

Digitality and Deceit: The ECtHR's Future in Approaching Digital Electoral Mis/Dis/Malinformation from Social Media Users

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2025

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Part 1: Introduction

The growing popularity of social media in recent decades has accompanied an increasing political discourse on these platforms.¹ While this participation is largely welcome, the transition contributed to an acknowledgement that social media exacerbates mis/dis/malinformation, more so than any other digital platform.² In 2018, the Facebook-Cambridge Analytica scandal compromised the data of 87 million individuals.³ Their information was used to create tailored political advertisements, allegedly intended to influence the outcome of the 2016 US Presidential election.⁴ Recently, Elon Musk's presence on the European political stage, after purchasing the popular Twitter/X platform, has led to accusations that he is attempting to alter electoral outcomes.⁵

Concerns over the effect of mis/dis/malinformation have led many States to introduce regulatory measures.⁶ However, criticisms are levelled at measures aiming to curb mis/dis/malinformation for unduly restricting freedom of expression.⁷ The European Court of Human Rights plays a crucial role in ensuring that States balance the right to free and fair elections, protected by Article 3 Protocol 1 (A3P1) of the European Convention on Human Rights (ECHR), and the right to freedom of expression protected by Article 10 ECHR.⁸

To provide an understanding centred on European terminology, this report relies on the following definitions. Misinformation is “verifiably false, inaccurate or misleading information disseminated without an intention to mislead, cause harm, or pursue economic or political gain; users who share

¹ Stefan Stieglitz and L Dang-Xuan, ‘Social Media and Political Communication: A Social Media Analytics Framework’ (2013) 3 *Social Network Analysis and Mining* 1277.

² Global surveys suggest that the public believe social media provides the most significant digital platform for mis/dis/mal/malinformation. See: Ipsos, ‘UNESCO Study on the Impact of Online Disinformation during Election Campaigns’ (Ipsos September 2023) <<https://www.ipsos.com/sites/default/files/ct/news/documents/2023-11/unesco-ipsos-online-disinformation-hate-speech-WEB.pdf>> accessed 4 July 2025.

³ Joanne Hinds, Emma J Williams and Adam N Joinson, “‘It Wouldn’t Happen to Me’: Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal’ (2020) 143 *International Journal of Human-Computer Studies* 102498.

⁴ Joanne Hinds, Emma J Williams and Adam N Joinson, “‘It Wouldn’t Happen to Me’: Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal’ (2020) 143 *International Journal of Human-Computer Studies* 102498.

⁵ Rym Momtaz, ‘Taking the Pulse: Is Elon Musk Meddling In European Politics?’ (Carnegie Endowment, Strategic Europe, 2025). <<https://carnegieendowment.org/europe/strategic-europe/2025/01/taking-the-pulse-is-elon-musk-meddling-in-european-politics?lang=en>> accessed 24 July 2025.

⁶ See, amongst others: Bangladesh, Belarus, Burkina Faso, Cambodia, China, Egypt, France, Germany, Kenya, Malaysia, Myanmar, Singapore, Taiwan, Thailand, United States, Vietnam.

⁷ Konstantinos Kalliris, ‘Online Harm, Free Speech and the Legal but Harmful Debate: An Interest-Based Approach’ (2024) 16(2) *JML* 390, 391.

⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 3 protocol 1; art 10.

The European Court of Human Rights (henceforth, the Court) was established in 1959.¹⁵ It has jurisdiction to rule on applications, primarily brought by individuals, for potential violations of the Convention rights.¹⁶

The rights protected by the Convention are separated into Articles.¹⁷ Some rights, such as the prohibition of torture, are absolute and can never be justifiably restricted by the State.¹⁸ Contrastingly, other rights are qualified and may be interfered with by the State when this is “necessary in a democratic society” and for a legitimate purpose.¹⁹ The Court must undertake a balancing act where qualified rights conflict with each other to determine which right will prevail.²⁰ In balancing the rights to free and fair elections and freedom of expression, Articles 10 and A3P1 are the relevant Articles. The following sections contextualise the rights and case-law.

2.1 Article 10 ECHR

Article 10 protects the right to freedom of expression and 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.* This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity*

Monaco, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Turkey, Ukraine, and the United Kingdom are Member States of the European Convention of Human Rights, but not the European Union.

¹⁵ Congress of Local and Regional Authorities, ‘The Case-Law of the European Court of Human Rights - Local and Regional Authorities’ (Council of Europe 2024) <<https://www.coe.int/en/web/congress/echr-case-law>> accessed 22 July 2025.

¹⁶ Congress of Local and Regional Authorities, ‘The Case-Law of the European Court of Human Rights - Local and Regional Authorities’ (Council of Europe 2024) <<https://www.coe.int/en/web/congress/echr-case-law>> accessed 22 July 2025.

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 3.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 10.

²⁰ Başak Çali, ‘Max Planck Encyclopaedia of International Procedural Law’, *Max Planck Encyclopaedias of International Law* (2018) <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3426.013.3426/law-mpeipro-e3426>> accessed 30 July 2025.

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.”²¹

Before examining how Article 10 interacts with A3P1, it is necessary to briefly explain the context. A State may justify an interference with an applicant’s Article 10 qualified right by invoking one of the legitimate aims listed exhaustively in the second paragraph of Article 10.²² In the context of mis/dis/malinformation, this may manifest in the form of regulation that imposes civil or criminal liability for those who create or share mis/dis/malinformation.²³ Article 10 protects not only “information or ideas that are favourably received or regarded as inoffensive, but also speech that might “offend, shock or disturb the State or any sector of the population”.²⁴

Article 10 not only includes a right to expression, but also to impart and receive information.²⁵ In the context of electoral mis/dis/malinformation, this is significant, as a person’s right may be interfered with in two ways. Firstly, a person creating or sharing mis/dis/malinformation may face an interference with their right to impart information through civil or criminal liability for their expression.²⁶ This affects another person’s Article 10 right to receive the information in question. At the same time, the audience’s right to receive information may be affected by mis/dis/malinformation, when the information they received was false.²⁷

It is important to note that disseminating mis/dis/malinformation is not explicitly excluded from expression protected by Article 10, as seen in *Avagyan v Russia*.²⁸

²¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

²² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

²³ See, amongst others: Bangladesh, Belarus, Burkina Faso, Cambodia, China, Egypt, France, Germany, Kenya, Malaysia, Myanmar, Singapore, Taiwan, Thailand, United States, Vietnam.

²⁴ *Handyside v UK* App no 5493/72 Series A no 24 12 January 1976, [49].

²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

²⁶ See, for example, *Avagyan v Russia* App no 57659/00 (ECtHR 8 July 2008) [5].

²⁷ *Von Hannover (No 2)* App nos 40660/08 and 60641/08 (ECtHR, 7 February 2012) [102].

²⁸ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008). The full judgment is accessible at: <<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-242859%22%5D%7D>> accessed 14 July 2025. The case summary is accessible at: <<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-13026%22%5D%7D>> accessed 14 July 2025.

The case of *Bradshaw and Others v UK* offered the Court its first opportunity to examine the influence of social media in electoral mis/dis/malinformation.³⁷ The applicants were Members of Parliament who believed there was credible evidence of Russian interference in several elections, and that the UK had failed to meet its obligations to positively protect free and fair elections under A3P1.³⁸ It was alleged that the tactics included weaponising disinformation and manipulating public discourse on social media.³⁹ Despite reports published by the House of Commons Digital, Culture, Media and Sport Committee and a report by the Intelligence and Security Committee of Parliament, the applicants complained to the Court that the UK government did not sufficiently investigate credible threats of Russian interference in the UK's democratic processes.⁴⁰ The Court did not find a violation of A3P1, on the basis that, in its view, the UK had taken adequate steps to tackle mis/dis/malinformation and had investigated claims of Russian interference.⁴¹ Ultimately, the Court held that the UK was better placed to evaluate the necessary conditions to provide for a free and fair election in a national context.⁴²

Bradshaw v UK broke new ground in addressing the challenges of mis/dis/malinformation in an electoral context. The Court acknowledged that disinformation was a credible threat to democracy.⁴³ Accordingly, the Court found that A3P1 imposes a positive obligation on States to take measures which protect the integrity of the electoral process, but that this must be balanced with the Article 10 right to receive information.⁴⁴ The State is under a positive obligation to ensure that elections support “the free expression of the opinion of the people in the choice of the legislature”.⁴⁵ While there was no consensus in *Bradshaw v UK* as to the kind of action required to fulfil the positive obligation, it is suggested that A3P1 would require a State to adopt measures to “protect the integrity of its electoral processes”, where there is a credible threat that interference would undermine the essence of the right.⁴⁶ Although a violation was not ultimately found in *Bradshaw v UK*, the Court's recognition that disinformation is capable of interfering with an electorate's A3P1 rights is a welcome progression in the case-law, as the applicants themselves acknowledged.⁴⁷

³⁷ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [130].

³⁸ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [1].

³⁹ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [1].

⁴⁰ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [142].

⁴¹ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [130].

⁴² *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [163].

⁴³ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [159].

⁴⁴ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [161].

⁴⁵ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [117].

⁴⁶ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [136].

⁴⁷ Dan Sabbagh, ‘UK does not need to hold Inquiry into Russian Disinformation, ECHR Rules’ *The Guardian Law* (London, 22 July 2025) <<https://www.theguardian.com/law/2025/jul/22/uk-does-not-need-to-hold-inquiry-into-russian-disinformation-echr-rules>> accessed 5 August 2025.

Part 3: The Principles Derived from the Case-Law

The following sections examine principles from the above case-law. Firstly, the role of freedom of expression as an essential democratic principle is established. In the second and third sections, the report examines the criteria the Court considers when balancing speech and the right to free and fair elections.

3.1 Freedom of Expression as an Essential Principle of Democracy

Article 10 is a cornerstone of a well-functioning democracy.⁴⁸ The notion that political speech enjoys heightened protection under Article 10 permeates the Court's case-law.⁴⁹ The Court considers the right to free and fair elections under A3P1 and the right to freedom of expression under Article 10 to be interrelated; the rights should reinforce one another.⁵⁰ The Court places particular emphasis on protecting public interest or political speech. Freedom of expression is considered one of the preconditions for ensuring the free expression of the people, enshrined in A3P1.⁵¹ As such, the Court considers that there is little scope for restricting Article 10 rights in the period before an election.⁵² *Salov v Ukraine* articulated this, considering that a false statement of a presidential candidate's death could impact "the ability of the electorate to support a particular candidate".⁵³ *Salov v Ukraine* typifies the Court's approach to balancing the right to free and fair elections with freedom of speech. Although the Court acknowledged that the publication may impact the electorate's ability to support the candidate, a violation was nonetheless found. This was because Ukrainian courts had failed to take into consideration the fact that the applicant had not produced or published the statement himself.⁵⁴ The domestic courts had also not proven that the applicant was intentionally attempting to deceive voters or alter the election's outcome.⁵⁵

3.2 Origins and Effects of a Statement

⁴⁸ Council of Europe, 'Freedom of Expression: Standard Setting' (Council of Europe Portal, 2025) <<https://www.coe.int/en/web/freedom-expression/internet-standard-setting>> accessed 24 July 2025.

⁴⁹ *Lingens v Austria* (1986) Series A no 103, [42]; *Castells v Spain* (1992) Series A no 236, [43]; *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [104].

⁵⁰ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [161].

⁵¹ *Handyside v UK* (1976) Series A no 24, [49].

⁵² *Bowman v UK* App no 24839/94 (ECtHR, 19 February 1998) [42].

⁵³ *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [111].

⁵⁴ *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [113].

⁵⁵ *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [114].

In the Court's assessment, a key criterion when balancing speech and fair elections is the origins of the statement and its effect. The case-law may imply that interferences with mis/dis/malinformation emanating from public accounts or authoritative sources may be more likely justified by the Member States. People contributing to misinformation in a digital electoral context from personal social media accounts with a limited following may receive a higher level of protection from the Court, as restrictions to their right to free speech are more likely to be viewed as disproportionate. The judgment in *Avagyan v Russia* made clear that imposing obligations to verify the veracity of every piece of information a private person shares on social media would place an unreasonable burden on them.⁵⁶ Emphasis was placed on the necessity for citizens to contribute to political discussions, and that placing such a burden on them would unjustly stifle free expression.⁵⁷ Considering the emphasis that the Court places on the importance of public contribution to political debate, this implies that interference with a private person who engages in digital electoral mis/dis/malinformation may constitute a violation of their Article 10 right, particularly where their speech did not reach a broad audience. Additionally, considerations as to the *effect* of an impugned statement are also taken into consideration by the Court. A smaller effect is less likely to justify an interference with the impugned expression. In *Avagyan v Russia*, the Court found that the applicant's post had received one like and one reply.⁵⁸ This suggests that the Court may accept that interference is necessary, where the mis/dis/malinformation has a substantial effect on the public or where the speech was disseminated widely online.

3.3 Author Intentions

The intentions of an author in making an expression are another important factor of the Court's balancing between the rights to free expression and free and fair elections.

Differentiating between mis- and dis-information, or wilful and accidental dissemination of false information, is of particular importance in the Court's approach to establishing the author's intentions. There appears to be little scope under the Court's case-law for interference with misinformation disseminated by private individuals, as the author did not intend to deceive or mislead; this directly contrasts with the higher journalistic standards expected of members of the press, or authoritative public

⁵⁶ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008) [31].

⁵⁷ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008) [31].

⁵⁸ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008) [35].

figures.⁵⁹ In *Salov v Ukraine*, the Court placed the burden of proof on Ukraine, in stating that the domestic courts had failed to prove that the applicant had intentionally attempted to deceive the electorate.⁶⁰

In a more nuanced distinction, the case-law differentiates between statements of fact and value judgments. A statement of fact is susceptible to a reasonably high burden of proof and is capable of being proven true or otherwise. A value judgment is not, however, subject to the same burden of proof as a statement of fact, as to do so would place an unreasonable burden and prevent active public debate.⁶¹ The distinction is well evidenced by contrasting *Avagyan v Russia* and *Salov v Ukraine*. In *Avagyan v Russia*, the applicant's criticism of reporting inconsistencies of COVID-19 figures amounted to a value judgment, rather than a false statement of fact, although the Court itself did not express this. Contrastingly, the applicant's expression that the presidential candidate in *Salov v Ukraine* was dead was a statement of fact.⁶² In the context of electoral mis/dis/malinformation, the dividing line between fact and value judgments, and the author's intentions in making such a statement, is a potentially challenging line to draw.

Part 4: The ECtHR's Future with Electoral Mis/Dis/Malinformation on Social Media

With the case-law still in its infancy, several unresolved tensions remain between the rights to freedom of expression and free and fair elections. The remainder of this report analyses the tensions posed by electoral mis/dis/malinformation in two distinct areas. Firstly, there is a need for clarification on the level of protection afforded to political speech on social media in the electoral cycle. Secondly, there are potential difficulties in delineating between a public and authoritative source of information, in contrast to a personal and private source.

Firstly, there appears to be a varying appetite for allowing interference into political expression, even when it may constitute mis/dis/malinformation in an electoral context. Notable concerns arise that "fake news" laws may illegitimately suppress criticisms and public debate, as articulated in a Joint Concurring Opinion in *Avagyan v Russia*.⁶³ According to the Opinion, "the notion that State

⁵⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

⁶⁰ *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [111].

⁶¹ *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [113].

⁶² *Salov v Ukraine* App no 65518/01 (ECtHR, 27 April 2004) [112].

⁶³ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008) (Joint Concurring Opinion of Judges Ktistakis, Kovatcheva and Durović). A Joint Opinion in the European Court of Human Rights refers to 'any text appended to the judgment...of any multi-member international adjudicatory body (eg. court, tribunal, panel, or a chamber

authorities should serve as arbiters of 'truth' in public debate is fundamentally at odds with the principles enshrined in Article 10".⁶⁴ A desire to protect the statement-makers of misinformation is suggested by the Opinion. This is contrasted with the principles articulated in other case-law, such as *Bowman v UK*, where it was suggested that limiting political speech in the period before an election may be more permissible than at other times, to ensure the free expression of the people in the choice of the legislature, as protected in A3P1.⁶⁵

Drawing together these two lines of thought, which are not solely limited to the cases referenced, the Court should clarify when States will have the power to legitimately interfere with digital mis/dis/malinformation in an electoral context. As the contrasting approaches in the case-law suggest, the balancing act that the Court undertakes is a complicated decision, conducted on a case-by-case basis.⁶⁶ However, it would be useful for the Court to recognise the broader rights of the electorate protected under A3P1, which include State duties to ensure the free expression of the people, as Pentney and Shattock argue.⁶⁷ Whilst the judgment in *Bradshaw v UK* confirmed that States may be under a positive obligation to regulate against mis/dis/malinformation in some circumstances, the scope of when this would be required was not clearly articulated.⁶⁸ Emphasising that legislation, and its application, must not unduly restrict expression is a notable thread in the case-law, and one that should be welcomed.⁶⁹ Ideally, the Court could articulate clearly the level of protection afforded to political speech in the electoral cycle, taking into consideration the rights of the electorate, which may legitimise further regulation of mis/dis/malinformation in some circumstances. Following the judgment in *Bradshaw v UK*, this would also clarify the rights and obligations of social media users.

Secondly, social media users who sit on the boundary between private individuals and authoritative sources of media may cause significant problems for the Court's assessment in the years to come. In contrast with the applicants in *Salov v Ukraine* and *Avagyan v Russia*, social media users with high numbers of followers and interactions may be treated as authoritative sources of media, even when they

thereof referred to generally as 'institution') that is authored by two or more members of the decision-making panel responsible for the institution's decision. Whereas the decision of the institution is proclaimed in the name of that institution and bears the formal authority of that institution, joint opinions are produced in the names of the decision-makers as individuals'. See Hemi Mistry, 'Joint Opinion', *Max Planck Encyclopaedias of International Law* (2023) <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2663.013.2663/law-mpeipro-e2663?rskey=W0efcy&result=1&prd=OPIL>> accessed 1 August 2025.

⁶⁴ *Avagyan v Russia* App no 36911/20 (ECtHR 8 July 2008) (Joint Concurring Opinion of Judges Ktistakis, Kovatcheva and Durović).

⁶⁵ *Bowman v UK* App no 24839/94 (ECtHR, 19 February 1998) [43].

⁶⁶ Katie Pentney and Ethan Shattock, 'Disinformation and Democracy on the Docket: Reformulating the Approach to Electoral Disinformation under the ECHR' (2025) 20(20) OJLS 1.

⁶⁷ Katie Pentney and Ethan Shattock, 'Disinformation and Democracy on the Docket: Reformulating the Approach to Electoral Disinformation under the ECHR' (2025) 20(20) OJLS 1, 6.

⁶⁸ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [160] – [163].

⁶⁹ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [160] – [163].

are not professional journalists or accredited members of the press.⁷⁰ A particularly poignant example is Elon Musk’s attempt to sway political discourse and election results in Europe earlier this year.⁷¹ Following Musk’s purchase of X (formerly, Twitter), verified accounts have been more able to influence public opinion through increased visibility.⁷² The dissemination of mis/dis/malinformation from public figures, who are often perceived as authoritative sources, is likely to exacerbate public distrust in the press, government institutions, and the electoral process.⁷³ Mistrust in electoral processes affects A3P1 rights, as the conditions do not “ensure the free expression of the people”.⁷⁴

Bradshaw v Others clarified to an extent the positive obligation of the State in protecting against interference from a separate hostile State in electoral proceedings, but did not consider the influence of other actors.⁷⁵ Beyond this, the Court should take the opportunity to articulate more clearly the boundaries of positive obligations on States to counter mis/dis/malinformation which emanates from authoritative public figures, rather than solely that originating from hostile States. As such, the Court should take its next available opportunity to clarify the scope of popular bloggers and citizen journalists. This may involve a clearer demarcation between applicants who are likely to be held to higher journalistic standards of source and information verification and those who do not need to undergo such a task. Making and publishing a statement should not, in every case, be a laborious task of verifying information and sources, as to do so would have a chilling effect on journalism and citizen engagement in political issues.⁷⁶ While the Court must continue to assess each case on its merits, the current case-law is not conducive to social media users effectively regulating their activity.

Part 5: Conclusion

In the context of the newly released judgment in *Bradshaw v UK*, and the increasing concerns of digital mis/dis/malinformation affecting the integrity of electoral processes, this report has sought to

⁷⁰ Przemyslaw Majerczak and Artur Strzelecki, ‘Trust, Media Credibility, Social Ties, and the Intention to Share towards Information Verification in an Age of Fake News’ (2022) 12(2) Behavioural Sciences 51.

⁷¹ Rym Momtaz, ‘Taking the Pulse: Is Elon Musk Meddling In European Politics?’ (Carnegie Endowment, Strategic Europe, 2025). <<https://carnegieendowment.org/europe/strategic-europe/2025/01/taking-the-pulse-is-elon-musk-meddling-in-european-politics?lang=en>> accessed 24 July 2025.

⁷² Przemyslaw Majerczak and Artur Strzelecki, ‘Trust, Media Credibility, Social Ties, and the Intention to Share towards Information Verification in an Age of Fake News’ (2022) 12(2) Behavioural Sciences 51.

⁷³ Finley Thomas, ‘Foreign Influence in European Elections: Examining X, Elon Musk, and the Amplification of Misinformation and Disinformation’ (The Counterterrorism Group 3 February 2025) <https://www.counterterrorismgroup.com/post/digital-investigation-of-foreign-influence-in-european-elections-examining-x-elon-musk-and-the-am#ftnt11> accessed 4 August 2025.

⁷⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), Protocol 1 Article 3.

⁷⁵ *Bradshaw and Others v UK* App no 15653/22 (ECtHR, 22 July 2025) [118].

⁷⁶ Przemyslaw Majerczak and Artur Strzelecki, ‘Trust, Media Credibility, Social Ties, and the Intention to Share towards Information Verification in an Age of Fake News’ (2022) 12(2) Behavioural Sciences 51.

derive the relevant principles from the case-law to establish recommendations as to the European Court of Human Rights' future in tackling these issues.

Through selected case-law, this report has derived three principles. Part 3.1 established freedom of expression as a foundation of democratic society. Accordingly, there is little scope for interference with political speech. Secondly, the type of actor and the effect of the expression affect the Court's balancing act between Article 10 and A3P1. Finally, the author's intention affects the Court's approach and illustrates a distinction between misinformation and disinformation in the case-law.

In light of this analysis of the case-law, Part 4 made some recommendations where the Court may clarify its definitions and approaches. Firstly, the Court is presented with an opportunity to clarify when a State may legitimately interfere with electoral mis/dis/malinformation. Secondly, the Court should take further action to delineate between different types of political actors. As outlined, private persons may gain the status of an authoritative source of information. This creates issues with the current categorisations, and the accordingly varied level of protection. Cumulatively, the Court's definitions and categorisations would benefit from clearer articulation to allow actors to regulate their behaviour.

Bibliography

Primary Sources

Avagyan v Russia App no 57659/00 (ECtHR 8 July 2008).

Bowman v UK App no 24839/94 (ECtHR, 19 February 1998).

Bradshaw and Others v UK App no 15653/22 (ECtHR, 22 July 2025).

Castells v Spain (1992) Series A no 236.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

Handyside v UK App no 5493/72 Series A no 24 12 January 1976.

Lingens v Austria (1986) Series A no 103.

Mathieu-Mohin and Clerfayt v Belgium (1987) Series A No 113.

Salov v Ukraine App no 65518/01 (ECtHR, 27 April 2004).

Von Hannover (No 2) App nos 40660/08 and 60641/08 (ECtHR, 7 February 2012).

Secondary Sources

Çali B, 'Max Planck Encyclopaedia of International Procedural Law', *Max Planck Encyclopaedias of International Law* (2018) <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3426.013.3426/law-mpeipro-e3426>> accessed 30 July 2025.

Congress of Local and Regional Authorities, 'The Case-Law of the European Court of Human Rights - Local and Regional Authorities' (Council of Europe 2024) <<https://www.coe.int/en/web/congress/echr-case-law>> accessed 22 July 2025.

Council of Europe, 'Guidance Note on Countering the Spread of Online Mis- and Disinformation through Fact-Checking and Platform Design Solutions in a Human Rights Compliant Manner' (Steering Committee for Media and Information, 2023) 6.

Ipsos, 'UNESCO Study on the Impact of Online Disinformation during Election Campaigns' (Ipsos September 2023) <<https://www.ipsos.com/sites/default/files/ct/news/documents/2023-11/unesco-ipsos-online-disinformation-hate-speech-WEB.pdf>> accessed 4 July 2025.

Hinds J, Williams E J and Joinson A, "'It Wouldn't Happen to Me": Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal' (2020) 143 *International Journal of Human-Computer Studies* 102498.

Kalliris K, 'Online Harm, Free Speech and the Legal but Harmful Debate: An Interest-Based Approach' (2024) 16(2) *JML* 390.

Majerczak P and Strzelecki A, 'Trust, Media Credibility, Social Ties, and the Intention to Share towards Information Verification in an Age of Fake News' (2022) 12(2) *Behavioural Sciences* 51.

Momtaz R, 'Taking the Pulse: Is Elon Musk Meddling In European Politics?' (Carnegie Endowment, Strategic Europe, 2025). <<https://carnegieendowment.org/europe/strategic-europe/2025/01/taking-the-pulse-is-elon-musk-meddling-in-european-politics?lang=en>> accessed 24 July 2025.

Pentney K and Shattock E, 'Disinformation and Democracy on the Docket: Reformulating the Approach to Electoral Disinformation under the ECHR' (2025) 20(20) *OJLS* 1.

Sabbagh D, 'UK does not need to hold Inquiry into Russian Disinformation, ECHR Rules' *The Guardian Law* (London, 22 July 2025) <<https://www.theguardian.com/law/2025/jul/22/uk-does-not-need-to-hold-inquiry-into-russian-disinformation-echr-rules>> accessed 5 August 2025.

Stieglitz S and Dang-Xuan L, 'Social Media and Political Communication: A Social Media Analytics Framework' (2013) 3 *Social Network Analysis and Mining* 1277.

Wardle C and Derakhshan H, 'Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making' (DGI (2017) 9, Council of Europe 2017).