

# Digitality, Deceit and Democracy: Electoral Mis/Dis/Malinformation and Social Media before the European Court of Human Rights

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## Introduction

The growth of social media has increased online political discussion, but also intensified the spread of harmful and misleading information during elections. The Cambridge-Facebook Analytica Scandal and recent developments concerning the political influence of tech moguls have demonstrated the impact that social media may have on electoral outcomes. The European Court of Human Rights maintains an essential role in balancing freedom of expression and the right to a “free and fair election” when these rights are in conflict.

## Aims

This research investigates how the European Court of Human Rights interprets and balances freedom of expression and electoral integrity, and whether this approach is fit for purpose in the digital age. The report firstly seeks to analyse the Court's case law and derive the relevant principles of the Court's approach. A further aim is to propose suggestions for how the Court could more clearly articulate the obligations of States, and the rights of individual social media users.

## Methodology

Through an analysis of the European Court of Human Rights' case law, the research derives the emerging principles, focusing on the importance of freedom of expression, the origins and effects of false statements, and the author's intentions. This legal analysis is contextualised through the relevant academic literature, Council of Europe policies and real-world examples. For instance, the allegations of Russian interference in elections and Elon Musk's supposed attempts to influence European politics through the X/Twitter platform are examined.



Based on these principles, the research suggests that rights protection would benefit from the ECtHR more clearly defining and articulating key concepts. For example, while the Court has confirmed that disinformation may impact electoral integrity, it is not clear when a State may legitimately interfere with problematic information to ensure an electorate's right to a “free and fair” election. Further, it is not yet known how the Court would approach problematic information from a private individual who is nonetheless viewed as an authoritative source of information. Better articulation would allow States and citizens to more appropriately regulate their actions.

## Results

The analysis identified three central principles which can be derived from the Court's case law. Firstly, the Court consistently describes freedom of expression as a cornerstone of a well-functioning democracy. As such, political speech is afforded a heightened level of protection by the Court, meaning that States must only interfere in limited circumstances. Secondly, the origin and effect of a statement are determining factors in the Court's decision of whether a State justifiably interfered with a person's freedom of expression. Harmful or misleading information from authoritative sources or with significant public impact is more likely to be justifiably restricted by States. Finally, the Court places weight on the author's intentions, distinguishing between harmful information shared without an intention to mislead and deceptive information shared intentionally.

## Conclusion

This research demonstrates that freedom of expression is an essential democratic principle, but false and misleading information shared on social media poses a significant risk to electoral integrity. The European Court of Human Rights should refine its approach to balancing these rights, particularly in the context of social media users, to ensure that democratic debate and electoral processes are both upheld in the digital age.



## References

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## Further Information

Please see the link below for access to the full report.  
<https://laidlaw scholars.network/documents/digitality-and-deceit-the-european-court-of-human-rights-future-in-approaching-digital-electoral-mis-dis-malinformation-from-social-media-users-research-report>  
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