

Free Speech Principles to Consider when Restricting Disinformation

Disinformation is widely considered to be one of the most pressing issues confronting society in the new online communication environment of today. The present problem of disinformation, however, did not materialise in a vacuum, and so the response to it needs to be situated among established constitutional principles. This paper, based on the jurisprudence of the European Court of Human Rights and some relevant documents and recommendations in this area at the European level, summarizes the most representative European principles of freedom of speech that are highly relevant in forming a legal answer to the issue of disinformation. Clarification of the current constitutional doctrine suggests that measures to restrict communication in the fight against disinformation can only play a more significant role than at present if the basic principles of freedom of speech are set aside. We therefore argue that we should primarily seek other solutions.

Keywords: *freedom of speech, disinformation, participatory democracy, Council of Europe, European Court of Human Rights*

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1. Introduction

Disinformation, i.e. knowingly and harmfully spreading untruths, is widely considered to be one of the most pressing issues confronting society in the new online communication environment of today. There is no doubt that the challenge posed by the rise of disinformation today lies precisely in the fact that digital technologies, platforms, and social media have significantly subverted the previous operating mechanisms of the public sphere and this has allowed opportunities for disinformation to easily spread. However, the present problem of disinformation did not materialise in a vacuum, and disinformation has flourished despite clear principles and criteria for the regulation of public discourse having been developed in recent decades. It follows then that the response to disinformation needs to be situated among established constitutional principles. However, the accepted doctrine must be confronted with a new phenomenon: on the one hand, it needs to be determined whether new approaches are needed at some point, and on the other hand, it also needs to be made clear where it is not possible to compromise on the principles that have been followed so far. This paper, based on the jurisprudence of the European Court of Human Rights (ECtHR) and some relevant documents and recommendations at the European level, summarizes the most representative European principles of freedom of speech that are highly relevant in forming a legal answer to disinformation. The starting points for the regulatory treatment of social information disturbances, including the intensification of attempts at disinformation, are provided by the legal framework covering public communication. The most important European points of this framework are summarized below.

2. Participatory Model of Free Speech

The key question that defines the entire doctrine of freedom of speech concerns which theoretical justification that right relies on, or to put it more accurately: which aspects each justification prioritise. Although the formation of public opinion is a fundamental social concept in common (Habermas 1991), the concept of “speech” has a normative nature that is defined by each constitutional doctrine based on which justification(s) it emphasizes (Schauer 1981). These justifications have already been systematized by others (e.g. Barendt 2005). Essentially, communication represents three types of value: it can contribute to the discovery of truth that society seeks together (Marshall 2021), it can be a manifestation of the free fulfilment of our personality (the individualist approach) (Redish 1982, 603; Dworkin 1996), and it can ensure our participation in democratic social life (democratic theories) (for the origin of democratic theories, see Meiklejohn 1948). Despite the fact that it is neither possible nor necessary to insist on exclusivity among these justifications, the primary basis the European doctrine rests on can be clearly established (see Robert Post about the “lexical priority” of the justifications, Post 2011, 618).

From the very beginning, the ECtHR has focused on the democratic justification of freedom of expression. According to the reasoning it has consistently ascribed to,

“freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment“ (see, e.g. in the latest case-law with several references to previous decisions, *Sanchez v France* 2023, 145). Considering the practice as a whole, it is clear that, despite the mention of individual fulfilment, the legal interpretations are not primarily based on individualistic justifications, although these play an important role within the democratic approach. Democratic justifications are not completely uniform in all details, and the two main models focus on somewhat different elements in important legal interpretation situations, wherein the issue of disinformation is one such situation.

One democratic theory sees the value of freedom of speech in that it is essential for common, informed decision-making, which is the essence of democracy, and which places the audience’s need for information at the centre (Meiklejohn 1961; Fiss 1996; Bork 1971, 20). Another theory sees the value of free speech above all in that it ensures that everyone has an opportunity to become involved in the life of the democratic community. In this model, participation is at the centre of the concept of democracy and democratic public opinion (Post 2011, 618), and freedom of speech focuses much more strongly on the speaker and their intention to communicate (Post 1993). The practice of the ECtHR draws on both approaches, but it is chiefly based on the participation model, in the sense that the central issue of legal interpretation is protection of the speaker’s right to personal expression.

The aspects of participatory democracy are also emphasized in the documents of other bodies of the Council of Europe (CoE). As a recommendation of the Committee of Ministers on the new notion of media highlights, freedom of expression is indispensable for a genuine democracy and for the proper functioning of democratic processes. “In a democratic society, people must be able to contribute to and participate in the decision-making processes which concern them” [Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a new notion of media (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers’ Deputies), s. 2]. The Internet-related recommendations of the Committee of Ministers – as will be shown below – also recognize the revolutionary importance of the digital age for freedom of speech in the expansion of the opportunities for personal participation. In addition, the democracy-based approach is most evident in the concrete interpretation of the law, in which, although the scope of freedom of speech is broader than that of political communication, significantly stronger protection is afforded to political speech. The ECtHR consistently emphasizes that “the promotion of free political debate is a very important feature of a democratic society and the Court attaches the highest importance to freedom of expression in the context of such debate” (e.g. *Sanchez v France* 2023, 146). The importance of this approach is particularly highlighted by the practice of the ECtHR towards artistic expression, in which it grants strong protection to works of art only if they form part of the public debate (see *Müller and others v Switzerland* 1988; *Wingrove v the United Kingdom* 1996; *Vereinigung Bildender Künstler v Austria* 2007).

On the grounds of democratic justification, both the ECtHR and other bodies of the CoE attach special importance to the democratic formation of public opinion,

to which they attribute specific characteristics. On the one hand, democratic public opinion means a lively discourse that embraces as many points of view as possible, and develops according to its own logic and under its own rules within a lively discussion of opinions and counter-opinions. As the Venice Commission emphasizes, open and robust public debate is the cornerstone of democracy: “A democracy should not fear debate, even on the most shocking or anti-democratic ideas. It is through open discussion that these ideas should be countered and the supremacy of democratic values be demonstrated. Persuasion through open public debate, as opposed to ban or repression, is the most democratic means of preserving fundamental values” (Compilation of Venice Commission Opinions and Reports Concerning Freedom of Expression and Media, CDL-PI(2016)011, 19 September 2016, s. 1.1.) On the other hand, although this does not appear *expressis verbis* in the documents, the legal interpretation of the public debate starts from a specific anthropological view.

The decisions of the ECtHR on the restriction of commercial communication can be usefully contrasted with its decisions on communication deemed to be part of the public debate. The Court has consistently held that although the freedom of speech extends to commercial advertisements, their publication can be widely restricted. In order to ensure that consumers receive accurate information about specific features of goods and services, restrictions may be imposed especially, in the case of misleading or untrue information. The ECtHR therefore considers the consumer as a player that is vulnerable to the manufacturer, and needs to be protected (*Casado Coca v Spain* 1994, 51; *Stambuk v Germany* 2002, 39). In the democratic public debate, even in the case of untrue information, the Court does not admit the possibility of such a general restriction, and considers citizens participating in the formation of public opinion as autonomous (rather than vulnerable) actors (A clear framing of this anthropology can be found in the case law of the Hungarian Constitutional Court, which closely follows the Strasbourg jurisprudence in the field of political debate: “The approach of the constitutional evaluation is determined by the consideration that during the democratic discussion of public affairs participants of the debate are the citizens who interpret political events in their complexity, being aware of the special characteristics of partizan political opinions, especially during electoral campaigns that tend to exaggerate in order to attract voters’ attention” (Decision No. 3107/2018. (IV. 9.) AB [28])).

3. Role of the Internet in the Freedom of Speech

To discuss the issue of disinformation, it is important and instructive to examine more closely how the documents of the CoE view the Internet. A wealth of material is available in this regard, as the Committee of Ministers has dealt with the issues raised by the Internet in many of its recommendations – even mentioning disinformation among these problems – and, of course, cases related to the role of the Internet have also been raised before the ECtHR.

It is clear from the documents that the CoE has taken into account the possibility of new dangers arising from the functioning of the Internet since the very begin-

ning, but in the first place it still welcomes it as a tool that can radically expand the possibilities for democratic participation. The recommendation of the Committee of Ministers on measures to promote the public service value of the Internet notes that digital tools can, on the one hand, significantly enhance the exercising of human rights and fundamental freedoms, such as freedom of expression, while, on the other hand, it admits that they may adversely affect these and other rights. Still, the Committee recommends that, in order to promote democracy, Member States should strengthen the participation and involvement of their citizens in public debate through the Internet, and encourage the use of infocommunication services, including online forums, weblogs, political chats, instant messaging, and other forms of citizen-to-citizen communication. The recommendation strongly supports citizens' engagement with the public through user-generated communities rather than official websites [Recommendation CM/Rec(2007)16 of the Committee of Ministers to Member States on measures to promote the public service value of the Internet (Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), Section III].

The ECtHR also views the Internet as one of the principal means of providing essential tools for the participation in discussions concerning political issues, highlighting that the possibility for user-generated expressive activity on the Internet provides an “unprecedented platform for the exercise of freedom of expression” (see, e.g. *Vladimir Kharitonov v Russia* 2020, 33; *Melike v Turkey* 2021, 44; *Times Newspapers Ltd v the United Kingdom* 2009, 27). The Court welcomes the fact that the Internet has fostered the “emergence of citizen journalism”, as political content ignored by the traditional media is often disseminated via websites to a large number of users, who are then able to view, share, and comment upon the information (*Cengiz and Others v Turkey* 2015, 52). However, the bodies of the CoE have also identified the dangers that making use of the new opportunities provided by the Internet entails. These include that defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, in a matter of seconds (*Sanchez v France* 2023, 162). Digital transformation and the shift towards an increasingly digital, mobile, and social media environment have profoundly changed the dynamics of production, dissemination, and consumption of news [Recommendation CM/Rec(2022)4 of the Committee of Ministers to Member States on promoting a favourable environment for quality journalism in the digital age (Adopted by the Committee of Ministers on 17 March 2022 at the 1429 meeting of the Ministers' Deputies), Preamble]. Newer materials also mention the problem of disinformation among the dangers of the new communications age: “Targeted disinformation campaigns online, designed specifically to sow mistrust and confusion and to sharpen existing divisions in society, may also have destabilizing effects on democratic processes” [Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the roles and responsibilities of Internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies), Recital (3)]. Meanwhile, “[d]emocracies have experienced growing threats posed by the spread of disinformation and online propaganda campaigns, including as part of

large-scale co-ordinated efforts to subvert democratic processes” [Recommendation CM/Rec(2022)4 (n 21), s. A(6)].

It is worth briefly mentioning the CoE’s bodies’ main approach to the responsibility for Internet content. The central concept of the documents is “shared liability”. According to this, “a wide, diverse and rapidly evolving range of players facilitate interactions on the Internet between natural and legal persons by offering and performing a variety of functions and services” [Recommendation CM/Rec(2018)2 (n 22), Recital (4)], and the responsibility for content must be adapted to this multi-player approach. According to the Committee of Ministers, instead of summary solutions, a fine-tuned approach is needed that elaborates and delineates the boundaries of the roles and responsibilities of all key stakeholders within a clear legal framework, using complementary regulatory frameworks [Recommendation CM/Rec(2007)16 (n 17)]. The ECtHR also focuses on “a context of shared liability between various actors” (*Sanchez v France* 2023, 183).

An important starting point for the CoE’s approach to responsibility is that providers of intermediary services – which contribute to the functioning or accessing of media and content, but do not themselves exercise editorial control – should not be regarded as media themselves. However, their activity is certainly relevant in the media context and for the formation of democratic public opinion [Recommendation CM/Rec(2011)7 (n 11), s. 36]. The CoE agrees with the view that state authorities should not impose a general obligation on intermediaries to monitor content that they merely provide access to, and recommends that they should ensure that intermediaries are not held liable for such third-party content. However, intermediaries may be liable if they do not act expeditiously to restrict access to content or services as soon as they become aware of their illegal nature [Recommendation CM/Rec(2018)2 (n 22), s. 1.3.7]. As the ECtHR emphasizes: “to exempt these services from all liability might facilitate or encourage abuse and misuse, including hate speech and calls to violence, but also manipulation, lies and disinformation” (*Sanchez v France* 2023, 185).

4. Legitimizing the Restrictions on Free Speech

It is also worth highlighting in principle the methodology with which the jurisprudence evaluates the values and interests that may compete with the interests of freedom of speech. It is even clear what these values and interests are as these are stated in the European Convention on Human Rights, where Article 10(2) of the Convention, on freedom of expression, lists the reasons that may serve as a basis for restricting freedom of expression. According to this part of the text, freedom of expression can be limited in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. It is well established in the jurisprudence

of the ECtHR and the CoE documents that the list provided in the Convention is exhaustive: any restrictions of the right to free speech must pursue a legitimate aim as exhaustively enumerated in Article 10 [Recommendation CM/Rec(2016)5 of the Committee of Ministers to Member States on Internet freedom (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies), s. 2.4.1].

The further question of what power these specific reasons for restriction may have over freedom of speech is connected to a dilemma that is also part of the academic discourse: whether freedom of speech should be protected with a categorical or a balancing approach (Frantz 1961–1962, 1432; Mendelson 1962, 821; Shiffrin 1977–1978, 955), or – to adapt this question to more recent American terminology – whether strict or intermediate scrutiny should be the main method for determining the validity of restrictions on free speech (Aleinikoff 1986–1987, 946; Bhagwat 2007, 785). At one end of the scale of theoretically possible answers is the position that grants constitutional protection to communications in all circumstances, while the other end of the scale is represented by the view that conflicts of relevant constitutional values can only be resolved by considering the special circumstances of specific cases. According to the most common view, which rather oversimplifies the picture, while the categorical approach prevails in the US, in Europe balancing interests is more typical. However, the situation is more complex than this: although the absolutist understanding of freedom of speech is undoubtedly quite different from the European doctrine, the jurisprudence of the ECtHR strives to combine both categorical and balancing approaches in its practice (Sardo 2020, 439).

On the one hand, the Court must take into account the reasons for the particular restriction listed in the Convention that competes against freedom of speech, which is itself protected by it (European Convention on Human Rights, Art. 10(2)). On the other hand, with regard to political speech, the jurisprudence applies a more categorical understanding of protection. According to the consistently emphasized thesis, there is little scope under Article 10(2) for restrictions on freedom of expression in the field of political speech, and the authorities' margin of appreciation in assessing competing interests against freedom of expression in this context is particularly narrow (see, among others, *Tête v France* 2020, 63; *Lingens v Austria* 1986, 42; *Sanchez v France* 2023, 146). The Recommendation of the Committee of Ministers concerning Internet freedom also points out that restrictions on freedom of speech based on legitimate aims, including defamation laws, hate speech-laws, or laws protecting public order, should be specific and narrowly defined in their application so that they do not inhibit public debate [Recommendation CM/Rec(2016)5 (n 30), s. 2.4.2]. Although included in the above-mentioned list, hate speech is something of an exception to the more categorical approach, as its restriction is accepted by the CoE's bodies, including the Court, with an increasingly permissive attitude. In general, however, it remains true that the ECtHR's approach to political speech departs from the case-by-case consideration and tends towards a more categorical protection [somewhat similar to what Melville Nimmer describes as definitional balancing (Nimmer 1968, 942)].

5. Horizontal Effect of Freedom of Speech

The purpose of the constitution and fundamental rights is, above all, to limit state power, thus ensuring the proper exercise of civil liberties. There is thus a primary obligation on the state to refrain from violating these freedoms. Regarding freedom of opinion, the key point is that the state should not interfere in the formation of public opinion. However, the European approach goes beyond this starting point in two important ways.

On the one hand, the documents of the CoE consistently emphasize that the state has not only negative but also positive obligations in connection with the protection of the freedom of speech [Recommendation CM/Rec(2016)5 (n 30), s. 1]. In this regard, the state is obliged not only to refrain from restricting free expression but is also obliged to actively contribute to the creation of an environment that supports the exercise of freedom of speech (for the doctrine and practice of the positive obligation of states, see Kenyon 2001; Kenyon and Scott 2020). In line with this, states have a positive obligation in the digital environment, too, “to create a safe and enabling environment for everyone to participate in public debate and to express opinions and ideas without fear, including those that offend, shock, or disturb state officials or any sector of the population” [Recommendation CM/Rec(2018)2 (n 22), Recital (6)]. The state, therefore, must not only protect the individual exercise of rights, but also promote the fulfilment of freedom of opinion as a social value and institution based on its obligation to ensure “objective institutional protection”. This obligation allows broader scope than the US doctrine to regulate social relations related to this fundamental right. The state’s obligation to act in support of the formation of democratic public opinion justifies only a very narrow range of substantive interventions in the content of social communication.

On the other hand, the role of the state is fundamentally influenced because, according to the European doctrine, the protection of fundamental rights is not only relevant between citizens and states. An integral tenet of European constitutional law for decades has been that in some well-defined cases, when private actors find themselves in a situation that significantly affects the enforcement of the fundamental rights of others, constitutional values also impose requirements on them (Frantziou 2019; Micklitz et al. 2022). Specifically, states have a “positive obligation to ensure the exercise and enjoyment of rights and freedoms (which) includes, due to the horizontal effects of human rights, the protection of individuals from actions of private parties by ensuring compliance with relevant legislative and regulatory frameworks” [Recommendation CM/Rec(2018)2 (n 22), Recital (6)]. Recently, the thesis of the horizontal scope of fundamental rights has gained traction in the field of freedom of speech, especially in the relationship between social media platforms and their users (the profound change in relations regarding free speech certainly appears also in the US literature, but in a different conceptualization, see Balkin 2018). According to this argument, platforms cannot shape and apply their community rules at their own discretion, but must pay attention to the rights of their users, above all their freedom of speech. In terms of content moderation, for instance, the hands of the service providers are therefore tied to a certain extent by the require-

ments arising from the need to ensure the freedom of speech. As a consequence, while the recommendation of the CoE welcomes that “some online platforms have made considerable efforts to prevent the use of their networks as conduits for large-scale disinformation and manipulation of public opinion”, it also warns that “the impact of these measures on the free flow of information and ideas in democratic societies must be studied carefully” [Recommendation CM/Rec(2022)4 (n 21), s. A.6].

This means that when restricting access to content in line with their own community standards and policies, intermediaries must pay attention to users’ right to freedom of speech. This is not to say that the system of requirements placed upon states should be transferred wholesale to social media platforms. First, the bearer of obligations with regard to fundamental rights remains, first and foremost, the state, so it follows that it is the states themselves that are most restricted by precepts arising from the freedom of expression. Second, the enforcement of constitutional rights against private actors always takes into account the specific, legitimate interests of the obliged party. In spite of this, the emergence of a fundamental rights aspect hinges precisely on the fact that these interests cannot be invoked without restriction.

Although platform providers may, on the basis of the objectives of the social network operator, impose special restrictions, they must respect the essential aspects of the fundamental rights that may be thus affected. One such criterion, which follows from the principle of freedom of expression, is that everyone should be free, above all, to express and publish their views in the debate on public affairs. The more heated and current the debate on social issues, the narrower the opportunity for the owners of platforms to intervene with regard to the expression of opinions, and the less the service provider can deviate from the necessary consideration of the key constitutional standards.

Based on all of this, in connection with disinformation there are strong arguments against platforms restricting the content of individual communications that are considered worrisome but not illegal. While the criteria for the free discussion of public affairs protect speakers against the state, there is also a good chance that they could also be invoked against the major social media service providers. On the other hand, considering how difficult it is to judge disinformation, it does not seem reasonable for private companies to be granted the right to decide on this topic instead of state authorities, especially courts. In the area of self-regulation, the situation is therefore just the opposite to the usual, and in constitutional terms there is a narrower scope for intervention, especially in Europe. The hands of service providers are tied by the requirements of ensuring freedom of speech, and the courts must be careful to develop a corresponding practice.

6. Main Arguments Against Restrictive Legal Means

The key finding from the above-mentioned principles and discussion is that the constitutional doctrine of freedom of speech does not support justification for general action against speech that can be classified as disinformation, and restrictive in-

tervention can only take place in rare, exceptional cases. The basic principles and aspects of the democratic participatory concept of free speech bind the legal interpretation of the conceptual elements of disinformation (untrue statement of facts, intent to deceive, and causing harm) in such a way that restrictive mechanisms can only be justified within a narrow range of misleading (and socially otherwise problematic) cases. The main arguments against restrictive interventions can be summarized as follows.

Among the theoretical obstacles that stand in the way of imposing legal restrictions on disinformation, the first is the basic approach of the participatory model of free speech, according to which the active involvement of as many people as possible in the discussion of public affairs is not a circumstance that causes risks but a value to be supported. In the logic of democratic public opinion, the answer to the undoubtedly existing risk that anyone can shape public opinion is not a limitation of participation but the corrective power of a robust debate. This represents more than an abstract doctrine: this argument is also based on the fact that where a pathological social weakness of corrective factors exists, legal restrictions are actually unsuitable tools for improving the situation. Restrictive legal instruments are hardly suited to remedying the problems caused by the lack of sources of information worthy of public trust, the shrinkage of the ethos of quality journalism, and the increasingly irrational tribalism prevailing in public discussions. They can, however, further increase distrust in institutional systems at any time.

Second, under the auspices of democratic public opinion, the European doctrine (also) regards the speaker and their audience first and foremost as autonomous citizens who may interpret information and context in their complexity, and who then jointly bear the result of the exchange of opinions. Democratic public opinion emerges from dialogue among the members of the community that governs itself democratically about how to self-govern. All this supports the rejection of any intervention that would steer the development of public opinion in the ‘right’ direction and protect the audience in a paternalistic way. In the field of disinformation (and without specific additional circumstances), the many restrictions applied on commercial communication cannot be taken as an example to be followed (Cavaliere 2022, 523), because their anthropological approach views the consumer as vulnerable to the manufacturer and distributor, whose position must be protected by the state, above all for the sake of their health and safety.

Third, for the doctrine of freedom of speech, statements that can be considered troubling in the informational sense are in many cases not untrue statements of fact, but rather political opinions in whole or in part, with which the participant in the public debate explains reality. Conspiracy theories, misinterpretations, or distortions are traditional elements of the public discourse, which must also be reckoned with in the altered circumstances of the public sphere of today.

In line with this, fourth, in the evaluation of the motivation of the speaker, their harmful intent can only be interpreted narrowly. Influencing the plural political public is often accompanied by one-sided communications, thus carrying the possibility of misrepresentation, even without the speaker having the intention to harm. In a public life that is based on political competition, the discrediting of an oppo-

ment's ability or policies are organic parts of participation in the public debate, even if they are based on arbitrary highlighting and exaggeration of certain factors, or subjective and baseless assumptions.

Fifth, in order to promote participation and avoid excessive interventions, the doctrine of freedom of speech also limits the legal consideration of grievances. In the case of public figures, jurisprudence often decides in favour of freedom of speech, even when specific personal rights are involved, and the abstract interest of informing society or the electorate can be used to justify restrictions even more narrowly.

7. Conclusion

Overall, the clarification of the current constitutional doctrine in the present paper suggests that measures restricting communication in the fight against disinformation can only play a more significant role than at present if the basic principles of freedom of speech are set aside. The prospect of overruling the aspects that have defined the doctrine of freedom of speech to date can definitely be considered an open question. It can be argued that these aspects were initially tailored to circumstances in which there were fewer speakers, a slower flow of communication, and more rational expressions of public life. In the new, altered circumstances of today new standards must be established and used as tools for effective interventions. However, these constitutional aspects of freedom of speech doctrine were actually not tailored to certain circumstances but to a general principle of the democratic formation of public opinion. It is an undoubted fact that social relations in today's society and the conditions for the democratic exchange of ideas are significantly different now than they were decades ago. Even so, the aforementioned starting points stem from the essence of democracy; hence, as long as European countries want to manage their public affairs democratically, social practices must be adapted to them, and not the other way around. However, the limitations this responsibility places on the use of restrictive legal instruments does not mean that there are no tools to fight against the social effects of disinformation. What is more, deeper reasons for the growth of disinformation can be found in social phenomena against which the state can successfully act primarily, not with restrictive measures but through other policy means to promote quality journalism and information literacy. There is also room for manoeuvre for states in Europe to regulate the structure of democratic public discussion, including the media system and the activity of online platforms in order to make reliable news sources more accessible. But this all requires a separate analysis.

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