

УДК 004.056; 34.05

DOI 10.33184/pravgos-2021.4.4

**OCHEREDKO Yulia Vladimirovna**

*Candidate of Sciences (Philology), Associate Professor  
of the Department of English for the Faculty of Social Communications  
and the Faculty of Law, Astrakhan State University,  
Astrakhan, Russia; y-ocheredko@yandex.ru*

**STARKOVA Laysyan Maratovna**

*Teaching Assistant of the Department of International Law,  
Astrakhan State University,  
Astrakhan, Russia; Sleska5@mail.ru*

**LEGAL ASPECTS OF COUNTERING THE CREATION  
AND DISSEMINATION OF FAKE INFORMATION  
ON THE INTERNET ON THE EXAMPLE OF THE DOMESTIC  
LEGISLATION OF STATES AND THE PRACTICE  
OF INTERNATIONAL REGIONAL ORGANIZATIONS**

The threat of the dissemination and influence of fake (unreliable, false) information can be regarded as one of the negative manifestations of the large-scale digitalization process that covered all spheres of social functioning and structure. Against the backdrop of the unfolding coronavirus epidemic, the threatening consequences of the rapid and uncontrolled process of disinformation in the global information space became especially evident. The phenomenon of fake information becomes a global threat, catastrophic in its destructive consequences. Effective counteraction to the growing threat of misinformation is possible only through an integrated approach that includes adequate and sufficient legal instruments. **Purpose:** to consider legal mechanisms to combat fake content, both at the level of national legislation of states and at the international level. In the course of the work, through the application of the **method** of comparative legal analysis, a study is conducted and an assessment is made of the existing approaches to the definition and normative binding of the category of «fake information»; highlighting the essential characteristics of this phenomenon, criteria for classifying this or that information as fake, researching the mechanism of criminalization of acts of creating and disseminating fake news in the information space using the example of the domestic legislation of individual states, as well as an

overview of existing international initiatives in this area, undertaken at the level of regional international organizations (for example, the EU), and universal measures (UN initiatives). **Results:** based on the results of the study, the authors come to the conclusion that it is necessary to develop a universal comprehensive international legal mechanism to counter the threat of the spread of fake information in the global information space, which should be based on generally binding principles of international law, in the first place respect and observance of human and civil rights and freedoms. Only such an approach seems to be the most effective and can be a kind of deterrent on the way of the desire of individual governments to establish censorship and excessive state control of the information space.

**Keywords:** fake information; disinformation; infodemia; digitalization; information society; information weapons; cybercrime.

The exchange of information can be considered as a basic property of any living community. Information exchange, as a basic determinant of the functioning of modern society, has reached a completely new level both in terms of the volume of information circulating and the speed of its dissemination. At the same time, there is an excessive increase in the level of information impact on various spheres of social development and structure, including social, economic, political, spiritual, et cetera. [1, c. 35].

All these processes lead to the necessity of structural transformations in the social structure – the actual transfer of the basic spheres of public life to digital platforms (primarily the spheres of economy, public administration, education, the financial sector, healthcare, and entrepreneurship). The task of large-scale digitalization is to ensure the fastest and most convenient access of users to socially useful and valuable information, to provide an opportunity for public discussion of significant public problems through collective interaction, and to increase the efficiency of information and knowledge exchange processes as a valuable resource. Meanwhile, the large-scale transition to the mass application of digital technologies has both positive and negative consequences. One of the negative manifestations of the transforming information environment can be considered the problem of widespread and systematic dissemination of so-called «fake» (unreliable, false) information. Its dissemination not only undermines the credibility of the content circulating on the Web, but also has a destructive impact and poses threats to the functioning of democratic institutions, privacy, including threats to the socio-political structure and state security.

A number of experts note the emerging trends of aggravation of the international information confrontation, which is already being conducted in

the form of so-called «information wars». Their characteristic feature is «a coordinated systematic activity aimed at using information as a weapon for destructive influence on the enemy in the economic, political, social and spiritual spheres. At the same time, it is a mistake to believe that the object of information warfare is exclusively information systems. Information weapons are a means of influencing people's consciousness, their behavior and psychological health in order to spread panic, disorientation and «zombification» of the population» [2, c. 356].

All this indicates an increased degree of public danger of the phenomenon of creating and spreading «fake information». What began as «unverified information» (and before the wide spread of the Internet was called «newspaper ducks») today has acquired the character of a global threat, catastrophic in its devastating consequences.

The growing threat of disinformation and the spread of fake news on a cross-border scale indicates the relevance of the researching the essence of this phenomenon, the characteristic criteria, forms, and methods of spreading fake information on the web, which in recent years has drawn the attention of representatives of various fields of science. The legal aspect of this problem was investigated in the works of D. Bebich, M. Volarevich [3], M.O. Zyryanova [4], A.S. Kurganova, N.A. Markova [5], S.V. Polishchuk [2], A.P. Sukhodulov [6], et cetera. The analysis of these works allows us to conclude that effective counteraction to the threat of fake disinformation can be implemented only through a comprehensive approach, including both technical measures and the development of appropriate legal tools.

On this basis, the purpose of this work was to consider the legal mechanisms for combating fake content, both at the level of national legislation of states and at the international level, which will further allow us to formulate proposals for improving and harmonizing legislation.

To implement the goal of the study, the following tasks were outlined:

- conducting a comparative legal analysis of existing approaches to the definition and normative consolidation of the category of «fake information»;
- identification of the essential characteristics of this phenomenon, criteria for classifying certain information as fake, criminalization of acts for the creation and dissemination of fake news in the information space on the example of the domestic legislation of various states;
- review of existing international initiatives in this area, undertaken at the level of regional international organizations (on the example of the EU), and universal measures (UN initiatives).

The request of law enforcement practice is reduced to the need to criminalize the acts of creating and distributing fake information, in order to establish responsibility for the so-called «disinformation», which can lead to serious consequences. Today, many States come up with a number of legislative initiatives aimed at creating a mechanism to counter the spread of fake information, its prohibition and criminalization of the designated acts.

There is a detailed analysis of national legislative initiatives in the field of countering the creation and dissemination of fake information on the example of the legislation of the Russian Federation, the Federal Republic of Germany, France, and Malaysia. The analysis is based on the identification of specific criteria. They are: 1) the definition and normative consolidation of the concept of «fake information»; 2) the essential characteristics of the phenomenon of disinformation and fake information; 3) the criteria for classifying this or that information as fake; 4) the criminalization of acts of creating and distributing fake information in the information space; 5) the procedure for blocking and deleting illegal content/subject of responsibility.

1. For example, a number of legislative amendments were introduced in the Russian Federation in March 2019. Federal Law No. 31-FL of 18.03.2019 «On Amendments to Article 15-3 of the Federal Law «On Information, Information Technologies and Information Protection»<sup>1</sup> supplemented the list of types of information distributed in violation of the law, thereby fixing the category of «fake information» at the legislative level. Federal Law of March 18, 2019 No. 27-FL «On Amendments to the Code of Administrative Offences of the Russian Federation (hereinafter: Law No. 27-FL)»<sup>2</sup> established liability for the placement of deliberately unreliable socially significant information under the guise of reliable messages in information-telecommunication networks and mass media. Administrative responsibility for the dissemination of fake (unreliable) information is provided for in paragraphs 9, 10, 10.1 and 10.2 of Article 13.15 of the Administrative Code of the Russian Federation. At the same time, the differentiation of these administrative offenses is carried out according to the above-mentioned paragraphs of Article 13.15. The Administrative Code of the Russian Federation, de-

---

<sup>1</sup> О внесении изменений в статью 153 Федерального закона «Об информации, информационных технологиях и о защите информации» : федер. закон от 18.03.2019 № 31-ФЗ [Электронный ресурс] // Доступ из справ.-правовой системы «Консультант-Плюс» (дата обращения: 17.05.2021).

<sup>2</sup> О внесении изменений в Кодекс Российской Федерации об административных правонарушениях : федер. закон от 03.18.2019 № 27-ФЗ [Электронный ресурс] // Офиц. интернет-портал правовой информации. URL: <http://publication.pravo.gov.ru/Document/View/0001201903180021?index=0&rangeSize=1> (дата обращения: 22.01.2021).

pending on the nature of the socially dangerous consequences that have occurred and the categories of subjects who have committed these actions. Thus, paragraphs 9, 10 of Article 13.15 of the Administrative Code of the Russian Federation provide for administrative liability for citizens, officials and legal entities, while paragraphs 10.1 and 10.2 of Article 13.15 of the Administrative Code of the Russian Federation provide for administrative liability only for legal entities. Further, it is worth noting the April amendments made to the Criminal Code of the Russian Federation in 2020 in Articles 207.1, 207.2, criminalizing similar acts as paragraphs 10.1, 10.2 of Article 13.15 of the Administrative Code of the Russian Federation. It should be noted that the distinction between administrative responsibility provided for in Article 13.15 of the Administrative Code of the Russian Federation and criminal responsibility provided for in Articles 207.1, 207.2 of the Criminal Code of the Russian Federation is based on the criterion of subject composition, since administrative responsibility for offenses provided for in Paragraphs 10.1 and 10.2 of Article 13.15 of the Administrative Code of the Russian Federation is established for legal entities, but citizens, officials and managers of legal entities can be brought to criminal responsibility provided for in Article 207.1 of the Criminal Code and Article 207.2 of the Criminal Code of the Russian Federation<sup>1</sup>. Thus, the current legislative framework of the Russian Federation in the field of combating fake information includes: Federal Law No. 149-FL of 27.07.2006 (ed. of 30.12.2020) «On Information, Information Technologies and Information Protection»<sup>2</sup>; Federal Law No. 31-FL of 18.03.2019 «On Amendments to Article 15-3 of the Federal Law «On Information, Information Technologies and Information Protection»»; Federal Law No. 27-Fl of 18 March 2019 «On Amendments to the Code of Administrative Offences of the Russian Federation» (p. 9, 10, 10.1 and 10.2 Articles 13.15 of the Administrative Code of the Russian Federation); «Criminal Code of the Russian Federation» of 13.06.1996 N 63-L (ed. of 30.12.2020) (Articles 207.1, 207.2); Criteria for evaluating materials and (or) information necessary for decision-making by the Federal Service for Super-

<sup>1</sup> Уголовный кодекс РФ от 13.06.1996 № 63-ФЗ (ред. от 30.12.2020) [Электронный ресурс] // Доступ из справ.-правовой системы «КонсультантПлюс» (дата обращения: 20.05.2021).

<sup>2</sup> Об информации, информационных технологиях и о защите информации : федер. закон от 27.08.2006 № 149-ФЗ [Электронный ресурс] // Доступ из справ.-правовой системы «КонсультантПлюс» (дата обращения: 10.05.2021).

vision of Communications, Information Technologies and Mass Communications of May 18, 2017 № 84/292/351/MMV-7-2/461@<sup>1</sup>.

Definition and normative consolidation of the concept of «fake information»: «unreliable socially significant information distributed under the guise of reliable messages, which creates a threat of harm to the life and (or) health of citizens, property, a threat of mass violation of public order and (or) public safety, or a threat of interference with the functioning or termination of the functioning of life-support facilities, transport or social infrastructure, credit organizations, energetic, industrial or communication facilities».

Essential characteristics of the phenomenon of disinformation and fake information:

- A sign of publicity: placement in information and telecommunication networks and mass media; public distribution;

- Intent: knowingly false;

- The nature of the information: socially significant information under the guise of reliable reports; information about the circumstances that pose a threat to the life and safety of citizens, and (or) about the measures taken to ensure the safety of the population and territories, technics and methods of protection against these circumstances;

- Socially dangerous consequences: the information must «create a threat of harm to the life and (or) health of citizens, property, a threat of mass violation of public order and (or) public safety, or a threat of interference with the functioning or termination of the functioning of life-support facilities, transport or social infrastructure, credit organizations, energetic, industrial or communication facilities»;

- «interference with the functioning of life-support facilities, transport or social infrastructure, credit organizations, energetic, industrial or communication facilities, but do not contain the composition of a criminal offense»;

- dissemination of information resulting in negligent harm to human health (Part 1 of Article 207.2), negligent death of a person or other serious consequences (part 2 of Article 207.2).

Criteria for classifying certain information as fake: «Criteria for evaluating materials and (or) information whose dissemination is prohibited in the Russian Federation» do not contain criteria for evaluating the category of

---

<sup>1</sup> Об утверждении Критериев оценки материалов и (или) информации, необходимых для принятия решений... : приказ Роскомнадзора № 84, МВД России № 292, Роспотребнадзора № 351, ФНС России № ММВ-7-2/461@ от 18.05.2017 [Электронный ресурс] // Официальный интернет-портал правовой информации. URL: [www.pravo.gov.ru](http://www.pravo.gov.ru) (дата обращения: 02.03.2021).

«fake information», despite the legislative prohibition of its dissemination. Thus, it indicates that there is a gap in the legislation.

Criminalization of acts of creation and dissemination of «fake information» in the information space:

Administrative responsibility: Paragraphs 9, 10, 10.1 and 10.2 of Article 13.15 of the Administrative Code of the Russian Federation;

Criminal liability: Articles 207.1, 207.2 of the Criminal Code of the Russian Federation.

Procedure for blocking and removing illegal content/subject of liability: With the adoption of Law No. 208-FL of 2017, the owners of news aggregators are obliged, among other things, to verify the accuracy of publicly distributed information before distributing it and immediately stop distributing it on the basis of an order of the authorized body; not to allow the use of a news aggregator for the purpose of concealing or falsifying socially significant information, distributing unreliable socially significant news information under the guise of reliable messages. The owner of the news aggregator is not responsible for the dissemination of news information by him if it is a verbatim reproduction of messages and materials or their fragments distributed by the mass media, which can be established and brought to justice for violating the legislation of the Russian Federation on mass media. In the case of «detection on the news aggregator of facts of falsification of socially significant information, dissemination of unreliable socially significant news information under the guise of reliable reports, as well as dissemination of news information in violation of the legislation of the Russian Federation» (paragraph 8 of Article 10.4 of the Law on Information) Roskomnadzor at the request of «authorized state bodies» (by the Law of March 18, 2019 No. 31 of the Federal Law «On Amendments to Article 15.3 of the Federal Law «On Information, Information Technologies and Information Protection» the powers are empowered by the General Prosecutor of the Russian Federation and his deputies) sends an order to the owner of the news aggregator «on the immediate termination of the dissemination of information» (paragraph 9 of Article 10.4 of the Law). In case of refusal to comply with the order, the aggregator faces a fine of up to 3 million rubles (Article 19.7.10-1 of the Administrative Code of the Russian Federation). Law No. 27 FL introduced the powers of the police authorities to initiate such administrative cases, along with Roskomnadzor. At the same time, it is envisaged to notify the Prosecutor's Office of the Russian Federation of all cases of initiation of cases within 24 hours.

Thus, the above-mentioned amendments to the Russian legislation can be regarded as evidence of the increased level of public danger of the prob-



lem of spreading fake information, the urgency of developing and adopting an effective and sufficient legal mechanism to counter this threat. It is worth noting that the Russian legislator has followed the path of normative consolidation of a specific legal definition of the category of «fake information» (Federal Law No. 31-FL of 18.03.2019 «On Amendments to Article 15-3 of the Federal Law «On Information, Information Technologies and Information Protection»). The norms on criminalization of the considered elements of crimes and administrative offenses cover quite extensively the features and composition of these acts, while there is a certain difficulty in distinguishing the types of responsibility (criminal and administrative), due to a certain duplication of the elements of acts. In addition, it seems that the legislative structures do not fully take into account the technological and technical aspects of this type of activity, which makes it difficult to identify clear criteria for classifying this or that information as fake, as well as criminalization and prosecution for committing certain actions to create such an information product.

2. Let us consider the legislative measures to counteract fake information on the example of other states. For example, the German authorities in 2017 adopted the Law «Net Enforcement Act (NetzDG)» The Law on Improving Law Enforcement Practices in Social Networks (The Law on Network Law Enforcement Practice), aimed at establishing responsibility for the owners of a social network on the Internet for violating the rules for the timely removal of illegal content. In fact, the law is aimed at combating various manifestations of destructive, negative, hostile, socially dangerous information on the Internet, in particular, the spread of fake news<sup>1</sup>.

Definition and normative consolidation of the concept of «fake information»: The law does not contain a clear definition of the concept of «fake information», and the criteria contained in it for defining this content as «false information» are generalized. It is worth noting, that the Law covers a large list of types of prohibited content, which includes about 20 elements of crimes under the Criminal Code of Germany and, depending on the object of criminal encroachment, identifies information whose dissemination undermines the foundations of the state structure and stability, encroaches on public order or entails a violation of the rights of citizens. Illegal content must be content within the meaning of subparagraph (1) that meets the requirements of offenses provided for in articles 86 (Distribution of propaganda materials

---

<sup>1</sup> Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act) [Electronic resource]. URL: [https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjbv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2) (date accessed: 20.02.2021).



of unconstitutional organizations), 86a (Use of signs of unconstitutional organizations), 89a (Preparation for the commission of serious violent crimes in the field of state security), 91, 100a (Treasonous forgery), 111 (Public call to commit punishable acts), 126 (Violation of public peace by threatening to commit punishable acts), 129 (Creation of criminal associations), 129b («Criminal and terrorist associations abroad; expanded confiscation of what was acquired by criminal means and withdrawal of objects and means of committing an act»), 130 (Incitement against peoples), 131 (Depiction of violence), 140 (Encouragement and approval of punishable acts), 166 (Insult to faiths, religious societies and ideological associations), 184b (Prostitution that harms minors) in connection with 184d, 185 to 187 (Insult, slander, calumny), 241 (Threat of committing a crime) or 269 (Forgery data relevant for obtaining evidence) of the German Criminal Code<sup>1</sup>.

Sign of publicity: The Law applies to media service providers who, for profit, operate Internet platforms designed to enable users to share any content with other users or make such content available to the public (social networks). Platforms that offer journalistic or editorial content, for which the service provider itself is responsible, are not social networks within the meaning of this Law. The same applies to platforms that are designed to provide individual communication or the distribution of specific content. The social network provider is exempt from the obligations provided for in sections 2 and 3 if the social network has less than two million registered users in the Federal Republic of Germany.

Intent: not specifically defined.

The nature of the information: false information, illegal in the sense of the elements of crimes, as defined in the Criminal Code of the Federal Republic of Germany.

Socially dangerous consequences are determined based on the specific qualification of the information contained on the grounds of a crime included in the list established in the Criminal Code of the Federal Republic of Germany.

Criteria for classifying certain information as fake: The Law does not contain specific provisions regarding the criteria for evaluating certain information as illegal or fake (unreliable).

---

<sup>1</sup> Criminal Code in the version published on 13.11.1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 19.06.2019 (Federal Law Gazette I, p. 844) [Electronic resource]. URL: [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html) (date accessed: 02.05.2021).

Criminalization of acts for the creation and dissemination of fake information» in the information space: Part 3 Section 1: illegal is information or content, the content of which must correspond to the characteristics of crimes provided for in Articles 86, 86a, 89a, 91, 100a, 111, 126, 129 in 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 241 or 269 of the Criminal Code of the Federal Republic of Germany (these elements of crimes were described above).

Procedure for blocking and removing illegal content/subject of liability: Social media providers that receive more than 100 complaints in a calendar year about illegal content are required to issue semi-annual reports in German addressing complaints about illegal content on their platforms, covering all points, and are required to publish them in the Federal Bulletin and on their own website no later than one month after the end of the half-year in which the complaint was recorded. Reports published on their own website should be easily recognizable, directly accessible, and constantly available.

Thus, the Law does not define new terms of illegal content, but is of a procedural nature, establishing the procedure for applying the existing norms of the Criminal Code to a new type of criminal activity. In addition, it is worth noting that the Law has been criticized for many provisions, in particular those related to censorship, non-compliance with international human rights standards (the right to freedom of expression and access to information), the unclear procedure for removing illegal content, and a number of other provisions.

Meanwhile, according to a number of experts, «this law is unique, because it is aimed exclusively at regulating social media and, in addition, it is an important step in finding a solution to the problem of fake news»<sup>1</sup>.

3. France has adopted a law against the manipulation of information, aimed at better protecting democracy from various methods of deliberately spreading fake news (approved in the second reading in the National Assembly on November 20, 2018)<sup>2</sup>.

Definition and normative consolidation of the concept of «fake information»: The Republican Law of France of July 29, 1881 «On freedom of the

---

<sup>1</sup> Marda V., Milan S. Wisdom of the Crowd: Multistakeholder Perspective on the Fake News Debate. A Report by the Internet Policy Observatory at the Annenberg School, University of Pennsylvania. 2018 [Electronic resource]. URL: [http://globalnetpolicy.org/wp-content/uploads/2018/05/Fake-NewsReport\\_Final.pdf](http://globalnetpolicy.org/wp-content/uploads/2018/05/Fake-NewsReport_Final.pdf). (date accessed: 18.02.2021).

<sup>2</sup> Against information manipulation/GOUVERNEMENT [Electronic resource]. URL: <https://www.gouvernement.fr/en/against-information-manipulation> (date accessed: 20.03.2021).

Press» (Article 27)<sup>1</sup> contains the definition of fake news: establishes a normative definition of the concept, according to the content of this category – «Malicious publication, distribution and reproduction by any means of false news and documents that were fabricated or falsified or falsely attributed to third parties, when it violated the peace or could violate it, will be subject to a fine of 45,000 euros. The same offence will be subject to a fine of 135,000 euros if this malicious publication, distribution or reproduction could undermine the discipline or morale of the Armed Forces or interfere with the country's military efforts».

Essential characteristics of the phenomenon of disinformation and fake information:

- A sign of publicity: fake news must be explicit;
- Intent: Fake news must be deliberately spread on a massive scale;
- The nature of the information: The dissemination of fake news should lead to a breach of the peace or jeopardize the outcome of the election.

Criteria for classifying a particular piece of information as fake: An Interim judge will qualify fake news as defined in the Freedom of the Press Act of 1881, according to three criteria:

- fake news must be explicit;
- deliberately spread on a massive scale;
- lead to a breach of the peace or endanger the outcome of the election.

The provision on criminalization of acts in the Law is contained in the reference form. Thus, «Article L. 112. – Any violation of the provisions of article L. 163-1 is punishable by one year's imprisonment and a fine of 75,000 euros. For legal entities found responsible for the specified crime, liability is provided in the form of a fine; prohibition, finally or for a period not exceeding five years, directly or indirectly to carry out one or more types of professional or social activities in accordance with the procedure established by Articles 121-2, 131-38, 131-39 of the Criminal Code of France.

Article L. 163-1 establishes the obligation of telecom operators during the three months preceding the first day of the general election month and before the date of the voting round – to provide the user with honest, clear and transparent information about the identity of an individual or about the company, head office and social object of a legal entity that pays remuneration for the promotion of information content related to public discussions; – provide the user with reliable, clear and transparent information about the use of their per-

---

<sup>1</sup> Loi du 29.07.1881 sur la liberté de la presse. Legifrance: La service public de la diffusion du droit [Electronic resource]. URL: <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070722/> (date accessed: 02.05.2021).

sonal data in the promotion of information content related to public interests; – make public the amount of remuneration received in exchange for the promotion of such information content, if their amount exceeds a certain threshold.

This information is combined into a register that is available to the public electronically in an open format and is regularly updated during a certain period provided for by the electoral legislation.

The French Republican Law of 29 July 1881 on freedom of the press (article 27) contains a provision prohibiting the dissemination of false news under threat of criminal punishment.

Procedure for blocking and deleting illegal content/subject of liability:

– Foreign-controlled media: a commitment to transparency for digital platforms that must report any sponsored content by publishing the author's name and the amount paid. Platforms that exceed a certain number of views per day must have a legal representative in France and publish their algorithms. In the period between elections, there is a duty of cooperation for digital platforms in order to force them to introduce measures to eliminate fake news and make these measures public. Verification of compliance with this duty is entrusted to the CSA (French Broadcasting Authority), which will also be able to prevent, suspend and terminate the broadcasting of television services controlled by or influenced by foreign States and detrimental to the fundamental interests of the country;

– Decisions on whether fake news is explicit and spread intentionally on a massive scale, and whether it has led to a breach of the peace or affected the election results, will be referred to an interim judge.

Thus, French law prohibits the dissemination of «inaccurate or false statements and accusations that are intended to change the true results of the vote». In addition, the law establishes the possibility of blocking the broadcasting of «a foreign TV channel or other media of a foreign state that carries out targeted disinformation» on the territory of the country. Of interest is the legislative consolidation of the obligation of social networks, if they place paid political advertising, to indicate that the information was paid for by one of the commercial clients, to post a link to its customer and to publish the amount of financial accruals<sup>1</sup>. It is noteworthy that the mentioned legislative initiatives of the French authorities are mainly aimed at limiting the dissemination of so-called «false information» mainly in the context of election campaigning, in particular, aimed at restricting the activities of foreign me-

---

<sup>1</sup> Международный опыт борьбы с фейками [Электронный ресурс]. URL: [https://news.rambler.ru/other/41616357/?utm\\_content=news\\_media&utm\\_medium=read\\_more&utm\\_source=copylink](https://news.rambler.ru/other/41616357/?utm_content=news_media&utm_medium=read_more&utm_source=copylink) (дата обращения: 29.03.2021).

dia, which can be described as a kind of abuse of legislative power and attempts to restrict freedom of speech. The bill does not define what should be considered «false news». As its developers point out, it is contained in the Press Act of 1881, where it is called «information that does not correspond to real facts and is deliberately used to disrupt public order or try to do so»<sup>1</sup>.

4. The issue of legislative consolidation of the legal category of «fake information» has been worked out in detail and significantly in Malaysia. In 2018, a specialized legislative act «Anti-fake News Act» was adopted, which supplemented the previous legislative acts in this area, namely the Law on Communications and Multimedia of 1998; the Law on Printing Machines and Publications of 1984<sup>2</sup>.

Definition and normative consolidation of the concept of «fake information»: The Law defines fake news as including «any news, information, data and messages that are or are completely or partially false, whether in the form of features, visual effects or audio recordings, or in any other form capable of offering words or ideas».

Essential characteristics of the phenomenon of disinformation and fake information: In section 233 of the Communications and Multimedia Act of 1998:

A sign of publicity: the dissemination of information through any network objects or network services, or applications that serve public users;

Intent: knowingly;

The nature of the information: «(a) a person creates or initiates the transmission of information containing any comment, request, suggestion or other communication that is obscene, false, threatening or offensive in nature with the intent to annoy, insult, threaten or harass another person; or

(b) initiates communication using any application service, whether continuously, repeatedly or otherwise, during which communication may oc-

<sup>1</sup> Прокофьев В. Соцсети просветят. Во Франции разработали проект закона о фейковых новостях [Электронный ресурс] // Российская газета. 2018. № 33 (7496). URL: <https://rg.ru/2018/02/14/vo-francii-razrabotali-proekt-zakona-o-fejkovyh-novostiah.html> (дата обращения: 16.04.2021).

<sup>2</sup> Anti-Fake News Act 2018 [Electronic resource]. URL: <https://ru.scribd.com/document/378823603/Anti-Fake-News-Act-2018> (date accessed: 20.05.2021) ; Communications and Multimedia Act 1998 (Act 588), s 233 (1) [Electronic resource]. URL: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20588.pdf> (date accessed: 11.05.2021) ; Printing Presses and Publications Act 1984 (Act 301), s 4 (1) (b) [Electronic resource]. URL: <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act301-PrintingPressesAndPublicationsAct1984.pdf> (date accessed: 11.05.2021).

cur, with or without disclosure of his identity and with the intent to annoy, insult, threaten or harass any person at any number or email address;

The Sedition Act of 1948<sup>1</sup> makes it a criminal offence, inter alia, to print, publish, sell, offer for sale, distribute or reproduce any «seditious publication». Such publications are those that have a «seditious tendency», which includes, for example, having a tendency to «incite hatred or contempt, or incite discontent against any ruler» or «encourage feelings of ill-will, hostility or hatred between different races or classes of the population of Malaysia».

Socially dangerous consequences:

Printing houses and printed publications are prohibited under the 1984 Law from using the printing press for illegal purposes, including producing any publication or document «that incites violence against persons or property, disobedience to the law or any lawful order, as well as publications that lead or may lead to a violation of the peace or promote feelings of ill-will, hostility, enmity, hatred, discord and disunity». The relevant government minister also has the «absolute discretion» to prohibit the printing, importation, sale, distribution or possession of a publication containing anything that may harm «public order, morals, security, or that may alarm public opinion, or that may harm public or national interests» (the provisions of the Law apply by analogy to Internet content).

Criteria for classifying certain information as fake: The Law of 2018 establishes various categories of «fake information», depending on the form of their creation and transmission:

(a) any written publication, as well as any other publication having the same properties as a written publication, as well as any copying, full or partial reproduction of such publication;

(b) any publication made by digital, electronic, magnetic or mechanical means, as well as the complete or partial copying of such publications.

Criminalization of acts of creation and dissemination of fake information in the information space: The Anti-Fake News Act of 2018 establishes a provision that «any person who in any way maliciously creates, offers, publishes, prints, distributes any fake news or publications containing fake news commits an offence and is liable, on the charge, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six years or both, and in the case of a continuing offense-to an additional fine of no more than three thousand ringgit for each day during which the crime con-

---

<sup>1</sup> Instigation of Mutiny Act of 1948 (Act 15), s 4 (1) (c) [Electronic resource]. URL: <http://www.agc.gov.my/agcportal/uploads/files/Publications/ LOM / EN / Act% 2015.pdf> (date accessed: 11.05.2021).

tinues after the conviction». The Communications and Multimedia Act of 1998 establishes liability for violation of this prohibition in the form of a fine of up to fifty thousand ringgit or imprisonment for up to one year, or both, together with a further fine of one thousand ringgit, applying for each day that the crime continues after conviction. «The Printing Presses and Publications Act of 1984 states: «If any false news is maliciously published in any publication, the printer, publisher, editor and author of that communication shall be found guilty of an offence and, on conviction, shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or both».

Procedure for blocking and removing illegal content/subject of liability: The Court may also order a person convicted under this provision to apologize. The law establishes a procedure for affected individuals to obtain a court order to remove a publication containing fake news. If the person who is the subject of such an order does not delete the content, a police officer or other authorized official may take «necessary measures» to delete the publication.

Thus, the law introduces a normative consolidation of the concept of «fake information», defines specific criteria by which information can be evaluated and classified as fake. The law establishes criminal liability for persons who by any means, acting maliciously, create, offer, publish, print, supply, transmit or distribute any fake news or publications containing such news. Criminal liability under the Anti-fake News Act of Malaysia is also provided for persons who directly or indirectly finance the distribution of Fake news [7]. According to some researchers, the Anti-Fake News Act of 2018 does not meet the criteria of effectiveness and sufficiency, because it is excessively vague, contains a «problematically broad» definition of fake news, and imposes «disproportionately high» penalties on the creators, distributors and publishers of such information<sup>1</sup>. An interesting fact is that the Law provides for its extraterritorial application, stating that «if a crime is committed by any person, whether a Malaysian citizen or not, outside Malaysia, and if fake news concerns Malaysia or affects a Malaysian citizen, then it can be treated as if it was committed in Malaysia»<sup>2</sup>.

These are just a few examples of such legislative initiatives. Similar laws have been adopted over the past 5 years in many countries, in particular,

<sup>1</sup> Инициативы по борьбе с фейковыми новостями [Электронный ресурс]. URL: <https://www.loc.gov/law/help/fake-news/malaysia.php> (дата обращения: 20.02.2021).

<sup>2</sup> Key Global Findings [Electronic resource]. URL: <https://freedomhouse.org/report/freedom-press/2017/press-freedoms-dark-horizon> (date accessed: 21.02.2021).



in Egypt, Brazil, Vietnam, Qatar, China, Kyrgyzstan, the United States, Kazakhstan, and Belarus. The analysis of the legal framework of the domestic legislation of the states in the field of countering fake information, regulating the Internet space and combating other forms of cybercrime allows us to conclude that significant efforts are being made by the governments of the states and the active implementation of these legislative initiatives.

Meanwhile, many national laws are assessed by experts as attempts to establish strict censorship and excessive state control of the national segment of the information space, when legal norms are introduced under the «loud slogans» of protecting human rights, which become an instrument of pressure on the media.

It seems that to solve the global problem of countering disinformation and the spread of fake product, it is not enough to carry out legislative reforms unilaterally. It is necessary to unite efforts at the level of the international community, to adopt basic agreements on the platform of international organizations, in strict accordance with the fundamental principles of international law, such as freedom of speech and equal access to information.

5. In this regard, it is worth considering the policy of the European Union, which has been carrying out comprehensive and systematic work in this area since 2017. November 13, 2017 The European Commission initiated a public consultation on «fake news» and disinformation on the Internet and established a High-level Expert Group, which included representatives of the academic community, IT companies, the media and representatives of civil society. In total, the group included about 40 experts. The aim of the Commission's work was to develop and further implement a comprehensive and integrated mechanism to counter online disinformation in Europe, which includes various activities, from the adoption of legislative initiatives and regional agreements to provide a legal framework (the Code of Practice on Disinformation, the European Action Plan to Strengthen Efforts to Counter Disinformation in Europe and Beyond), to the creation of specialized international platforms (the European Digital Media Observatory), conducting regular meetings in the format of conferences and preparing regular review reports and reports.

According to the Action Plan against Disinformation, «disinformation» means deliberately false or misleading information that is created, presented and distributed for the purpose of obtaining economic benefits or deliberately deceiving the public and may cause public harm. At the same time, public harm may include threats to democratic processes, as well as public goods, such as the health of Union citizens, the environment, or security.

Freedom of expression is called the core value of the European Union, enshrined in the Charter of Fundamental Rights of the European Union and in the constitutions of the member States».

An important role is given to the joint efforts and participation of civil society and the private sector (social media platforms), representatives of business structures, and the IT industry in solving the problem of disinformation. This approach seems to be the most effective, since it is consistent with the model of «stakeholdernism», which is one of the foundations for the construction and functioning of the Internet space, since countering disinformation requires coordinated actions with the participation of all stakeholders [8, c. 59–65]. That is why the work of the European Commission in this direction at the first stage involved so-called «consultations with the public» (citizens, social networks, news organizations (broadcasters, print media, news agencies, online media), researchers and government agencies, which allowed us to formulate common approaches to understanding what set of measures should be implemented at the EU level to address the problem of disinformation.

Thus, the European approach seems to be quite effective and comprehensive, since the above-mentioned initiatives are implemented in strict accordance with the principles of international law, with respect for human rights, and is based on the cooperation of interested stakeholders, in addition, the European legislator seeks to unify the regulatory framework and develop basic agreements in this area. While the initiatives of individual states to introduce new laws aimed at combating disinformation, in particular fake information, can rather be regarded as establishing state control of the information space through the introduction of mandatory rules and restrictions», expanding «criminalization of acts in the absence of legislative consolidation of the very concept of «fake information», as well as criteria for classifying a particular information as fake, the qualification of the relevant acts.

It is worth mentioning, that the necessity to unite efforts to counter the problem of disinformation at the level of the international community has become particularly relevant against the backdrop of the unfolding epidemic of the coronavirus, which has affected all spheres of human life in terms of its scale and consequences. The accelerated pace of digitalization and the global transfer of many aspects of everyday activities to the digital environment provoked a backlash from criminal structures, a significant increase in cybercrime and the global threat of disinformation of the general population. Which in turn brought the problem of fake news to the level of the global universal platform of the United Nations (UN). So, at the World Conference

on Security (February 2020), in particular, the problem of spreading false data and news about the coronavirus was discussed. WHO (World Health Organization) representatives identified the new term «infodemia», which should be understood as «the dissemination of false information about the coronavirus, which contributes to the spread of rumors, inaccurate data and fake news during a global health emergency, which in turn makes it difficult to take effective public health measures and creates an atmosphere of panic and confusion among the population». To counteract this problem, the United Nations and WHO have jointly created the so-called «Mythbusters Team», which brought together representatives of the largest Internet service providers and social networks, such as Facebook, Google, Pinterest, Tencent, Twitter, TikTok, Youtube, et cetera. These companies are actively working to remove fake information (false medical information, prescriptions, tips, diagnostics, rumors, conspiracy theories and similar information that poses a danger to public health).

Meanwhile, now, the UN has not adopted universal agreements on the problem of countering disinformation and the spread of fake news. In March 2019. The Russian Federation has taken the initiative to apply on behalf of the UN General Assembly Committee on Information to the UN secretariat with a proposal to «take measures aimed at developing a mechanism for countering "fake information" on a global scale». Despite the support of the UN secretariat and a number of states, the initiative was not clearly included in the draft Resolution of the UN General Assembly, as US representatives blocked it.

Thus, the problem of the global spread of fake information is rapidly gaining a cross-border scale, and ensuring effective counteraction to this threat requires the joint efforts of States and the entire international community to develop a universal comprehensive mechanism for combating it, based on the principles of international law, respect for human rights, and the values of a democratic society. It seems that unilateral initiatives at the level of national laws of States are not enough to solve this problem. An integrated approach involves combining efforts in various areas:

- the necessity for an interdisciplinary study of the phenomenon of disinformation and fake information, including the technological, legal, journalistic aspect in order to understand the essence of this phenomenon, the normative consolidation of a unified categorical apparatus in this area, in particular the terms «disinformation», «fake information», criteria for determining the composition of acts that may be criminalized, criteria for classifying a particular information as «fake» et cetera.

– the necessity to involve all stakeholders, taking into account the principle of «multistakeholdernism» and self-regulation of the global Internet space, with the involvement of representatives of civil society, business structures, the private sector, representatives of the IT industry, as well as state governments (since the establishment of regulatory rules and legal frameworks in this area is possible only through public discussion and the development of common approaches, and not by establishing mandatory regulations and strict regulation of the information space, in violation of the generally accepted principles of international law);

– the necessity for interstate cooperation in order to develop and adopt an international mechanism for cooperation in the field of countering disinformation, fake information, which will create a unified comprehensive mechanism that includes international standards of a legal and technological nature. This, in its turn, will help to overcome the fragmentation of unilateral measures taken at the level of individual states and minimize attempts to turn «media» technologies into an instrument of information confrontation. Of course, such a mechanism for cooperation and counteraction to this problem should be developed and implemented in strict accordance with the generally accepted principles and norms of international law, and become a kind of deterrent for certain governments' attempts to establish censorship and excessive state control of the information space, restrict human rights and media freedom under the pretext of ensuring information security and protect citizens from the destructive impact of disinformation on the Web.

### References

1. Pal'chinskaya M.V. Socio-cultural determinants of the formation of the information society. *Gumanitarnye, social'no-ekonomicheskie i obshchestvennye nauki = Humanities, Social-economic and Social Sciences*, 2015, no. 3-1, pp. 32–35. Available at: <https://www.elibrary.ru/item.asp?id=23325457>.
2. Polishchuk S.V. Legal aspects of counteraction to fake attacks. *Social'no-gumanitarnye znaniya = Social and Humanitarian Knowledge*, 2019, no. 9, pp. 114–123. URL: <https://elibrary.ru/item.asp?id=37314555>.
3. Domagoj B., Volarević M. New Problems, Old Solutions? A Critical Look on the Report of the High Level Expert Group on Fake News and On-Line Disinformation. *Vestnik Rossijskogo universiteta druzhby narodov. Seriya: Politologiya = RUDN Journal of Political Science*, 2018, no. 3, pp. 447–460. URL: <https://www.elibrary.ru/item.asp?id=36387565>.

4. Zyryanova M.O. Fake news as a tool for managing public opinion. In Danakina N.S. (ed.). *Diagnostika i prognozirovanie social'nyh processov. Materialy nauchno-prakticheskoy konferencii, Belgorod, 18–19 oktyabrya 2019 g.* [Diagnostics and forecasting of social processes. Proceedings of the scientific and practical conference, Belgorod, October 18–19, 2019]. Belgorod, 2015, pp. 21–25. URL: <https://www.elibrary.ru/item.asp?id=42371066>.

5. Markova N.A., Kurganova A.S. Some aspects of the regulation of legal responsibility for the dissemination of fake information on the internet and mass media: Russian and foreign experience. *Vestnik Vladimirskogo yuridicheskogo instituta = Bulletin of Vladimir Law Institute*, 2019, no. 3 (52), pp. 81–85. URL: <https://www.elibrary.ru/item.asp?id=40646751>.

6. Sukhodolov A.P. The Phenomenon of «Fake News» in the Modern Media Space. In Sukhodolov A.P. (ed.). *Evroaziatskoe sotrudnichestvo: gumanitarnye aspekty. Materialy Mezhdunarodnoj nauchno-prakticheskoy konferencii, Irkutsk, 14–15 sentyabrya 2017 g.* [Eurasian Cooperation: Humanitarian Aspects. Proceedings of the International Scientific and Practical Conference, Irkutsk, September 14–15, 2017]. Irkutsk, 2017, pp. 93–112. (In Russian).

7. Scherbakov A.D. Fake news as an object of criminal legal regulation: Malaysian experience. *Mezhdunarodnoe ugovnoe pravo i mezhdunarodnaya yusticiya = International Criminal Law and International Justice*, 2018, no. 4, pp. 18–21. (In Russian).

8. Kasenova M.B. *Problemy pravovogo regulirovaniya transgranichnogo ispol'zovaniya Interneta* [Problems of legal regulation of the cross-border use of the Internet]. MGIMO University Publ., 2015. 429 p.

*Received: 10.11.2021*

**ОЧЕРЕДЬКО Юлия Владимировна**

*кандидат филологических наук, доцент кафедры английского языка  
для факультета социальных коммуникаций и юридического  
факультета Астраханского государственного университета,  
г. Астрахань, Россия; y-ocheredko@yandex.ru*

**СТАРКОВА Ляйсян Маратовна**

*ассистент кафедры международного права Астраханского  
государственного университета,  
г. Астрахань, Россия; 5leska5@mail.ru*

**ПРАВОВЫЕ АСПЕКТЫ ПРОТИВОДЕЙСТВИЯ СОЗДАНИЮ  
И РАСПРОСТРАНЕНИЮ ФЕЙКОВОЙ ИНФОРМАЦИИ  
В ИНТЕРНЕТЕ НА ПРИМЕРЕ ЗАРУБЕЖНОГО  
ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКИ МЕЖДУНАРОДНЫХ  
РЕГИОНАЛЬНЫХ ОРГАНИЗАЦИЙ**

Угрозу распространения и влияния фейковой (недостоверной, ложной) информации можно расценивать в качестве одного из негативных проявлений широкомасштабного процесса цифровизации, охватившего все сферы общественного функционирования и устройства. На фоне развернувшейся эпидемии коронавируса угрожающие последствия стремительного и неконтролируемого процесса дезинформации в глобальном информационном пространстве обозначились особенно явно. Феномен фейковой информации приобретает характер глобальной угрозы, катастрофической по своим разрушительным последствиям. Эффективное противодействие нарастающей угрозе дезинформации возможно только посредством комплексного подхода, включающего в себя адекватный и достаточный правовой инструментарий. **Цель:** рассмотрение правовых механизмов борьбы с фейковым контентом на уровне национального законодательства государств и на международном уровне. Посредством применения **метода** сравнительно-правового анализа было проведено исследование и дана оценка существующим подходам к определению и нормативному закреплению категории «фейковая информация»; выделены существенные характеристики данного явления, критерии отнесения той или иной информации к фейковой; исследован механизм криминализации деяний по созданию и распространению фейковых новостей в информационном пространстве на примере законодательства отдельных государств; представлен обзор международных инициатив в данной сфе-

ре, предпринимаемых на уровне региональных международных организаций (на примере Евросоюза), и мер универсального характера (инициативы ООН). **Результаты:** по итогам проведенного исследования авторы пришли к выводу о необходимости разработки универсального комплексного международно-правового механизма противодействия угрозе распространения фейковой информации в глобальном информационном пространстве, в основу которого должны быть положены общеобязательные принципы международного права, в первую очередь уважения и соблюдения прав и свобод человека и гражданина. Только такой подход представляется наиболее эффективным и может стать неким фактором, сдерживающим стремления отдельных правительств к установлению цензуры и чрезмерного государственного контроля информационного пространства.

**Ключевые слова:** фейковая информация; дезинформация; инфодемия; цифровизация; информационное общество; информационное оружие; киберпреступность.

### **Библиографический список**

1. Пальчинская М.В. Социокультурные детерминанты становления информационного общества // Гуманитарные, социально-экономические и общественные науки. 2015. № 3-1. С. 32–35. URL: <https://www.elibrary.ru/item.asp?id=23325457>.
2. Полищук С.В. Правовые аспекты противодействия фейковым атакам // Социально-гуманитарные знания. 2019. № 9. С. 114–123. URL: <https://elibrary.ru/item.asp?id=37314555>.
3. Бебич Д., Воларевич М. Новые проблемы – старые решения? Критический взгляд на Доклад экспертной группы высокого уровня Европейской комиссии о фейковых новостях и онлайн дезинформации / пер. В.Г. Иванов // Вестник Российск. ун-та дружбы народов. Сер.: Политология. 2018. № 3. С. 447–460. URL: <https://www.elibrary.ru/item.asp?id=36387565>.
4. Зырянова М.О. «Фейковые» новости как инструмент управления общественным мнением // Диагностика и прогнозирование социальных процессов : матер. науч.-практ. конф., Белгород, 18–19 окт. 2019 г. / отв. ред. Н.С. Данакина. Белгород, 2015. С. 21–25. URL: <https://www.elibrary.ru/item.asp?id=42371066>.
5. Маркова Н.А., Курганова А.С. Некоторые аспекты регулирования юридической ответственности за распространение фейковой ин-



формации в Интернете и средствах массовой информации: российский и зарубежный опыт // Вестник Владимирск. юрид. ин-та. 2019. № 3 (52). С. 81–85. URL: <https://www.elibrary.ru/item.asp?id=40646751>.

6. Суходолов А.П. Феномен «фейковых новостей» в современном медиапространстве // Евроазиатское сотрудничество: гуманитарные аспекты : матер. Междунар. науч.-практ. конф., Иркутск, 14–15 сент. 2017 г. / отв. ред. А.П. Суходолов. Иркутск, 2017. С. 93–112.

7. Щербаков А.Д. Fake news как объект уголовно-правовой регуляции: опыт Малайзии // Международное уголовное право и международная юстиция. 2018. № 4. С. 18–21.

8. Касенова М.Б. Проблемы правового регулирования трансграничного использования Интернета. М. : МГИМО-Университет, 2015. 429 с.

*Дата поступления: 10.11.2021*