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Fakenews is much more than fake content

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Abstract. The goal of this article is simple. In the context in which there is more and more talk about the concept of fakenews, there are also efforts to instrumentalize and operationalize it. Rightly so, from media to commerce, from social networks to propaganda, the phenomenon is at the heart of the communication processes we use today, but also at the heart of the problems we face as societies. Unfortunately, fakenews is a much more subtle concept than people think and the big question is whether this phenomenon can be approached legally, without violating the right to opinion and free expression. Our article deals precisely with these subtleties of the concept and puts them in parallel with the normative basis that we now have as a reference. What can and cannot be done in this area ultimately depends on our ability to correctly understand the manifestations of what we call fakenews.

Keywords. the right to freedom of opinion, fakenews, sender-receiver, censorship, disinformation

1. The concept. Why do we use it?

The purpose of this article is to bring some conceptual and, if possible, methodological clarifications to the phenomenon of fake news. The topic itself has been particularly topical since the middle of the last decade. On the one hand, it is fuelled by the accelerated development of virtual space / cyberspace, both as technical possibilities and as interconnection. In short, recent years have greatly increased anyone's access to devices that can produce photos, movies, recordings, but also to software that can alter or crop and process these products (a simple smartphone can do things that were impossible with a desktop computer twenty years ago). Secondly, access to the communication medium has become hyperdemocratized: anyone can post something online or on a social network, any message can be easily spread to thousands to millions of users in a global audience at no cost, without a real verification of authenticity or quality, anyone can set up an online magazine or a small debate studio (a microtelevision), and the production of a film material is no longer strictly the prerogative of professionals who have access, with the ID, to the expensive equipment of a television. *The question of quality vs. authenticity.*

And the regulation of this communication space is still in its infancy. Which opens up *the issue of freedom of speech vs. censorship.*

The second major source that made this theme popular was the awareness, in many Western capitals, in the middle of the last decade, of Russian strategic communication efforts,

in which, as it turned out, innocent intentions did not exactly reside. Moreover, this communication was based on at least dubious narratives, which created school cases for the concept of fake news. The problem of *advertising vs. propaganda*, but also the hardest to understand for analysts of the fakenews phenomenon (and harder to measure sociologically), *content vs. intent*. The two key moments in Russia's inflammation of Eastern Europe, 2014/2015 and 2022 respectively, accompanied not only the rethinking of international relations theories and how we see the international system today, but also the entire debate surrounding the concept of fakenews.

A special problem related to understanding the fake news issue is related to the comparison with previously used concepts: political propaganda, rumour, etc. Of course, new digital and global media have left their mark on the concept, but the content is not far from the other two mentioned. Which brings us to another problem, classic in substance but extremely current in the era of fakenews: *fakenews through the eyes of the sender vs. fakenews through the eyes of the receiver*. Of course, it is not only important what the sender does in the media, but, nowadays, especially what the receiver does. There is now a huge paradox of the receiver: if the receiver of classical propaganda or rumour did not have access to knowledge (and information was at stake in the plunge into a dubious cognitive environment), nowadays, anyone with a smartphone is flooded with information. It is not receiving information that is at stake today, but analysing it and, right from the start, selecting relevant information.

There is no consensus in the literature on what fake news might be. As with other famous concepts in the last ten or twenty years (hybrid warfare or national/international security, for example), we are witnessing a certain excess of debate, a certain deficit of methodology and empirically correctly substantiated studies, so we are heading towards a failure to study the phenomenon rather than an enrichment of its knowledge. Like so many other concepts, it will be left when it is no longer fashionable, it will be rechristened, but it will unlikely be solved.

2. What does the sender earn? Trust and conspirativism

The idea of fakenews is deeply contextualized. Basically, very rarely will fakenews be simply a lie or simply fabricated information. They are, moreover, easy to identify (of course, controlling their movement is another matter). Fakenews is rather a partial lie, but it can also be a decontextualization of an otherwise trivial information or fact [1]. Shifting the focus or emphasizing an aspect [2], hypertrophying a minority trait but perceived as threatening a situation, confusing a correlation with causality, abusive generalization of a phenomenon [3], delivering information not for its actual content, but for its affective capacity (which can frighten, mobilize, demobilize, etc.) and, especially, for its potential to have an audience, to circulate [4]. Also, a fake news can be a trivial truth, but one that the sender knows will be misperceived [5], possibly in an ominous register, by the public untrained in the matter. Last but not least, there is also a value connotation of fakenews: fake news belongs to the enemy/aggressor [6], we, the good ones, do "crisis communication". Basically, except for lies or completely fabricated news, the key to a "good" fakenews, so to speak, is interpretability. What is interpretable cannot be legally sanctioned or censored. What's more, an obscuration of such information will further arouse the public's curiosity and fuel conspiracy theories.

Of course, naturally, the next question is where is the sender [7][8][9] and what does he gain from this whole business? Sociologically speaking, searching for the source of a fake news is like looking for the source of a rumour. For the analyst of the phenomenon, relevant is not, half joking, the Russian troll who circulates huge amounts of fake news, waiting for some

to go viral. At most, such an approach could be of interest to authorities, intelligence services, criminal prosecution bodies, if necessary. The issue is rather related to how the public is more or less permeable to fakenews [7][8], whether the cognitive dissonance that disinformation seeks to produce has a relevant impact, what strategies do media users and especially of the Internet and social networks have to verify (if they have this concern) the information circulated and, as far as possible, the source of their spread.

A key variable here is the climate of trust in institutions. If the public has a high level of trust in institutions, especially those responsible for the field targeted by the disinformation campaign / fakenews, etc., they will probably be easier to dismantle: security, health, financial-banking, IT and technology in general, trade, food, etc. Unfortunately, for years there has been a tendency to decline trust in the institutions specific to advanced democracies, and even the conspiracy of the general public is not easy to treat.

3. How does the phenomenon work?

We must understand that fake news is a critical discourse, but not necessarily a rational one. It can attack certain points on society's agenda (vaccination, the pro-Western direction of a country, etc.), without all the elements invoked being coherent with each other. If we refer, for example, to strategic fake news, the one blamed on Russia in the years before the full-scale invasion of Ukraine (2013-2022), we notice¹ that, unlike political propaganda, let's call it classical, there is no ideological coherence here, nor an intention to offer Russia as a model. Drive is critical and focused on exploiting cleavages and problems, dissatisfactions, dysfunctions often real within the targeted societies. That is why, at times, we have seen there a wide register of values, from Eastern European traditionalism and religiosity, to local nationalism (including economic and anti-capitalist) and anti-globalism, to Pan-Orthodoxy, Pan-Slavism and pleas for good neighbourliness in Eastern Europe.

After all, fake news is based on its power of circulation, not on its content: the Internet and social networks get to speed even traditional media channels (TV, for example, which often feeds on information circulating online). As speed of reaction is the standard today in the media industry, verification of information is reduced to a minimum. Sure, the fact that we mention that the information is a rumour, or that it comes from *sources*, or from character X's Facebook can legally exonerate the journalist or any user of circulating that information, but the problem is that it was put into circulation, not that the source was somehow cited.

After this primary circulation, there remains the secondary one, in which the mechanisms of memory (individual and social) simplify all information content. The context in which the fake news was issued does not remain, not even the intellectual precautions that the public could have taken at that time remain. The fact remains that at one time there was something dubious with a personality, brand, organization, product, drug, etc. And here we return to the problem of the society lacking trust. The paradox is that as we have more and more technical means of perceiving the environment around us, we trust institutions less and fake news proliferates. Do not understand that we are apologizing for the times when we could not verify the facts of authorities, economic operators, celebrities, leaders, etc. But now, part of the moral burden also falls on the public, which is proactive, which seeks interactivity, but which needs to be more responsible in doing so.

¹ One can study extensively the archives of several NGOs that have addressed this phenomenon and sought to deconstruct this type of fake news. For Romania, larics.ro can be followed, for example.

4. Legal perspectives

The domestic and international legal regulations in this field try to establish a fundamental normative framework, of a very delicate balance, between the right to express and transmit opinions, ideas, information and the obligation to responsibly guarantee the correctness and veracity of the information transmitted. The difficulty of such an approach of law-making lies in carrying out a somewhat paradoxical construction of conduct: the democratic state is forbidden to censor free access to information, but the same state also has the responsibility to watch over the quality and veracity of information allowed to circulate freely in the information media to which its citizens have access, within its area of state responsibility.

In the sphere of transmitted information, covering a very wide area of dissemination, the most relevant are the regulations of international conventions in the field, the constitutional and criminal regulations.

Being enshrined as fundamental rights in the range of human rights, the right to freedom of opinion and the right to be informed are enshrined in Article 19 of the UNIVERSAL DECLARATION OF HUMAN RIGHTS of 10 December 1948:

"Everyone has the right to freedom of opinion and expression; this right shall include freedom to hold opinions without outside interference and freedom to seek, receive and impart information and ideas by any means and independently of frontiers" [10].

Regulation is a benchmark for domestic normative acts, but more and more detailed regulations are needed (as norms-means of domestic law, transposing the application of international norms-principles) on the framework necessary to protect not only access to information, but especially the protection of citizens from false information.

At the level of European regulations, Article 11 of the Charter of Fundamental Rights of the European Union, article entitled "Freedom of expression and information" provides:

"(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.

(2) The freedom and pluralism of the media shall be respected." [11].

The rule of non-interference of public authorities in the transmission of ideas or information is configured in the context of generally valid socio-legal boundaries. If the information transmitted by the sender is true and transmitted in good faith, it correctly responds to the receiver's right to information, a right protected by law. However, if the information is false and transmitted in bad faith, its recipient risks becoming a victim of misinformation (with all the negative consequences arising from it), and, in such a context, the person needs the protection of the authorities against disinformation.

In domestic law, first of all in the Romanian Constitution, there is a vast content of the regulation on freedom of expression (Article 30) and the right to information (Article 31):

"ART. 30

Freedom of expression

(1) Freedom to express thoughts, opinions or beliefs and freedom of creation of any kind, by speech, writing, images, sounds or other means of communication in public, shall be inviolable.

(2) Censorship of any kind is prohibited.

(3) Freedom of the press also implies freedom to establish publications.

(4) No publication may be suppressed.

(5) The law may impose on mass media the obligation to make public the source of funding.

(6) *Freedom of expression may not prejudice the dignity, honour, private life of the person or the right to one's own image.*

(7) *The law prohibits defamation of the country and nation, incitement to war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene manifestations contrary to good morals.*

(8) *The civil liability for the information or creation brought to public knowledge rests with the publisher or producer, author, organizer of artistic manifestation, owner of the multiplication medium, radio or television station, under the law. Press offences shall be established by law" [12].*

"ART. 31

Right to information

(1) *The right of a person to have access to any information of public interest shall not be restricted.*

(2) *Public authorities, according to their competences, shall ensure correct information of citizens on public affairs and issues of personal interest.*

(3) *The right to information shall not prejudice the measures of protection of young people or national security.*

(4) *Public and private mass media shall ensure correct information of public opinion.*

(5) *Public radio and television services shall be autonomous. They must guarantee important social and political groups the exercise of antenna rights. The organization of these services and parliamentary control over their activity shall be regulated by organic law" [12].*

The constitutional text links the person's right to access information of public interest with the obligation to correctly inform the public opinion by mass information means, public or private. "This provision highlights the great imperatives to be respected in terms of information, namely: accuracy, honesty, discretion and, of course, fairness" [13].

The communication or dissemination of false information may constitute not only a social problem that affects social thinking and conduct to a small extent, but such actions may constitute crimes against national security (being included in Title X of the Romanian Criminal Code).

The Romanian Criminal Code, in article 404, criminalizes *the communication of false information*:

"Communication or dissemination, by any means, of false news, data or information or falsified documents, knowing their false character, if thereby endangering national security, is punishable by imprisonment from one to 5 years." [14].

According to the same Criminal Code, Article 405 provides for and sanctions *propaganda for war*:

"(1) Propaganda for the war of aggression, as well as the dissemination of tendentious or invented news for the purpose of provoking a war of aggression, shall be punishable by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights.

(2) The acts referred to in para.(1), committed for the purpose of provoking a war of aggression against Romania or an internal armed conflict shall be sanctioned by the same punishment" [14].

If in terms of social conduct incriminated by Article 405 of the Criminal Code, there are benchmarks that can more easily configure the risk of provoking a war of aggression, in

terms of communicating or spreading false information that endanger national security (provided for and punished according to Article 404 of the Criminal Code), the situation may also evolve on a more complex terrain, because, in this case, there may be mainly latent developments of disinformation flows, carried out over a longer period of time (during which any direct intervention to combat it can be considered borderline censorship), but which, in the final stages, produce serious effects, sanctioned by law, but difficult to manage in light of the already extensive social effects.

5. Discussion and conclusions

Is there a regulatory deficit or simply the *fakenews* phenomenon is hard to regulate? Despite what is believed, the problem is not strictly related to the difficulties of surveilling the online media space, the rush for audiences leaving even television a victim.

First of all, at the end of the whole fakenews phenomenon is the right of any individual to get informed, to have an opinion and to share it further. It is not so much the information, its content that is the problem here, but rather communication as a facilitator of our integration into the groups to which we are related. As we have seen in the section above, the clear delineation of speech that can be censored and punished is difficult to do and is only envisaged in special circumstances.

Even detecting fake news is difficult. A technology-based detection of it can, for example, lead to the identification of faked, falsified images with the potential to influence the audience – the deep-fake category. The same for texts that do not belong to the sources to which they are attributed. Of course, in order to separate these harmful falsehoods from jokes, for example, the intention of the sender must somehow be established. However, most of the time, it is unknown, these materials being usually spread through social networks by innocent people and in no way malicious, but rushed to gain reputation in their online peer-groups and to broaden their base of appreciation.

One solution to combat online fake news is to leave this operation to artificial intelligence [15], which will censor suspicious content based on its own algorithms, just as today it censors offensive content, extremism etc. on some platforms. The advantage would be that you do not have a human and subjective decision behind it, the process is impersonal and there are no individual exceptions. On the other hand, this could not counteract more subtle fake news, which are not simply lies and whose mechanism is much more subtle from a psychosociological point of view.

Of course, when the stakes are very high, awareness and information campaigns are the easiest solution for authorities. The public can be warned that they will be the target of misinformation and fake news. This can happen in relation to an enemy (the case of Russian fakenews in the context of the confrontations in recent years with Ukraine), but also in relation to an issue that displeases the public (for example, the fake news that circulated around the anti-covid vaccination during the pandemic). The biggest problem arises when the authorities (or the source that legitimately challenges the fake news) do not have or lose public trust along the way (the case of the covid pandemic is illustrative in this regard). There is then a risk that the public will recirculate disinformation or fake news as a way to delegitimize official communication and protest. Of course, educating the public to avoid misinformation and all the aspects that come with it will not only not work, but risk becoming the object of public amusement.

Usually, fake news policies, whether more or less legally coercive, follow a classic definition of communication [16]: sender (here the goal is to regulate transparency, define

indicators of credibility and authenticity of the source, *empowerment* for bona fide journalists), channel (at this level, we are primarily talking about the digital sector and how to reconcile the correct information of the public with the diversity of the digital media landscape), message (obviously, the subject is the different categories of fake news), receiver (educating the public and equipping them with means to select and complain about misinformation and inappropriate content).

But beyond this classic scheme, it should be borne in mind one simple thing – communication is ultimately an interactional, social process, not just a content-centric one. The "communication contract" integrates us into a group, confirms our belonging to it, possibly highlights us in its hierarchy. A debate, at whatever level, is rarely purely rational, based on criteria and purely democratic. The analysis of how a fake news is discussed in an online group is particularly relevant [17], perhaps more relevant than how information is received or an attitudinal change occurs at the individual level. The debate keeps the group alive and confirms it (on the street, on the block scale and even more so on a social network), and feeding it with information to be debated ensures its existence.

In many ways, whether or not people believe fake news, debunk it or not in these microdebates is irrelevant. Fakenews is fake news not just because it contains false or misleading content. They are false because they offer false topics for discussion and are successful when they get debated. Keeping them in the public space is more important than whether they are believed or not.

References

- [1] Roxana Bratu, Darie Cristea, Diana Alexandra Dumitrescu, *Fighting fake news - the key role of the public*, in Dan Sultanesu (ed.), *Challenges in strategic communication and fighting propaganda in Eastern Europe*, IOS Press, 2019
- [2] Tucher, Andie, "NOT EXACTLY LYING." *Not Exactly Lying: Fake News and Fake Journalism in American History*, Columbia University Press, 2022
- [3] Id.
- [4] Chiu, M. M., & Oh, Y. W. (2021). How Fake News Differs From Personal Lies. *American Behavioural Scientist*, 65(2), 243–258. <https://doi.org/10.1177/0002764220910243>
- [5] Id. note [2]
- [6] Roger G. Herbert (2021) In Search of the Virtuous Propagandist: The Ethics of Selling War, *Journal of Military Ethics*, 20:2, 93-112, DOI: [10.1080/15027570.2021.1983116](https://doi.org/10.1080/15027570.2021.1983116)
- [7] Kim B, Xiong A, Lee D, Han K (2021) A systematic review on fake news research through the lens of news creation and consumption: Research efforts, challenges, and future directions. *PLoS ONE* 16(12): e0260080. <https://doi.org/10.1371/journal.pone.0260080>
- [8] Khan, A., Brohman, K., & Addas, S. (2022). The anatomy of 'fake news': Studying false messages as digital objects. *Journal of Information Technology*, 37(2), 122–143. <https://doi.org/10.1177/02683962211037693>
- [9] Golovchenko, Y., Buntain, C., Eady, G., Brown, M. A., & Tucker, J. A. (2020). Cross-Platform State Propaganda: Russian Trolls on Twitter and YouTube during the 2016 U.S. Presidential Election. *The International Journal of Press/Politics*, 25(3), 357–389. <https://doi.org/10.1177/1940161220912682>
- [10] United Nations, *UNIVERSAL DECLARATION OF HUMAN RIGHTS* of 10 December 1948, published in the Brochure of 10 December 1948.
- [11] Charter of Fundamental Rights of the European Union, binding upon the entry into force of the Treaty of Lisbon on 1 December 2009.

- [12] The Constitution of Romania, of November 21, 1991, amended and supplemented by Law revising the Romanian Constitution no. 429/2003, published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003, republished by the Legislative Council, pursuant to Article 152 of the Constitution, by updating the names and renumbering the texts.
- [13] Muraru, I, Tănăsescu, E.-S, (2003), “*Drept constituțional și instituții politice*” (*Constitutional Law and Political Institutions*), Volume I, Eleventh Edition, Bucharest, ALL Back Publishing House, p.216.
- [14] Criminal Code of 17 July 2009 ([LAW no. 286/2009](#)), published in OFFICIAL GAZETTE n. 510 of 24 July 2009.
- [15] T. Lakshmi Surekha, N. Chandra Sekhara Rao, C.K. Shahnazeer, Syed Mufassir Yaseen, Surendra Kumar Shukla, Singh Bharat, Mahendran Arumugam, *Digital misinformation and fake news detection using WoT integration with Asian social networks fusion based feature extraction with text and image classification by machine learning architectures*, Theoretical Computer Science, Volume 927, 2022
- [16] European Commission, Directorate-General for Communications Networks, Content and Technology, *A multi-dimensional approach to disinformation: report of the independent High level Group on fake news and online disinformation*, Publications Office, 2018, <https://data.europa.eu/doi/10.2759/739290>
- [17] Mohammad Ali (2022) Fake-News Network Model: A Conceptual Framework for Strategic Communication to Deal with Fake News, International Journal of Strategic Communication, 16:1, 1-17, DOI: [10.1080/1553118X.2021.1988616](https://doi.org/10.1080/1553118X.2021.1988616)