

# COVID-19 Infodemic: fake news, real censorship Information and freedom of expression in time of Coronavirus

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## Abstract

*Infection disease outbreaks are invariably characterized by myths and rumors, boosted by social media accounts, that media often pick up and circulate. On the grounds of protecting public health in the context of the COVID-19 pandemic, some Member States of the Organization for Security and Co-operation in Europe imposed strict rules on the dissemination of “fake news”. This paper reviews the outbreak communication principles established by the World Health Organization and checks the compliance of emergency legislation, adopted under the pretext of combating misinformation and disinformation, against fundamental human rights.*

**Key words:** COVID-19, Disinformation, Misinformation, Human Rights, International Law.

## 1. Introduction

On 5 February 2020 the International Committee on Taxonomy of Viruses (ICTV) announced «severe acute respiratory

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syndrome coronavirus 2 (SARS-COV-2)» as the name of the new virus responsible for the COVID-19 disease – the name of the disease in many cases is different from the virus name<sup>1</sup>. This name was chosen because the virus is genetically related to the coronavirus responsible for the SARS outbreak of 2003<sup>2</sup>. The World Health Organization (WHO), the specialized agency of the United Nations (UN) responsible for international public health, called the disease “COVID-19”, on communication grounds that, using the acronym SARS may have created fear for some populations affected by the homonymous outbreak in<sup>3</sup>. COVID-19 is the third documented spillover of an animal coronavirus to humans in only two decades that has resulted in a major epidemic<sup>4</sup>. The fear of the disease, which broke out in the Chinese city of Wuhan<sup>5</sup>, has developed into a worldwide pandemic and panic has spread widely. Governments took emergency measures to protect public health.

## 2. *Emergency? What Emergency?*

A “pandemic” is an epidemic crossing international boundaries and usually affecting a large number of people<sup>6</sup> – an “epidemic” occurs when in a community or region there are more cases of a certain disease than normally expected<sup>7</sup>. An influenza

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1. Cf. INTERNATIONAL COMMITTEE ON TAXONOMY OF VIRUSES (ICTV), *Naming the 2019 Coronavirus*, 5 February 2020, <https://talk.ictvonline.org/information/w/news/1300/page>.

2. An outbreak is «the emergence of infectious disease human cases and rapid spread causing illness and potential death». Cf. WHO, *World Health Organization Outbreak Communication Planning Guide*, WHO, Geneva July 2005, p. 30.

3. Cf. WHO, *Naming the coronavirus disease (COVID-19) and the virus that causes it*, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

4. Cf. A.E. GORBALENYA, S.C. BAKER, R.S. BARIC *ET AL.*, *The species severe acute respiratory syndrome-related coronavirus: classifying 2019-nCoV and naming it SARS-CoV-2*, in «*Nat Microbiol*», 5, pp. 536-544.

5. Cf. WHO, *Pneumonia of unknown cause—China*, 5 January 2020, <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en>.

6. *Pandemic*, in M.S. PORTA (ed. by), *A dictionary of epidemiology*, Oxford University Press, Oxford 2014.

7. *Epidemic*, in M.S. PORTA (ed. by), *A dictionary of epidemiology*, cit.

(flu) pandemic occurs when a new virus appears, against which the human population have no immunity<sup>8</sup>.

Influenza can turn into a pandemic and spread worldwide quickly. Influenza pandemics occur every 10-15 years.<sup>9</sup> The last pandemic that spread globally was the influenza A(H1N1) in 2009, better known as the “swine flu”. Up to 650,000 deaths annually are associated with respiratory diseases from seasonal flu<sup>10</sup>. The death toll of the 2017-2018 seasonal flu was over 80,000 Americans<sup>11</sup>.

Despite flu and flu pandemics, or, more generally, pandemics, are a time constant, before the 2019 novel coronavirus no government participating in the Organization for Security and Co-operation in Europe (OSCE) had taken measures restricting fundamental rights on grounds of public health safeguard.

Some emergency measures adopted to protect public health in the context of the COVID-19 pandemic seem to be quite inconsistent with this purpose. As it is widely acknowledged that tobacco is among the leading cause of mortality in the world, it sounds bizarre that some governments, such as the Italian one, ordered to shut down all the “non-core” economic activities, while smoke and tobacco shops were allowed to stay open<sup>12</sup>.

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8. Cf. WHO & UNICEF, *Behavioural interventions for reducing the transmission and impact of influenza A(H1N1) virus: a framework for communication strategies*, June 2009, [https://www.who.int/csr/resources/publications/swineflu/framework\\_20090626\\_en.pdf](https://www.who.int/csr/resources/publications/swineflu/framework_20090626_en.pdf).

9. Cf. M. CHENG, *WHO Handbook for Journalists: Influenza Pandemic*, WHO, Geneva 2005, p. 1.

10. Cf. WHO, *Up to 650 000 people die of respiratory diseases linked to seasonal flu each year*, <https://www.who.int/news-room/detail/14-12-2017-up-to-650-000-people-die-of-respiratory-diseases-linked-to-seasonal-flu-each-year>.

11. Cf. CENTERS FOR DISEASE CONTROL AND PREVENTION, *Summary of the 2017-2018 Influenza Season*, <https://www.cdc.gov/flu/about/season/flu-season-2017-2018.htm>.

12. Cf., e.g.: Art. 1 of Decree-Law No. 6 of 23.2.2020, in *Gazzetta Ufficiale della Repubblica Italiana*, Vol. 45 of 23 February 2020; Art. 1 of Decree of the President of the Council of Ministers of 11 March 2020, in *Gazzetta Ufficiale della Repubblica Italiana*, Vol. 64 of 11 March 2020; Art. 1 of Decree of the President of the Council of Ministers of 22.3.2020, in *Gazzetta Ufficiale della Repubblica Italiana*, Vol. 76 of 22.3.2020.

Noncommunicable diseases, such as chronic respiratory diseases, are the leading cause of mortality in the world – risk factors include tobacco<sup>13</sup>. Lower respiratory infections are among the leading causes of death. According to the WHO lower respiratory infections are among the leading causes of death in low-income countries, amounting approximatively to 80% of crude death rate (per 100,000 population)<sup>14</sup>. Chronic obstructive pulmonary disease claimed 3.0 million lives in 2016, while lung cancer (along with trachea and bronchus cancers) caused 1.7 million deaths. Lower respiratory infections remained the most deadly communicable disease, causing 3.0 million deaths worldwide in 2016. The WHO called relevant national authorities to assess the effectiveness of their health system and to determine the focus of their actions based on cause-of-death statistics<sup>15</sup>. Nevertheless, many countries still lack important preparedness capacities or have not updated their pandemic influenza preparedness plans<sup>16</sup>.

These contradictions suggest that in the context of COVID-19 emergency, the protection of public health is used as a pretext to limit the freedom of expression and information<sup>17</sup>, so that the only source available is the government and the public authorities in general, thus excluding any independent voice and suffocating the public debate.

### 3. *The WHO Guidelines on Outbreak Communication*

After the 2003 SARS epidemic, the World Health Organization deserved much more attention to communication during a

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13. Cf. WHO, *Noncommunicable diseases*, <https://www.who.int/data/gho/data/themes/noncommunicable-diseases/GHO/noncommunicable-diseases>.

14. Cf. WHO, *The top 10 causes of death*, 24.5.2018, <https://www.who.int/news-room/fact-sheets/detail/the-top-10-causes-of-death>.

15. *Ibid.*

16. Cf. WHO, *Pandemic influenza preparedness in WHO Member States: Report of a Member States survey*, [https://www.who.int/influenza/preparedness/pandemic/member\\_state\\_survey/en](https://www.who.int/influenza/preparedness/pandemic/member_state_survey/en).

17. For the purpose of this paper we adopt the definition of freedom of expression and information set forth in Art. 11 of the EU Charter of Fundamental Rights.

pandemic and adopted new regulations on how to manage information in outbreaks<sup>18</sup>. In a guide containing recommendations to help national authorities to implement the outbreak communication principles, the WHO suggests to review international agreements on the public release of information<sup>19</sup>. These agreements should include the main instruments on human rights – the guide does not spell it.

WHO documents, such as the handbook on *Effective Media Communication during Public Health Emergencies*<sup>20</sup>, are intended to assist public authorities to communicate effectively through the media during an outbreak – they are not designed to support media and journalist. These publications do not say anything about the compliance with fundamental human rights: freedom of speech; freedom of thought; freedom of expression; freedom of the press; freedom of information<sup>21</sup>. Ultimately, these guidelines can help governments, especially authoritarian ones, to better convey their communication – a kind of propaganda.

The claims the right of populations to be informed on what affects their lives and concludes that decision-makers must inform people and not hide relevant information<sup>22</sup> – all governments are tempted to hide information about an outbreak for one reason or another.<sup>23</sup> The greater impediment to effective information is political nature; it is likely that national security may become an excuse for secretiveness or deceit<sup>24</sup>. According

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18. Cf. WHO, *Outbreak Communication. Best practices for communicating with the public during an outbreak. Report of the WHO Expert Consultation on Outbreak Communications held in Singapore, Sept. 21–23, 2004*, WHO, Geneva 2005.

19. Cf. WHO, *World Health Organization Outbreak Communication Planning Guide*, p. 8.

20. R.N. HYER, V.T. COVELLO, *Effective Media Communication during Public Health Emergencies*, WHO, Geneva July 2005, p. II.

21. For the purpose of this paper the terms “freedom of thought”, “freedom of speech” “freedom of press”, “freedom of expression”, and “freedom of the media” have the same meaning.

22. WHO, *Outbreak Communication. Best practices for communicating with the public during an outbreak*, cit., pp. 19, 27, 28.

23. Ivi, p. 10.

24. Ivi, pp. 24, 39, 40.

to the UN specialized agency for international public health, officials make decisions based on how best to survive in a particular political climate like outbreaks; they may feel uncomfortable communicating information that is very likely to provoke questions from the public and press that cannot be answered with certainty<sup>25</sup>.

WHO publications warn national authorities that many reporters perceive themselves as “watchdogs” of governments: journalists focus on underlying political or social conflict; they are often suspicious if access to information is denied or if answers to questions are not forthcoming<sup>26</sup>. Reporters are deemed to be «highly dependent» upon government officials and agencies for a flow of newsworthy information that makes news production «more predictable, efficient and profitable»; if this flow is «blocked», journalists are more likely to seek other sources<sup>27</sup>. On one side, these considerations seem to suggest that feeding reporters constantly with public information<sup>28</sup> avoid the risks that they turn to unofficial sources; on the other, governments are tempted to become themselves the only source of information.

While politicians decide to manage information according to their purposes, journalists seek to uncover the truth during an outbreak response; they can be allies, but they will not tolerate being misled or lied to by officials<sup>29</sup>. The actions of decision-makers will be closely scrutinized by the press, and press reports, in turn, will influence public confidence in the authorities and feed back into political concerns<sup>30</sup>. When a government has low credibility, the lack of confidence in the political leadership feeds the public distrust of the authorities’ commitment to protect public health and public protests and demonstrations are

25. Ivi, p. 34.

26. Cf. HYER & COVELLO, *Effective Media Communication*, cit., p. 6

27. *Ibid.*

28. Public information is all information originating from the field of work of the public sector bodies.

29. Cf. WHO, *Outbreak Communication. Best practices for communicating with the public during an outbreak*, pp. 8, 44.

30. Ivi, pp. 8, 9.

likely to be held: mismanagement of outbreak communication can damage a nation's political image at the highest level<sup>31</sup>. The conclusion is obvious: apolitical culture in which officials regularly collaborate with the media is more likely to maintain public confidence in an outbreak response than a political culture in which the media are distrusted and their work is suppressed<sup>32</sup>.

#### 4. *An Opportunity to Control Information*

Outbreaks are invariably characterized by rumors and misinformation that media often pick up and circulate<sup>33</sup>. As the COVID-19 became a headline news, conspiracy theories, bogus medicines and cures, false regulations and fake claims about vaccines circulated on the Internet and on social media platforms. The WHO warned that the COVID-19 outbreak and response has been accompanied by a massive «infodemic»<sup>34</sup> – an over-abundance of information and misinformation that makes it hard for people to find trustworthy sources and reliable guidance when they need it<sup>35</sup>. Social media accounts boosted myths and rumours that can potentially harm the public's health, such as false prevention measures or cures<sup>36</sup>. The WHO called countries to counter this flow of disinformation. Provisions included in the COVID-19 response decrees granted governments special powers to curb freedom of information.

Politics, information, communication, and outbreak are deeply interwind. Outbreak communications management policy is a political choice. A WHO report states that an outbreak is an inherently political event; outbreaks have a «high political profile», grabbing attention at highest and powerful government

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31. Ivi, pp. 12, 13, 32.

32. Ivi, p. 10.

33. Cf. WHO, *World Health Organization Outbreak Communication Planning Guide*, pp. 16, 18.

34. Cf. WHO, *Novel Coronavirus (2019-nCoV)*, Situation Report 13 of February 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200202-sitrep-13-ncov-v3.pdf?sfvrsn=195f4010\\_6](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200202-sitrep-13-ncov-v3.pdf?sfvrsn=195f4010_6).

35. *Ibid.*

36. *Ibid.*

level<sup>37</sup>. The UN health agency believes that the political context further defines the communications challenge.<sup>38</sup>

To stop “fake news” on the pandemic and to avoid the spread of panic and confusion, some governments, both authoritarian systems and democracies, adopted restrictive policies on information – measures that seem to be inconsistent with their purpose, but that are useful to curb dissenting voices. We grouped these governments into three blocks, according to the *Democracy Index 2019*<sup>39</sup>, that rates the state of *democracy* in 167 countries: hybrid regimes (Republika Srpska<sup>40</sup>, Serbia, Kosovo, Turkey, Ukraine, and Armenia); authoritarian regimes (Russia, Belarus, and Azerbaijan); democracies (Romania, Bulgaria, Hungary, and Italy).

In some countries, reporters investigating the disease were arrested. In Tukey, a nation that had already taken draconian measures under the state of emergency declared in the aftermath of the attempted coup d'état of 15 July 2016, some journalists were briefly detained after they published reports on the coronavirus crisis<sup>41</sup>. In Belarus a reporter who had recently published articles on the disease crisis, was detained for three days<sup>42</sup>. In Kosovo the police arrested the editor-in-chief of the KOSSEV portal, Tatjana Lazarević, for allegedly violating the curfew. According to KOSSEV, Lazarević was on her way to report on the situation in a health centre, in relation to the pan-

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37. Cf. WHO, *Outbreak Communication. Best practices for communicating with the public during an outbreak*, pp. 7, 5.

38. Ivi, p. 10.

39. Cf. THE ECONOMIST INTELLIGENCE UNIT, *Democracy Index 2019*, <https://www.eiu.com/topic/democracy-index>.

40. Republika Srpska is one of the two equitable entities of Bosnia and Herzegovina, the other being the Federation of Bosnia and Herzegovina.

41. Cf. OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA, *OSCE Media Freedom Representative concerned about detention of several journalists following their reports on coronavirus crisis in Turkey*, 23.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449023>.

42. Cf. OSCE RFOM, *OSCE Media Freedom Representative expresses deep concern about detention of journalist Serguey Satsouk in Belarus*, 26.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449179>.



demic.<sup>43</sup> More incisive measures have *de facto* suspended or curtailed the right of journalists to do their job. Fake news, real arrests.

The Ukrainian Ministry of Culture, Youth and Sports drafted a bill «to provide national information security and right to access to truthful information», that foresees imprisonments up to seven years and block of online media<sup>44</sup>.

Republika Srpska introduced by decree punitive measures, including fines, for spreading «fake news» about the virus in the media and on social networks, causing panic and disorder during the state of emergency<sup>45</sup>. The decree forbids the media and the general public from spreading false news that incites panic and prescribes significant fines for those who do so. This way, the emergency legislation enacted by the government of Banja Luka restricts the media and journalists from reporting freely on the COVID-19 pandemic. According to media reports, the Interior Minister of the Federation of Bosnia and Herzegovina proposed to introduce a similar regulation at federal level<sup>46</sup>.

Serbia, another entity of the dissolved Yugoslavian Federation, adopted a decision regulating the centralization of public information on the coronavirus pandemic during the emergency. The decision provides all information to the public to be shared by the Prime Minister or by individuals authorized by the Crisis Management Taskforce<sup>47</sup>. After concerns expressed by media

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43. Cf. OSCE RFOM, *OSCE Media Freedom Representative concerned about pressure on KOSSEV online portal and its editor-in-chief in Kosovo*, 12.4.2020, <https://www.osce.org/representative-on-freedom-of-media/450085>.

44. Cf. OSCE RFOM, *OSCE Media Freedom Representative concerned by several provisions of Ukraine's new draft law on disinformation*, 23.1.2020, <https://www.osce.org/representative-on-freedom-of-media/444673>.

45. Cf. OSCE RFOM, *OSCE concerned about decree against "fake news" in Republika Srpska, Bosnia and Herzegovina, and calls on authorities to withdraw it*, 14.4.2020, <https://www.osce.org/representative-on-freedom-of-media/450115>.

46. Cf. OSCE RFOM, *OSCE Media Freedom Representative Désir and Head of Mission to Bosnia and Herzegovina Kavalec concerned about measures against coronavirus "fake news"*, 23.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449041>.

47. Cf. OSCE RFOM, *OSCE Media Freedom Representative and OSCE Head of Mission to Serbia stress importance of free access to information, following new Govern-*

professionals and the Organization for Security and Cooperation in Europe, the Government of Serbia revoked the decision<sup>48</sup>. The health emergency is a great opportunity for governments to stand as a single source of information, and resisting temptation is hard.

Armenia introduced a package of amendments to the criminal and administrative codes<sup>49</sup>. During the state of emergency, any «organization that carries out journalistic activities» (the term includes electronic publications that are not considered part of the legacy media) would only be allowed to publish information about the coronavirus crisis that has been released by official sources. After concerns expressed by the OSCE Representative on Freedom of the Media (OSCE RFOM), the media advocacy NGOs and editors, the Government of Yerevan decided to amend the Decree on the State of Emergency concerning the regulations of media activity in the context of the COVID-19 pandemic, that now regulates only the publication of information of a medical and epidemiological nature<sup>50</sup>. However, the amendment does not fix the problem of censorship, and prevents a plural and open debate on the disease.

The protests raised by the representatives of national media outlets, and the concerns expressed by intergovernmental organizations, primarily the OSCE, have prompted some countries to withdraw emergency measures restricting the right of expression. However, the majority of the countries, especially authoritarian ones, maintained the legislation enacted in the context of the epidemic.

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*ment decision*, 1.4.2020, <https://www.osce.org/representative-on-freedom-of-media/449494>.

48. Cf. OSCE RFOM, *OSCE Media Freedom Representative and OSCE Head of Mission to Serbia welcome reversal by Serbian Government of decision on public information*, 2.4.2020, <https://www.osce.org/representative-on-freedom-of-media/449536>.

49. Cf. OSCE RFOM, *Coronavirus response should not impede the work of the media in Armenia, says OSCE Media Freedom Representative*, 24.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449098>.

50. Cf. OSCE RFOM, *OSCE Media Freedom Representative welcomes swift reaction of Armenian Government in addressing his concerns on State of Emergency Decree*, 27.3.2020, <http://www.osce.org/representative-on-freedom-of-media/449290>.

The parliament of Azerbaijan amended the law on information, prohibiting the publication on any Internet resource of «false information» that poses a threat to the life, health and property of the population or public safety, or to the work of life support facilities, financial, transport, communication, industrial, energy and social infrastructure<sup>51</sup>.

The Hungarian cabinet drafted a bill that extended the «state of danger» and gives government the power to rule by decree without any parliamentary oversight or specified time limitation<sup>52</sup>. The stated aim of the legislation is to prevent, manage, and eliminate the epidemic and mitigate the harm it causes – but in effect, it would allow the government to take further measures considered applicable to that aim without involving parliament. The bill, that was said «instill fear in the media», foresees imprisonment of up to five years for distribution of misinformation that obstruct or frustrate the effectiveness of the government's response to the pandemic<sup>53</sup>.

Some governments strengthened or delegated powers to the national regulatory authority of communications. The Romanian President Klaus Iohannis signed an emergency decree that included provisions to counter the spread of disinformation related to COVID-19 online and allowed for the removal of reports and entire websites, without providing appeal or redress mechanisms<sup>54</sup>. The National Authority for Management and Regulation in Communications (ANCOM), an institution for communication infrastructure established under the Romanian Parliament, was made responsible for implementing the removal of

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51. Cf. OSCE RFOM, *Coronavirus response should not curb freedom of the press in Azerbaijan, says OSCE Media Freedom Representative*, 25.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449146>.

52. Cf. OSCE RFOM, *Newly declared states of emergency must include a time limit and parliamentary oversight, OSCE human rights head says*, 30.3.2020, <http://www.osce.org/odhr/449311>.

53. Cfr. OSCE PARLIAMENTARY ASSEMBLY (OSCE PA), *Indefinite rule by decree in Hungary's COVID-19 response a serious concern, say OSCE PA human rights leaders*, 1.4.2020, <https://mailchi.mp/oscepa/2781-press-release-2786224?e=3f015b9a06>.

54. Cf. OSCE RFOM, *Coronavirus response bill should not curb freedom of information in Romania, stresses OSCE Media Freedom Representative*, 30.3.2020, <http://www.osce.org/representative-on-freedom-of-media/449380>.

content through hosting service providers. ANCOM has been entrusted to implement the relevant recommendations coming from the Strategic Communication Group, a task force at the Ministry of Internal Affairs charged with managing the pandemic.

In Russia, the media regulatory agency, Roskomnadzor, requested local media to delete news about the coronavirus.<sup>55</sup> This demand was deemed «arbitrary and illegal» by the OSCE RFOM<sup>56</sup>. Amendments to the Code of Administrative offense and to the Criminal Code, passed by the State Duma and by the Federation Council of the Russian Federation, imposed up to five years imprisonment for spreading false information about COVID-19 pandemic<sup>57</sup>.

Bulgaria drafted a legislation that, amending the Radio and Television Act and the Criminal Code, criminalizes the spread of «Internet misinformation», punishing it even with imprisonment of up to three years<sup>58</sup>. The bill criminalizes all forms of false information disseminated on the Internet, leaving undefined the criteria to define what constitutes «misinformation». The legislation vests the national broadcasting regulator with the power to suspend Websites.

To strengthen the National Health Service and financially support the country in the context of the COVID-19 emergency, the Italian government enacted a decree-law suspending the Freedom of Information Act<sup>59</sup>. The emergency legislation suspended *de facto* the fundamental right to information held by

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55. Cf. OSCE RFOM, *Coronavirus response should not impede the work of the media in Russia*, says OSCE Media Freedom Representative, 24.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449110>.

56. Cf. *Ibid.*

57. OSCE RFOM, *OSCE Media Freedom Representative concerned by the impact of coronavirus response law on work of media in Russia*, 31.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449455>.

58. Cf. OSCE RFOM, *COVID-19 response in Bulgaria should not curb media freedom*, says OSCE Representative on Freedom of the Media, 15.4.2020, <https://www.osce.org/representative-on-freedom-of-media/450193>.

59. Cf. Decree-Law No. 18 of 17.3.2020, in *Gazzetta Ufficiale della Repubblica Italiana*, Vol. 70, 17.3.2020 and Vol. 94, 8.4.2020.

public entities<sup>60</sup>. Has been reported that, before this decree was adopted, the Councilor for Health of the autonomous Region of Sardinia<sup>61</sup> had issued a directive to the directors of hospital and health facilities by which announced «disciplinary measures» against any personnel who make statements without prior authorization by the regional government.<sup>62</sup> The Italian Communications Authority (AGCOM), an independent administrative body elected by the parliament, halted the broadcasting of some programs, the contents of which have been deemed potentially likely to endanger the health of the audience as they might induct to underestimate the potential risks associated with the COVID-19<sup>63</sup>.

Measures taken by OSCE countries were imitated by other nations. These regulations served as a “model”, but also as an excuse: so do they all. Investigations have been opened worldwide in connection with *fake news* postings about COVID-19 on social media<sup>64</sup>.

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60. Cf. FOIA NATIONAL CENTER, ITALIAN GOVERNMENT, *Il FOIA ai tempi del coronavirus*, 9.4.2020, [https://www.foia.gov.it/sospensione\\_foia](https://www.foia.gov.it/sospensione_foia); FOIA NATIONAL CENTER, ITALIAN GOVERNMENT, *Prorogati al 15 maggio i termini di sospensione dei procedimenti amministrativi, inclusi quelli riguardanti il FOIA*, [https://www.foia.gov.it/proroga\\_sospensione\\_procedimenti-amministrativi](https://www.foia.gov.it/proroga_sospensione_procedimenti-amministrativi).

61. Constitutional Law No. 3/1948 grants to the Autonomous Region of Sardinia some degree of domestic autonomy, according to Art. 116 of the Italian Constitution.

62. Cf. A. CONCAS, *No al bavaglio dell'informazione sul coronavirus. Ordine dei giornalisti e Associazione della stampa sarda in difesa della libera consultazione delle fonti*. Order of journalists of Sardinia, 17.5.2020, <http://www.odgs.it/2020/03/17/no-al-bavaglio-dell-informazione-sul-coronavirus-ordine-dei-giornalisti-e-associazione-della-stampa-sarda-in-difesa-della-libera-consultazione-delle-fonti>.

63. Cf. AGCOM, Decision No. 152/20/CONS and No. 153/20/CONS.

64. Cf. MALAYSIAN NATIONAL NEWS AGENCY, *Police open 40 investigation papers over fake news on Covid-19*, «New Straits Times», 18.3.2020, <https://www.nst.com.my/news/crime-courts/2020/03/575758/police-open-40-investigation-papers-over-fake-news-covid-19>; B. DORE, *Fake News, Real Arrests*, in «Foreign Policy», 17 April 2020, <https://foreignpolicy.com/2020/04/17/fake-news-real-arrests>; S. COBLE, *Philippines Arrests 32 on Fake News Charges*, in «Infosecurity Magazine», 7.4.2020, <https://www.infosecurity-magazine.com/news/philippines-arrests-32-on-fake>; JERUSALEM POST STAFF, *Police opens 23 cases against coronavirus fake-news spreaders*, in «Jerusalem Post», 24.3.2020, <https://www.jpost.com/breaking-news/police-opens-23-cases-against-coronavirus-fake-news-spreaders-622163>; S. MAHTANI, *Singapore introduced tough laws against fake news. Coronavirus has put them to the test*, in «The Washington Post», 16 March 2020; M. BOSE, *Coronavirus: Maharashtra Police crack down on hate speech fake news*, «Deccan Herald», 10 April 2020, <https://www.deccanherald.com>

Emergency measures enacted by OSCE governments to combat misinformation in the context of the coronavirus pandemic have been criticized by many. The OSCE RFOM, *Harlem Désir*, claimed that «publishing only information provided by the authorities is a very restrictive measure which would limit freedom of the media and access to information disproportionately»<sup>65</sup>. The OSCE media watchdog stressed that, while there's need to combat false information, this will not be achieved through restriction of media freedom<sup>66</sup>. The RFOM underlined that «[c]ensorship and limiting freedom of expression are not helpful and can undermine trust in institutions».<sup>67</sup>

In a joint statement<sup>68</sup> the OSCE RFOM, the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the special rapporteur for freedom of expression of the Inter-American Commission on Human Rights (IACHR) emphasizes that «[h]uman health...also depends on access to accurate information»<sup>69</sup>. The three media freedom experts specified that «[t]he right of access to information means that governments must be making exceptional efforts to protect the work of journalists». They stressed that «[j]ournalism serves a crucial function at a moment of public health emergency, particularly when it aims to inform the public of

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/national/coronavirus-maharashtra-police-crack-down-on-hate-speech-fake-news-823768.html.

65. Cf. OSCE RFOM, *Coronavirus response should not impede the work of the media in Armenia, says OSCE Media Freedom Representative*, 24.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449098>.

66. Cf. OSCE, *Comprehensive security approach needed for global response to COVID-19, OSCE leaders say ahead of International Day of Multilateralism and Diplomacy*, 23.4.2020, <https://www.osce.org/chairmanship/450688>.

67. Cf. OSCE RFOM, *OSCE Media Freedom Representative Désir and Head of Mission to Bosnia and Herzegovina Kavalec concerned about measures against coronavirus "fake news"*, 23.3.2020, <https://www.osce.org/representative-on-freedom-of-media/449041>.

68. Cf. D. KAYE, H. DÉsir, E. LANZA, *COVID-19: Governments must promote and protect access to and free flow of information during pandemic, say international media freedom experts*, 19.3.2020, <https://www.osce.org/representative-on-freedom-of-media/448849>.

69. The right of expression is protected also under Art. 13 of the *American Convention on Human Rights*, adopted 22.11.1969, entry into force 18.7.1978 (UN Registration 17.8.1979, No. 17955; OAS *Treaty Series*, No. 36; UNTS (1987), Vol. 1144, p. 123.

critical information and monitors government actions», and therefore «[i]t is essential that governments and Internet companies address disinformation in the first instance by themselves providing reliable information».

The OSCE Parliamentary Assembly's special rapporteur on disinformation and propaganda, Oscar Mina, added that due diligence must be shown in countering the spread of disinformation about the crisis<sup>70</sup>. He stated that governments should ensure citizens the right to access free information. At the same time, he urged competent authorities and media publishers «to ensure that trustworthy sources of information prevail over fake news and propaganda...to protect people from contagion and to make sure they are informed to act appropriately». Some government used excessive zeal in accepting the call to counter «fake news», while some others has disregarded the invitation not to make propaganda – an activity typically carried out by governments, especially authoritarian<sup>71</sup>. The criticism of the measures to combat disinformation in the context of the COVID-19 emergency seems well grounded.

An OSCE/ODIHR snap report on the efforts to respond to human rights challenges caused by the COVID-19 pandemic, released in July 2020, shows that the emergency has also been a «stress test» for OSCE democracies to respect their commitment in this field<sup>72</sup>. The report finds that some countries used the pandemic as a pretext to roll back democratic standards, erode fundamental freedoms and human rights and curtail the rule of law, and stresses that there is no situation in which it can be necessary, legitimate or proportionate to dismantle the separation of powers that lies at the core of any democracy, and coun-

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70. Cf. OSCE PARLIAMENTARY ASSEMBLY (OSCE PA), *Urgent need to counter 'fake news' on coronavirus outbreak and make accurate information more accessible for citizens, says OSCE PA's Mina*, 11.3.2020, <https://mailchi.mp/oscepa/2781-press-release-2786188?e=3f015b9a06>.

71. Cf. M. MARSILI, *Propaganda and International Relations: An Outlook in War-time*, in «Voices dos Vales», 7, 2015, pp. 1–38.

72. Cf. OSCE/ODHIR, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, 17.7.2020, <https://www.osce.org/odihr/human-rights-states-of-emergency-covid19>.

tries now need to restore democratic safeguards and guarantee human rights and fundamental freedoms. Commenting the report, the President of the OSCE PA, George Tsereteli, concludes that some governments have «exploited the crisis to sideline the political opposition and consolidate power»<sup>73</sup>.

##### 5. *Compliance of Emergency Legislation with Fundamental Human Rights*

Principles of political science can help to enrich the investigation on how authorities establish an evidence base for their work in outbreak management.<sup>74</sup> At the time of the English Civil War (1642–1651), John Milton wrote *Areopagitica*, a manifesto against arbitrary government licensing and pre-publication censorship<sup>75</sup>. Although at that time this pamphlet did not provoke reactions to stop these practices, the manifesto will be seen in later centuries as a milestone in the struggle for the freedom of expression from the interference of the government<sup>76</sup>. The central argument proposed by Milton is that every person is able to judge ideas for themselves, with the reason, free will, and conscience, and to distinguish good from evil, truth from falsehood. In order to develop the capacity to exercise this rational ability in the right way, people must have access to the ideas of their fellow citizens in a «free and open encounter». Milton developed the concept of the «marketplace of ideas»: when people expose conflicting or opposing arguments, good arguments prevail. In his book *On Freedom*, published in 1859, the British philosopher and economist John Stuart Mill, that was heavily influence by Milton's treatise, concludes that it is

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73. Cf. G. TSERETELI, *COVID crisis reminds us that we're only as strong as our weakest link*, 23.7.2020, <https://www.osce.org/blog/only-as-strong-as-our-weakest-link>.

74. Cf. WHO, *World Health Organization Outbreak Communication Planning Guide*, p. 16.

75. Cf. J. MILTON, *Areopagitica. A speech of Mr. John Milton, For the Liberty of Unlicensed Printing, To the Parliament of England*, London 1644.

76. Cf. M. MARSILI, *Libertà di pensiero. Genesi ed evoluzione negli ordinamenti politici dal V secolo a.C.*, Mimesis, Milano-Udine 2011, p. 125.



evil to silence the expression of opinions.<sup>77</sup> From this it follows that freedom of expression – a concept linked to the right to information – is essential for the wellness of the society.

Devlin gathers that knowledge is reached only through the individual use of information<sup>78</sup>. Knowledge is an individual capacity; it is based on information, but it implies the ability to know how to search for it, interpret it, select it and manage it, and then connect it to others and produce new ones<sup>79</sup>. When knowledge has been produced, the goal of the society would be to promote its maximum diffusion<sup>80</sup>. For these reasons, freedom of information and freedom of expression are considered cornerstone rights that any democratic government should guarantee to its citizens – include the right to receive and impart information and ideas through any. In liberal-democracies, the freedom of the expression implies that all people should have the right to express themselves through their writings or in any other way of conveying personal opinions or creativity – orally, in writing or in print, in the form of art, or through any other media.

Kelsen finds that freedom of speech, freedom of thought and freedom of expression in the press are core values of a democracy<sup>81</sup>. On the contrary, authoritarian systems do not allow freedoms of speech and press; in authoritarian regimes the nonconformity with to that is decided by the authority is a punishable crime<sup>82</sup>. Authoritarian governments are expected to be less sensitive to human rights than democratic countries in which the press enjoys full freedom<sup>83</sup>. While it is common belief that de-

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77. Cf. J.S. MILL [1859], *On Liberty* (A. CASTELL, ed. by), Appleton-Century Crofts, New York 1947, p. 16.

78. Cf. K.J. DEVLIN, *Infosense: Turning Information into Knowledge*, W. H. Freeman & Co., New York 1999.

79. Cf. M. MARSILI, *La rivoluzione dell'informazione digitale in Rete. Come Internet sta cambiando il modo di fare giornalismo*, Odoja, Bologna 2009, p. 20.

80. Ivi, p. 21.

81. Cf. H. KELSEN, *Foundations of Democracy*, in «Ethics», 66 (1), Part 2, 1955, p. 81.

82. Ivi, p. 28

83. Cf. WHO, *Outbreak Communication. Best practices for communicating with the public during an outbreak*, p. 10.

mocracies do not censor newspapers and public expression of opinions, Busch conclude that Internet blocking is no longer a tool wielded only by authoritarian regimes, but one also commonly employed by liberal *democracies*<sup>84</sup>. According to *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, a report on online freedom released by Freedom House, governments around the world are tightening control over citizens' data and using claims of «fake news» to suppress dissent, eroding trust in the Internet as well as the foundations of democracy<sup>85</sup>.

The freedom of opinion and expression is embodied in core international instruments: Art. 19 of the *Universal Declaration of Human Rights* (UDHR) of 1950<sup>86</sup>; Art. 10 of the *European Convention on Human Rights* (ECHR) of 1950<sup>87</sup>; Art. 19 of the *International Covenant on Civil and Political Rights* (ICCPR) of 1966.<sup>88</sup> For the Institutions of the European Union (EU) and its Member States, when implementing EU law, also applies the *Charter of Fundamental Rights of the European Union* (CFR)<sup>89</sup> – much of Charter is based on the ECHR. The ECHR, one of the most advanced instruments on the protection of fundamental human rights, embodies many of the principles enshrined in the *Declaration of the Rights of Man and of the Citizen* of 1789,

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84. Cf. A. BUSCH, P. THEINER, Y. BREINDL, *Internet Censorship in Liberal Democracies: Learning from Autocracies?*, in J. SCHWANHOLZ, T. GRAHAM & P.T. STOLL (ed. by), *Managing Democracy in the Digital Age. Internet regulation, social media use, and online civic engagement*, pp. 11-28, Springer International Publishing, Cham 2018.

85. Cf. FREEDOM HOUSE, *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, pp. 11-14.

86. Cf. *Universal Declaration of Human Rights*, 10.12.1948 (Resolution 217 A (III)), in *Treaty Series*, Vol. 660, p. 195.

87. Cf. *Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols No. 11 and No. 14, signed in Rome 4.11.1950, entry into force 3.9.1953 (ETS 5; 213UNTS 221).

88. Cf. *International Covenant on Civil and Political Rights*, UN General Assembly Resolution 2200A (XXI), adopted and opened for signature, ratification and accession 16.12.1966; entry into force 23.3.1976, in «Treaty Series», Vol. 999 (p. 171) and Vol. 1057 (p. 407).

89. Cf. *Charter of Fundamental Rights of the European Union* (2012/C 326/02), adopted by the European Convention 2 October 2000, proclaimed by the European Parliament, the Council of Ministers and the European Commission 7.12.2012, entry into force 1.12.2009, in *Official Journal of the European Union*, 26.10.2012, pp. 391-407.

that introduces in its preamble the fundamental characteristics of the rights which are qualified as being «natural, unalienable and sacred» and consisting of «simple and incontestable principles» on which citizens could base their demands, including the freedom of speech and press<sup>90</sup>.

The current provisions of the international human rights law allow countries to suspend or limit some rights to ensure safety for their citizens. Art. 15 of the ECHR enables the signatory parties to derogate from some of their obligations in certain exceptional circumstances<sup>91</sup>. These provisions allow states to do this both in times of acute crises and outside of them; the procedure requires governments to declare the state of emergency. The derogation from certain rights under the ECHR does not exempt signatory states from compliance with the mandatory principles: derogations must be exceptional and temporary. While freedom of expression can be restricted on grounds of national security, under Art. 10 of the ECHR and Art. 19 of the ICCPR, such restrictions should not only be necessary to national security, but also proportionate<sup>92</sup>.

According to the Moscow Document produced by the third Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE), under international law, emergency legislation must be necessary and proportionate<sup>93</sup>. All countries across the OSCE region committed themselves not to use state of emergency to dismantle «internationally recognized human rights and fundamental freedoms»<sup>94</sup>. The UN High Commissioner for Human Rights (OHCHR) finds that the suspension of constitutional rights adopted under the state of

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90. Cf. M. MARSILI, *The protection of Human Rights and fundamental freedoms at the origins of the European integration process*, in «Europea», 1, 2018, p. 200.

91. Cf. Art. 15 ECHR: «In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law».

92. *Ibid.*

93. Cf. *Document of the Moscow Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe*, 3.10.1991, §28.

94. *Ivi*, §28.1

emergency, violates human rights and fundamental freedoms, not only with regard to the fundamental law of some nations but also in relation to international conventions<sup>95</sup>.

Last but not least, we must look at the issue of definition of terms. What is “fake news”? This term has been widely flaunted «with no clear idea of what it means» and has «has taken on a variety of meanings, including a description of any statement that is not liked or agreed with by the reader»;<sup>96</sup> it is therefore subject to an arbitrary assessment. According to the definition of the UN Human Rights Committee (HRC) «a norm, to be characterized as a ‘law’, must be formulated with sufficient precision to enable an individual to regulate conduct accordingly».<sup>97</sup>

The term “fake news”, which became widely used in 2016, is ambiguous, lacking an agreed definition.<sup>98</sup> The UK Government claims that «fake news» is «a poorly-defined and misleading term that conflates a variety of false information, from genuine error through to foreign interference in democratic processes»<sup>99</sup>. Instead, it would be better using an agreed definition of the word «misinformation» and «disinformation»<sup>100</sup>. The British Government adopted the following definitions: «disinformation» is «the deliberate creation and sharing of false and/or manipulated information that is intended to deceive and mislead audiences, either for the purposes of causing harm, or

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95. Cf. OHCHR, *Human Rights, Terrorism and Counter-terrorism*, Fact Sheet No. 32 (GE.08-41872), July 2008, p. 27, §2a. Cf. also: C. WARBICK, *The European Response to Terrorism in an Age of Human Rights*, in «European Journal of International Law», 15 (5), 2004:

96. Cf. PARLIAMENT, HOUSE OF COMMONS, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE (DCMS), *Disinformation and ‘fake news’: Interim Report* (HC 363 17/19), 5th Report of Session 2017-19, p. 64, §1.

97. Cf. HUMAN RIGHTS COMMITTEE, *General comment No. 34, Article 19, Freedoms of opinion and expression: International Covenant on Civil and Political Rights* (CCPR/C/GC/34), 102nd Session, 11-29 July 2011 (GE.11-45331), p. 6, §25.

98. Cf. UK PARLIAMENT, HOUSE OF COMMONS, DCMS, HC 363 17/19, pp. 7-8, §11-14.

99. Cf. UK PARLIAMENT, HOUSE OF COMMONS, DCMS, *Disinformation and ‘fake news’: Interim Report: Government Response to the Committee’s Fifth Report of Session 2017-19* (HC 1630 17/19), 5th Special Report of Session 2017-19, p. 2.

100. Cf. UK PARLIAMENT, HOUSE OF COMMONS, DCMS, *Disinformation and ‘fake news’: Final Report* (HC 1791 17/19), 8th Report of Session 2017-19, p. 10, §11.

for political, personal or financial gain»; «misinformation» is «the inadvertent sharing of false information»<sup>101</sup>.

In the context of the measures taken to counter false information on COVID-19, the definition of “fake news” leaves room for arbitrary definitions, lacking the censorship of the court: the power to decide what is misinformation is delegated to the government or to an administrative authority, thus subtracting the jurisdiction from the competent courts. There is a real risk of an undue compression of fundamental rights, such as the right of expression, and the right to information.

## 6. *Conclusions*

The WHO warns governments about the spread of misinformation in an outbreak and suggests tackling it but keeps silent on the compliance with fundamental human rights, including freedom of expression in the press: an ambiguous posture that leaves room for restrictive policies. Under the justification to avoid panic and confusion, and to combat false information during the COVID-19 pandemic, some governments took emergency measures that curtail the freedom of information. The rule of law and civil liberties should however be ensured in situation of public emergency.

The fight against COVID-19 can be a pretext for restricting civil liberties. Authorities cannot invoke the state of emergency or national security as a motivation to suspend or limit fundamental human rights. Measures adopted by governments in time of public emergency, which threatens the life of the nation, even if derogating from their obligations, should not be inconsistent with other obligations under international law.

Emergency legislation can only be temporary and should be subject to parliamentary checks. If passed quickly by parliament in the context of the emergency, the new legislation, once entered into force, will be applicable even after the end of the pan-

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101. UK PARLIAMENT, HOUSE OF COMMONS, DCMS, HC 1791 17/19, p. 10, §12; HC 1630 17/19, p. 2.

demic. Decrees issued during the state of emergency – including the practice of detaining journalists for their work and the abuse of pre-trial detention and Internet censorship – may become permanent measures used to restrict freedom of expression and freedom of the media, and to shout down dissenting voices. The lack of a legal definition of the term “fake news” leaves room for arbitrary and broad interpretations.

The attempt to introduce a single source under the state of emergency is serious and dangerous, and deprives the people of complete, updated and impartial information. Media play a key role in providing important information to the public, and a pluralistic and vibrant media landscape is indispensable to any democratic society. Access to information and a free working environment are therefore essential and need to be ensured at all times, even under state of emergency. Any kind of pressure against journalists has an immediate consequence, not only on them but also on the public’s right to be informed. Restrictive policies adopted under emergency powers with the purpose of countering disinformation should not restrict fundamental rights.

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# OSSERVATORIO

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