fighting the informational manipulations”.<sup>26</sup> Subsequently, we will consider the nature of the regulations and the controversies that rose during the elaboration of the act.

### 2.2.1 The purpose of the law

The law is providing modifications in the several legal acts, in particular the Electoral Code, the law on the Liberty of Communication of September 30, 1986, the Educational code as well as imposes obligations of cooperation on internet providers.

The essence of the law comes down to the following:

1. In the period of three months prior to the elections digital platforms are obliged to provide the users with the information on the sponsored content, in particular, the identity of the sponsor who pays for the promotion of a content on public interest.<sup>27</sup>
2. To publish the received sum which is received in exchange of promotion of the content relating the public interest.<sup>28</sup>
3. During the mentioned period of three months in case of dissemination of “inaccurate or misleading accusation of allegation of fact” occur then the interested subject may apply the court with aim of ceasing the diffusion of such disinformation. The court within the time-limit of forty-eight hours decides on the matter and in case of satisfying the demand orders the internet providers to cease the dissemination of such information.<sup>29</sup>

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<sup>26</sup> The law of France on combating informational manipulations N 2018-1202 of December 22, 2018.

<<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037847559&dateTexte=20200222>>

<sup>27</sup> The amendments to the Electoral Code, Article L163-1 paras 1.

<[https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1BD5CBA3582F91BFDFEB62A01C6DFDF01.tplgfr28s\\_1?cidTexte=LEGITEXT000006070239&idArticle=LEGIARTI000037850602&dateTexte=20200509&categorieLien=id#LEGIARTI000037850602](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1BD5CBA3582F91BFDFEB62A01C6DFDF01.tplgfr28s_1?cidTexte=LEGITEXT000006070239&idArticle=LEGIARTI000037850602&dateTexte=20200509&categorieLien=id#LEGIARTI000037850602)>

<sup>28</sup> *Ibid.*, paras 2.

<sup>29</sup> The amendments to the Electoral Code, Article L163-2.

<[https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1BD5CBA3582F91BFDFEB62A01C6DFDF01.tplgfr28s\\_1?cidTexte=LEGITEXT000006070239&idArticle=LEGIARTI000037850615&dateTexte=20200509&categorieLien=id#LEGIARTI000037850615](https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1BD5CBA3582F91BFDFEB62A01C6DFDF01.tplgfr28s_1?cidTexte=LEGITEXT000006070239&idArticle=LEGIARTI000037850615&dateTexte=20200509&categorieLien=id#LEGIARTI000037850615)>

4. The Conseil supérieur de l'audiovisuel or CSA can order the suspension of the broadcasting of foreign state controlled radio or television broadcasting company if it considers that the said company deliberately spreads false information which can circumvent the results of elections. It is important to note that the law covers not all types of elections but only those of grave importance such as presidential elections, elections of members of parliaments, senators etc.<sup>30</sup> Additionally, after official notification CSA can unilaterally terminate the agreement, also called “convention”, in situations when the contracting company, by means of spreading false information, poses threat to the fundamental interests of the state (including the proper functioning of the institutions). When examining such cases, the CSA takes into account not only the content displayed by the company in questions but also the content broadcasted by affiliated companies (for example subsidiaries, or the parent company). It is noteworthy that CSA cannot base its decision only on the content of the affiliated company: these have supplementary functions.<sup>31</sup>

### 2.2.2 Disputes around the law

The law was gravely challenged in the course of its discussion and passage. It was submitted to Conseil d'Etat for advisory opinion. Moreover, Senate rejected the law twice.<sup>32</sup> Finally, in 2018 the National Assembly confirmed the final text of the law.<sup>33</sup> After the confirmation of the text a group of senators and deputies applied to the Conseil constitutionnel contesting the constitutionality of the law.<sup>34</sup> In particular, they claimed that the law will have a chilling effect on numerous freedoms and in particular, on the freedom of expression.<sup>35</sup> The Conseil constitutionnel has the powers to decide whether the legislation in question corresponds to the norms described in the French Constitution of 1958.<sup>36</sup>

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<sup>30</sup> The amendments to the law on the freedom of communication N 86-2067 of September 30, 1986. <[https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=6F95E547B12C102C1DF3BD25333D2535.tplgfr34\\_s\\_3?cidTexte=JORFTEXT000000512205&idArticle=LEGIARTI000037850714&dateTexte=20200222&categorieLien=id#LEGIARTI000037850714](https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=6F95E547B12C102C1DF3BD25333D2535.tplgfr34_s_3?cidTexte=JORFTEXT000000512205&idArticle=LEGIARTI000037850714&dateTexte=20200222&categorieLien=id#LEGIARTI000037850714)>

<sup>31</sup> The amendments to the law on the freedom of communication N 86-2067 of September 30, 1986. Article 31-1-1 <[https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=6F95E547B12C102C1DF3BD25333D2535.tplgfr34\\_s\\_3?cidTexte=JORFTEXT000000512205&idArticle=LEGIARTI000037855732&dateTexte=20200222&categorieLien=id#LEGIARTI000037855732](https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=6F95E547B12C102C1DF3BD25333D2535.tplgfr34_s_3?cidTexte=JORFTEXT000000512205&idArticle=LEGIARTI000037855732&dateTexte=20200222&categorieLien=id#LEGIARTI000037855732)>

<sup>32</sup> Rachael Craufurd Smith (2019) Fake news, French Law and democratic legitimacy: lessons for the United Kingdom? *Journal of Media Law*, 11:1, 52-81, DOI: 10.1080/17577632.2019.1679424, p. 53.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

In the scope of their submission the applicants raised several concerns regarding the law. In particular, it was contested that the provision obliging the online platform operators to promote reliable information during the three months' period prior the elections was not sufficiently clear as to avoid legal uncertainty and that the obligation infringes the principle of offences and penalties defined by 1789 Declaration.<sup>37</sup> In response to this allegation the Conseil constitutionnel underscored the facts that the obligations were limited in time (i.e. three months' period prior to elections) and were aimed at providing the citizens with trustworthy information necessary for guaranteeing honest elections.<sup>38</sup> As an additional relevant element, the Conseil constitutionnel added the fact that the obligation was supposed to enter in force only for those subjects which qualify for certain threshold (i.e. subjects whose connections on the territory of France exceeded the defined threshold).<sup>39</sup> Summing all the said up, the Conseil constitutionnel declared the measure imposed by the law as constitutional.<sup>40</sup>

Secondly, the applicants raised the concerns as to the constitutionality of the provision obliging the judge to decide on the ability of the information in question to alter the outcome of the elections in the course of forty-eight hours.<sup>41</sup> Thus, this provision had the potential to infringe with the freedom of expression. Additionally, the applicants stated that the imprecision of the notion of false information as well as the notion of the harm caused to the results of the elections is an extra peril for the freedom of expression.<sup>42</sup> In response to these concerns the Conseil constitutionnel established that the legislature has the authority to regulate the way the freedom of expression is exercised as well as foresee the procedure via which it would be possible to restrain the abuses of the rights in question.<sup>43</sup> Subsequently, the Conseil constitutionnel sets prerequisites which makes the interference in the freedom of expression on the basis of this law possible: the disseminated information's fallacy should be objectively demonstrated<sup>44</sup> and the risk of impact on the integrity of the elections must be apparent.<sup>45</sup> The last two criteria are not given any precise meaning as to what is considered "objectively demonstrated" and "apparent" which possibly mean that the CC deems necessary for the court to decide such issues on the case by case basis.

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<sup>37</sup> Decision no 2018-773 DC of 20 December 2018, paras. 4.  
<<https://www.conseil-constitutionnel.fr/en/decision/2018/2018773DC.htm>>.

<sup>38</sup> *Ibid.*, paras 8, 9.

<sup>39</sup> *Ibid.*, paras 6, 9.

<sup>40</sup> *Ibid.*, paras 10.

<sup>41</sup> *Ibid.*, paras 11.

<sup>42</sup> *Ibid.*, paras 12.

<sup>43</sup> *Ibid.*, paras 14.

<sup>44</sup> *Ibid.*, paras 21.

<sup>45</sup> *Ibid.*, paras 23.

Subsequently, the applicants contested that CSA's ability to refuse to enter into agreement as well as the authority to assess the content of the broadcaster and its affiliates infringes the freedom of expression and communication via establishing the system of prior administrative authorization.<sup>46</sup> The applicants were anxious about such imprecise definitions as "maintaining public order" or "the fundamental interests of the Nation"<sup>47</sup>. Responding to the aforementioned allegations the CC stated that taking into account the obligation of the legislature to balance between the freedom of communications and peculiarities of the audiovisual means of communication which may cause harm to the plurality of opinions the creation of prior administrative control is permissible.<sup>48</sup> In relation to the allegedly imprecise terms used in the law the CC stated that these are commonly used terms and bear no vagueness.<sup>49</sup> Although no detailed argumentation was brought to explain the said opinion it may be assumed that not all terms must be explained word-by-word as far as in this case the judiciary would lose its flexibility and thus will become inadequate to counter the challenges posed to the legal system. Generally, it is noteworthy that the CC acknowledges the destabilizing potential of media if it starts to disseminate manipulative information.<sup>50</sup> Though, in here the CC emphasizes the role of foreign state in the context of our inquiry we can state that it is obvious that the same activity performed by instate actor can also be identified as a threat to the public order.

Almost authentic contestations were raised in respect of CSA's powers to suspend the broadcasting of certain companies who transmit "deliberately, false information that has the effect of influencing the honesty of the elections."<sup>51</sup> In this case the CC again upheld the constitutionality of obligations bringing the same arguments as in case of previous contestations.<sup>52</sup>

The CC separately addressed the issue of terminating the agreement with the company on the basis of analyzing the content produced by affiliate companies. The CC stated that such regulation is justified as far as the affiliated companies share the common interest and thus it is reasonable to assume that their actions may be coordinated.<sup>53</sup> Moreover, the CC additionally

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<sup>46</sup> *Ibid.*, paras 30.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, paras 32.

<sup>49</sup> *Ibid.*, paras 34.

<sup>50</sup> *Ibid.*, paras 41.

<sup>51</sup> *Ibid.*, paras 51.

<sup>52</sup> *Ibid.*, paras 49-51.

<sup>53</sup> *Ibid.*, paras 69, 70.

ascertained that the content broadcasted by the affiliated entities cannot be the only basis for the decision to terminate the contract.<sup>54</sup>

The analysis of the CC decision clearly indicates that France acknowledges the threat of false information and undertakes the necessary steps to counter the risks of destabilization of political system when it is most vulnerable: the electoral period.

### 2.3 Germany

The legal system of Germany bears no notion of “fake news”. Nevertheless, Germany has also responded to the recent trend of countering the spreading false information by adopting Network Enforcement Act (hereafter the Act).<sup>55</sup> The scope of the law includes exclusively the “social networks”.<sup>56</sup> The term includes only internet platforms which enable users to share content among each other and the rest of the public and does not include the platforms which provide specific content or the cases where the content is editorial (i.e. where the service provider is responsible for the content).<sup>57</sup> In other words, the law is aimed at the “virtual public spaces” which play the role of modern public forums and where the communication of false information may be extremely dangerous. Article 1(3) of the law indicates that the Act does not invent new types of criminal offences or any other legal concepts but reinforces the existing norms of Criminal Code of Germany. The illegal acts enlisted in the law include the “Dissemination of propaganda material of unconstitutional organizations”, “Anti-constitutional influence on Federal Armed Forces and public security forces”, “Public incitement to commit violence”<sup>58</sup> etc. The law provides the obligation of the social network providers to establish efficient complaint handling procedures which infers removing or blocking access to content that is **manifestly unlawful** within 24 hours of receiving the complaint.<sup>59</sup> In case of unlawful content the time limit is 7 days.<sup>60</sup> Though these offences do not directly bear the notion of false information one of the instruments of committing them may be the dissemination of unreliable information. This assumption is even

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<sup>54</sup> *Ibid.*, paras 70.

<sup>55</sup> Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act), <[https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2)>

<sup>56</sup> *Ibid.*, Section 1.

<sup>57</sup> *Ibid.*

<sup>58</sup> German Criminal Code, <[https://www.gesetze-im-internet.de/englisch\\_stgb/index.html](https://www.gesetze-im-internet.de/englisch_stgb/index.html)>

<sup>59</sup> *Supra*, note 44, Section 3(2)(2).

<sup>60</sup> *Ibid.*, Section 3(2)(3).



more justified when we consider that one of the motivations to pass the law was to fight the threat posed by “fake news”.<sup>61</sup>

The content of the Act shows that it may be regarded as an instrument adjacent to the Criminal Code for facilitating the operation of the norms described therein. Such solution is justified by the fact that the mentioned criminal offences are easier to perform them in on-line domain. For example, the already mentioned “Dissemination of propaganda material of unconstitutional organizations” will be more “effective” (from the offender’s point of view) if disseminated via web because it provides better reach to the audience and there is no need to waste resources on elaborating physical samples of propaganda material. Accordingly, the response to this qualitative change shall be symmetric.

It is important to note that the law was a subject to criticism. It was contested that the law materially violates the German constitutional law.<sup>62</sup> In particular, currently there are four applications demanding to annul the law.<sup>63</sup> One of the main arguments of the critics is that the law discriminates the social media service providers imposing additional obligations on them.<sup>64</sup> This argument is countered by the fact that modern communication technologies are an effective instrument of spreading illegal content. Additionally, these concerns are partially addressed in the decision of CC of France acknowledging that the fair balance between the fundamental rights must be maintained and the need to protect constitutionality.<sup>65</sup>

To sum up, we consider the solution given by the German legislator effective means of reaching constitutionally important goal of maintaining public order. Prevention of dissemination of false information is a basis for safe communication which, in its turn, is the fundament of the society.

Additionally, German legal system provides alternative tools for countering false information such as redress form insult, malicious gossip, defamation.<sup>66</sup> Though these means may be used to counter the spreading of false information but the basis for their invocation is the individual claim which may not be effective because the false information can be spread massively and not be

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<sup>61</sup> Sandra Schmitz-Berndt, Christian M. Berndt, *The German Act on Improving Law Enforcement on Social Net-works: A Blunt Sword?* p. 21.

<sup>62</sup> Matthias C. Kettemann, *Follow-up- to the comparative study on “Blocking, filtering and take down of illegal internet content”*, p. 7.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Supra*, note 26, paras. 35.

<sup>66</sup> Irini Katsirea (2018) “Fake news”: reconsidering the value of untruthful expression in the face of regulatory uncertainty, *Journal of Media Law*, 10:2, 159-188, DOI: 10.1080/17577632.2019.1573569 p. 180.

aimed at concrete person. Therefore, aforementioned defense may become ineffective as far as technically it would be impossible to track all the sources of manipulative information and file a lawsuit against the offenders.

## 2.4 Singapore

One of the recent bids to prevent the dissemination of false information is Singapore's "Protection from Online Falsehoods and Manipulation Act" of 2019 (hereafter the POFMA or Act). The purpose of the act is to prevent the communication of false statements of fact in Singapore.<sup>67</sup> To achieve this end the Act adopts complex approach which includes suppression of any support towards the online locations which disseminate false statements, countering the concerted informational actions of inauthentic subjects (i.e. fake accounts, bots etc.), provision on enhancing the origins of finance payed for promoting political content.<sup>68</sup> The notion of false information includes not only the untrue information but also any statement which if communicated may be prejudicial to the public interest (i. e. security of the country, outcome of the elections, confidence of the public as to the effective performance of the government).<sup>69</sup> In case of violation of the norms set out by the POFMA the offender may be fined to the of sum up to 1 million Singapore dollar (minimum is 30 thousand) or for imprisonment for a term not exceeding 6 years or both.<sup>70</sup>

The outline of the law shows that the general direction of the Singaporean law is in line with emerging international practice. In particular, it reflects the approach adopted by the French legislative changes made specially to counter the threat posed to electoral campaigns by manipulative technologies. The law also has several features which may be potentially challenged on the grounds of the freedom of the speech. In particular, the POFMA may be put into action if the alleged offender communicates statements which may diminish public confidence in the effective performance of the government. Number of concerns arise in the light of the said regulation: it is not clear how exactly this or that statement will be qualified as "diminishing public confidence"?

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<sup>67</sup> Protection from Online Falsehoods and Manipulation Act 2019, Purpose of Act, <<https://sso.agc.gov.sg/Act/POFMA2019?ValidDate=20191002&Timeline=Off#pr4->>

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, 7.

<sup>70</sup> *Ibid.*, 9.

Another potentially troublesome regulation concerns the so-called Correction Directions.<sup>71</sup> By virtue of the said instrument any minister of the Singaporean government may order the correction of certain communication which he deems containing false statement.<sup>72</sup> This point was underscored by Human Rights Watch in its “World Report 2020”.<sup>73</sup> Additionally, it is bothersome that no objective criteria is established to identify what is considered “false statement”. It is even more dangerous for the freedom of opinion as far as the said freedom infers the opportunity to be wrong and be able to insist on one’s opinion. Only through such discourse it is possible to discover the objective truth and consequently maintain democratic order. In other words, the freedom of expression includes the freedom to be wrong.

In practice, the law “justified” the aforementioned concerns. In particular, as to this moment the law was put into force four times and all of them against dissenters.<sup>74</sup> For example, oppositional Singapore Democratic Party was ordered to issue correction notice in relation of Facebook post claiming that the native white-collar workers were displaced by foreigners.<sup>75</sup> The oppositional party has challenged the legality of Correction Direction in the High Court.<sup>76</sup> Nevertheless no decision is delivered yet it is already obvious that the laws of this type have the potential to curb political debate not only by limiting the political pluralism as a phenomena but by depleting human, financial and other resources of the parties.

### 3. The approach of the European Court of Human Rights

In order to discover the general approach of ECtHR (hereafter also the Court) to the issue of false information or statement it is necessary to inquire into the notion of freedom of expression as it is interpreted by the Court.

One of the cases analyzing the notion is *Handyside v UK* where the Court stated that freedom of expression includes not only information, opinion, ideas (and other means of communicating one’s impressions) which are favorable for the majority but also those which may cause

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<sup>71</sup> *Ibid.*, 11.

<sup>72</sup> *Ibid.*, 10.

<sup>73</sup> Human Rights Watch, World report 2020,  
<<https://www.hrw.org/world-report/2020/country-chapters/singapore>>

<sup>74</sup> Mary Hui, Singapore’s fake news law is facing its first real challenge in court,  
<<https://qz.com/1784632/singapore-faces-legal-challenge-over-fake-news-law/>>

<sup>75</sup> *Ibid.*

<sup>76</sup> Declaration of “Singapore Democratic Party”.  
[https://yoursdp.org/news/sdp-files-case-against-mom-in-high-court-to-fight-for-what-little-democratic-space-we-have-left-in-s-pore?fbclid=IwAR191WKBrjdEvGdp-15-TPV56yfg6eU2cbn81nAE5H3x911V1OZYT\\_8S6VI](https://yoursdp.org/news/sdp-files-case-against-mom-in-high-court-to-fight-for-what-little-democratic-space-we-have-left-in-s-pore?fbclid=IwAR191WKBrjdEvGdp-15-TPV56yfg6eU2cbn81nAE5H3x911V1OZYT_8S6VI)

inconvenience to some categories of population or to its entirety.<sup>77</sup> Such position was justified by the fact that no “democratic society” is possible without certain level of diversity.<sup>78</sup> Subsequently, the Court once again puts emphasis that all the possible limitations put on the freedom of expression must be proportionate to the legitimate aim pursued.<sup>79</sup> When considering the spreading of false information it is also important to note that the Court also emphasized that the subject expressing its opinion or when communicating information must take into account “...his situation and the technical means he uses.”<sup>80</sup> The said infers that the Court acknowledges the responsibility of the members of society for their opinions. In particular, the one who expresses his or her opinion must weigh the possible consequences of expressing the opinion and also take into account that if the latter is potentially false it will spread even faster due to modern technology and cause greater harm than it would in the past. Thus, the idea of punishing the spreading false information is engrained in the Court’s opinion and if a balanced legislation aimed at limiting the harms of false information is adopted it would be acknowledged by the Court as conforming to the Article 10 of European Convention on Human Rights.

Although the said opinion of the Court infers obligation of the State not to interfere with the freedom of expression it also poses certain obligation of disseminating truthful information on the journalists. In particular, in the case of *McVicar v UK* the Court stated that when exercising the freedom of expression journalists bear certain obligation as to “...acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism” when discussing issues of public interest.<sup>81</sup> Additionally, the Court established the obligation of the journalist to verify the underlying information of their allegations and verify the sources from which they derive it on his/her own.<sup>82</sup> In this context the Court observed that the information can be considered truthful if, for example, it is derived from state bodies.<sup>83</sup>

In this context it is noteworthy that such means of expression as “value judgments” are not subject of verification as far as that would limit the freedom of expression.<sup>84</sup> Simultaneously, the value judgments cannot be entirely unfounded.<sup>85</sup> For the purpose of this research it is necessary to

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<sup>77</sup> *Handyside v UK* (1976), para 49.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Case of McVicar v UK* (2002), para 73.

<sup>82</sup> *Case of Tønsberg Blad AS and Marit Haukom v. Norway* (2008), para 89, 90.

<sup>83</sup> *Selisto v. Finland*, para 60.

<sup>84</sup> *Case of Lingens v. Austria*, para 46.

<sup>85</sup> *Gra stiftung Gegen Rassismus und Antisemitismus v. Switserland*, para 68.

understand the difference between factual allegation, which insists on the veracity of the communicated information and the value judgment. The Court addressed this issue either and stated that the establishment of difference is subject to the margin of appreciation of national authorities but in any case the circumstances of the case, the general tone of the remarks and the factor of public interest must be taken into account.<sup>86</sup> Additionally, as to the obligation of the media the Court established that the seriousness of the allegation must be proportionate to the accuracy and the reliability of the factual basis.<sup>87</sup>

In the light of the aforementioned issues it is important to understand the possible scope of the Court's judgments as far as in modern world the function of media is not uniquely confined to the traditional media. In practice, the role of media is widely performed by such agents of informational field as bloggers, vloggers as well as professionals sharing their thoughts on divers topics on social media. In particular, we need to understand the approach of ECHR and other international institutions to the notion of journalism. The clarification of the said concept will further enhance our understanding as to practical possibility of criminalizing spreading false information.

Although ECHR gives no concise definition of what is journalism, the Council of Europe Committee of Ministers gave comprehensive definition of the notion of journalism, i.e. the latter is "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication".<sup>88</sup> Nevertheless the CoE defines the notion of journalism we can conclude that potential legislation limiting the manipulative statements may target the manipulators in general as far as the CoE tacitly acknowledged the fact that the modern informational field comprises of numerous actors. Therefore, if a state wants to restrain the potential abusers it may draw wide specter of subjects of offense.

The Court used the term "fake news" for the first time in the recent judgment for BRZEZIŃSKI v. Poland case. The term itself was not analyzed thus we will just take into account the opinion of the Court and draw practical conclusions for our research. The factual basis of the case concerns

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<sup>86</sup> *Ibid.*

<sup>87</sup> *Supra*, note 72, para 90.

<sup>88</sup> Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the rights of journalists

not to disclose their sources of information, 8 March 2000, Appendix.

<[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805e2fd2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e2fd2)>.

the issue of “untruthful expression” spread during electoral period.<sup>89</sup> In particular, the applicant, who was also a candidate during the said local elections, disseminated booklets accusing the local government of non-professionalism and corruption. Subsequently, the ongoing members of the local government filed a lawsuit against the applicant. The Court ordered the applicant to cease distributing the booklet, ordered him to publish an apology in two local newspapers, which were supposed to contain the following phrase ‘regrets that the above-mentioned untrue information was made public, since it could have misled public opinion’ and to pay a sum to charity, and costs. The Court acknowledged a violation of Article 10 of ECHR. The decision of the Court was founded on the following factors: first, the booklet was disseminated during an electoral campaign with an aim of revealing possible flaws in the management of the community which was an important public matter. Second, the elected officials were supposed to be more tolerant towards criticism.

Additionally, the case in question is eminent because for the first time the Court acknowledged the dangers that “fake news” bear for the electoral process and underscored that the procedures aimed at eliminating such danger is necessary for prompt prevention of negative consequences.<sup>90</sup>

Although, the general overview of the Court’s analysis shows that it is more prone to keeping balance between the exercise of freedom of expression and underlying responsibility for its veracity than to giving unequivocal definitions there are exceptional situations when the Court is partisan of criminal punishment for untruthful expressions.

This approach reveals itself in the situations when questionable expressions concern important historical facts such as Holocaust and for example Armenian Genocide of 1915. When discussing issues of historical nature, the Court distinguished between “clearly established historical facts...”<sup>91</sup> and the facts which are not. The practice shows that until now there was only one historical fact which was considered by the Court as not doubtful: Holocaust. Such unique status may be conditioned by the judgements of Nuremberg tribunal which established the fact of Jewish Genocide. As to other historical circumstances the Court states that they are subject to the ongoing historical debate.<sup>92</sup> Hence, in the Court’s opinion the denial of Armenian Genocide is not

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<sup>89</sup> Ronan Ó Fathaigh, *BRZEZIŃSKI v. Poland* Fine over ‘false’ information during election campaign violated Article 10, <  
<https://strasbourgobservers.com/2019/08/08/brzezinski-v-poland-fine-over-false-information-during-election-campaign-violated-article-10/>>.

<sup>90</sup> *Brzezinki v. Poland* (2019), para 35.

<sup>91</sup> *Lehideux and Isorni v. France* (1998), paras 47.

<sup>92</sup> *Ibid.*

subject to criminalization. This stance was later confirmed in the case of *Perinçek v. Switzerland*<sup>93</sup>

In the context of the Court's decisions it is important to note that in the case of *Garaudy v. France* the analysis shows that the basis for the expression to be banned is the intentions of the offender. In particular, in the *Garaudy* it was stated that the intention of the Holocaust deniers was to rehabilitate National-Socialist regime and accuse the victims of falsifying the history.<sup>94</sup> Thus, we can conclude that when limiting the potential harm posed by spreading of untruthful expressions the situations of sanctioning the offenders must take into account the degree of peril that they pose to the public order.

The approach of the Court sets high standard of established facts which complicates the job of the legislature which would like to enact legislation against manipulative statements because the criteria of what is considered fact is crucial to understand what can be identified as manipulation or false statement of fact.

In the interest of this research we can establish that according to ECHR the criminalization of untruthful statement is possible in cases when offenders challenge such historical facts which constitute the moral basis of modern civilization.

## 4. Current legal instruments to counter false information in Armenia and existing trends

The legislation of Armenia provides for several possible instruments which may help fighting the negative consequences of false information. These tools are spread both in civil and criminal law. Subsequently, we will consider the essence of the said tools and understand what niche the new regulation against false news could occupy in the ecosystem of Armenian legislation.

### 4.1 Civil law<sup>95</sup>

The article 19 of the Civil Code of Armenia provides for protection of honor, dignity and business reputation. The norm defines that any physical person or legal entity can apply to the court to protect its rights. Article 1087.1 of the CC designated the details of the possible remedies

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<sup>93</sup> Dirk Voorhoof, Criminal conviction for denying the Armenian Genocide in breach with freedom of expression, Grand Chamber confirms.

<sup>94</sup> *Garaudy v. France* (2003), para 1.

<sup>95</sup> Civil Code of the Republic of Armenia, <<http://www.irtek.am/views/act.aspx?aid=150008>>.

including financial remuneration and public rebuttal of respective statement. The said instrument, though potentially effective, cannot be used in situation when the party demanding rectification of false statement is a state body. In particular, the Constitutional Court of Armenia in its decision ՄԴՈ-997 established that the notion of “legal entity” of article 1087.1 is not applicable to state bodies.<sup>96</sup> Consequently, the false information which is spread to undermine the reputation of state bodies cannot be countered through civil procedure.

### 5.1 Criminal law<sup>97</sup>

The criminal law provides an array of norms which may be used to eliminate the negative consequences of false information. For example, article 385 of Criminal Code of Armenia describes the offense of public calls for aggressive war. In context of false information, it can be used when the offender spreads false information in order to motivate the society for aggressive actions against any state. Article 301 (Public calls to seize power, violate territorial integrity, or the constitutional order), 226.1 (Public calls for terrorism, financing of terrorism and international terrorism, publicly justifying or advocating the commission of these crimes) as well as other crimes may be performed via spreading false information.

The main issue with the resorts granted by Civil and Criminal laws is that they require the Court to adjudicate on the existence of offence before necessary countermeasures may be applied i.e. elimination of published information. Another issue concerns the general goal of criminal law which is aimed at identifying the personality of the offender not the elimination of the manipulative information which is the real peril for public stability. The reason is that after being communicated it starts its own “independent life” via being shared, liked and after certain period of time the author of the publication plays no eminent role in its future effects on the public. Taking this into account we may say that the countering the false information must be more flexible than traditional procedures be it civil or criminal and be focused on prompt eliminating of false content rather than punishing the offender. The punishment of offender is useless for another reason too. Modern technologies enable the offenders to effectively hide their identity and it would require vast resources from the state to find the criminals. Therefore, the proper instrument must focus on the specific content and the context in which it is produced and leave the

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<sup>96</sup> ՄԴՈ-997, para. 11, <<http://www.concourt.am/armenian/decisions/common/2011/pdf/sdv-997.pdf>>.

<sup>97</sup> Criminal Code of the Republic of Armenia, <<http://www.irtek.am/views/act.aspx?aid=150015>>.



identification of criminals for near future when it will be possible through traditional legal proceedings.

### 4.3 Current trends in Armenia

As it was mentioned in the “Introduction” part for this research the starting point for the inquiry was the recent legislative initiative to criminalize the spreading false information. In order to understand the scope of the problem it is necessary to overview the general state-of-the-art of informational and legislative landscape in Armenia.

First of all, the relevance of the problem is best pictured by other legislative initiatives of recent months. One of them can be found in the draft of Criminal Code of the Republic of Armenia.<sup>98</sup> Article 450 of the draft code designates that the false denunciation made through the mass media will be punished by fine, public works or imprisonment for up to 7 years depending on factual circumstances of the case. Although the issue of false/manipulative information is not directly mentioned in the article it is obvious that it may be employed to limit the negative impact of the manipulative statements. The example may be the situation when a person during an interview accuses someone of committing a crime. After that the law enforcement agency may start an investigation and find out that the accusation where wrongful and accuses that person of false denunciation. Such scenarios are an example how this new article may indirectly decrease the negative impact of false information. Although the regulation in question is a step forward in the context of regulating the issue of informational security it contains certain disadvantages in the context of the freedom of opinion and journalism. In particular, if the law enforcement agency starts criminal investigation on the basis of the publication in media it may apply to the journalist to get the information about the source. In this case the conflict between the law “In Mass Media” and purported article will arise because latter provides for disclosure in cases of all types of offenses while the Article 5 of the law “In Mass Media” states that the journalistic sources may be disclosed only in cases of grave or particularly grave crimes.

## 5. Conclusion.

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<sup>98</sup> Draft of the Criminal Code of the Republic of Armenia, <<https://www.e-draft.am/projects/2115/about>>.

As our research has shown, although the issue of “fake news” is vague in terms of finding a concise definition it attracts the attention of numerous countries throughout the world. Each country tries to give a tailor-made response to the issue at hand. Our approach is the following:

The experience of the countries mentioned in this paper show that the criminalization of “spreading false news” or any other type of manipulative information is not an accepted practice (we can regard Singapore with its sanction of imprisonment as an exclusion to the list of reviewed countries). Instead, the countries try to adopt more flexible approach. Such as preventing the spread of manipulative information via mechanisms of prompt response like in France or in Germany. Another possible solution is to limit the application of respective norms to the distinct time-limit as it is done in France (i.e. the regulation imposed to eliminate the harm of manipulative attacks is limited to the period of three months prior to important elections) and, of course, design balanced regulations, which simultaneously respect and protect human rights and public order.

As to the criminalization of the “spreading false news” Armenia must try to avoid it as much as possible. The reason is that the criminalization of this or that act requires clear and distinct definitions of terms in order to avoid human rights’ violations. Taking into account the general vagueness of subject matter it will be quite cumbersome task. The analysis undertaken in this paper shows that the most balanced and reasonable approach is adopted by France and USA. The French experience is best for pre-electoral period because it guarantees that the voters will be informed on the sources and potential beneficiaries of communicated information. Additionally, French approach provides for effective procedural remedies, which will guarantee the implementation of the regulations. Another advantage is that the special regime foreseen by French legislation is limited in time, which significantly decreases the possibility of limitation of the freedom of the speech. What considers the limitation of false news’s impact in daily life the best solution is leaving it to the “marketplace of ideas” as it is done in US because in case of bid to limit false news we will have the issue of defining the complete and comprehensive notion of “false news” or any other relative concept. The complete definition is almost impossible because the communicative techniques like “propaganda” (which is included in the notion of “false news”) may have many different forms and it is unlikely that the legislator can give final definition that will address all possible cases that may occur in real life. Moreover, the criminalization of spreading false information would highly likely limit the freedom of expression because independently of how diligently one is trying to define the notion of false information

there is always place for abuse. For instance, the effective combating of spreading false information probably will require distinct unit under law enforcement agency which implies not only organizational and financial allocations but also certain degree of discretion to decide on trustworthiness of content in question. Consequently, any governmental body bestowed with such discretion can abuse its authority, thus limiting the freedom of speech. As a result, it is more rational to adopt “passive” measures against spreading false information which do not require significant resources to be used and does not interfere with the freedom of the speech on the initiative of public official. The advantage of such “passive” measures is that the main load of their realization is on the initiative of private individuals or politicians. In other words, it is easier for individuals to monitor the informational field and decide whether certain information is manipulative and must be removed. If employed, this approach will strike the fair balance between moderate state intervention when necessary and the US concept of “marketplace of ideas” which implies that the truthfulness of ideas is found through free public debate.

As to the approaches adopted by Germany and Singapore we have to state that both have advantages: Germany facilitates and accelerates the implementation of Criminal Code’s norms in virtual field and Singapore adopts a system of prompt response. Nevertheless, Germany’s model targets the issue of false information indirectly while French concept is generally aimed at any type of manipulative information independently of its criminal nature or type media by which it is communicated. As to the Singapore, though having such flexible and swift instrument is appealing to any state official, it simultaneously creates threat of human rights violations because is supposed to be implemented by volition of public official.

As to the approach of the European Court of Human Rights, the previous study of case-law shows that although the Court has no concise opinion on the issue, the threat of informational manipulations is acknowledged. Hence, the “passive” measures offered in this study most probably will receive the Court’s approval.

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