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**SOCIAL MEDIA CONTENT REGULATION IN THE CONTEXT  
OF ARMED CONFLICTS**

Master's thesis

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

The document length is 18 815 words from the introduction to the end of the conclusion.

Alina Lemet 03.01.2024

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## **ABSTRACT**

The rise of social media platforms as news sources is not news anymore. However, the possibility for ordinary users to become to some extent the journalists of nowadays creates many debates over freedom of speech vs content regulation. This thesis is to demonstrate the consequences emerging from social media's role during the armed conflicts. As well, this paper makes evident that the content shared in the social platforms is not regulated enough by law, which can become risky for every person involved in the conflict.

Keywords: Social media, armed conflicts, content regulation

## **LIST OF ABBREVIATIONS**

CFREU - Charter of Fundamental Rights of the European Union

EU – European Union

ICCPR - International Covenant on Civil and Political Rights

ISIS - Islamic State of Iraq and Syria

UN – United Nations

US or USA – United States of America

VK – Vkontakte

VPN – Virtual private network

## INTRODUCTION

The minds of the younger generation are currently blown up by the variety of digital inventions that can be used daily, starting from the trendy games and continuing with the crowd-pleasing social media platforms. For some of the older generation, who is not into the digital developments, it might become questionable, what can be done, for instance, in the social media networks and what is the reason behind the shifted priorities of the youth that nowadays dedicate their time, efforts and themselves in whole and as a consequence often build their careers in the virtual world instead of attending the university lectures and obtaining a proper degree together with deep knowledge.

Internet and everything from the online environment that comes with it in addition as social media networks have immeasurably changed many aspects of the usual daily life of an average person and as well added modern elements and concepts to it. To illustrate it, Ali and Fahmy have noted that in the 21<sup>st</sup> century, when the technology has developed so far, every citizen is able to become a journalist without any appropriate training by means of the social media platforms.<sup>1</sup> These platforms give floor not only for networking with other people, watching videos or live streams or following the lives of the celebrities, but as well for splashing out the creativity, speaking the opinions out loud, sharing experiences of the manifold events and many other similar activities.

Thus, the online environment gives people plenty of opportunities to step out of their shades and become prominent in a short period of time without even going out of their homes, but with the only requirements of having a smart device, a connection and a knowledge of how to use them all together. However, this thesis will explore more the so-called “dark side” that social media has according to Alrasheedy *et al.*<sup>2</sup> As it is commonly said the medal has two sides and besides the

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<sup>1</sup>Ali, S. R., Fahmy, S. (2013). Gatekeeping and citizen journalism: The use of social media during the recent uprisings in Iran, Egypt, and Libya. *Media, War & Conflict*, 6 (1), 55 – 69.

<sup>2</sup>Alrasheedy, M., Dhir, A., Kaur, P., Talwar, S., Zafar, N. (2019). Why do people share fake news? Associations between the dark side of social media use and fake news sharing behavior. *Journal of Retailing and Consumer Services*, 51, 72 – 82.

many opportunities that the virtual world brings, there is also another not so pleasant side that includes a diverse set of issues.

The rise of social media networks as a framework for worldwide communication brought with it many essential questions related to “security, privacy, legal, ethical and regulatory compliance requirements”.<sup>3</sup> As it is shown in Figure 1, civilians are tightly interconnected both with social media and armed conflicts. People share personal and not personal information about themselves without a thought, what can happen with this data or with themselves further and how essential it might be for their security and safety. Moreover, few people think that even a small piece of information shared with others can change the course of the political or just prominent world events and lead to the devastating aftereffects for thousands or millions of people. That is why it is shown in Figure 1 that social media can have an impact on armed conflicts and vice versa. An illustration of social media’s popularity during some prominent world events is the statistics in Kopečný’s research, which demonstrated that both Azerbaijan and Armenia made less publications before the re-escalation of the Nagorno-Karabakh conflict, consequently during the course of the armed conflict the numbers of publications from both sides increased.<sup>4</sup> One and the other side tried to disseminate their opinion on the situation and convince the public of their rightness.

As it was mentioned in Brooking’s and Singer’s book the new modern type of socialising through the social media platforms became a new way for warfare.<sup>5</sup> In this war information plays the role of the weapons that are used against the enemy. “Together with the involvement of multiple state and non-state actors, civilian participation makes these modern conflicts all the more unpredictable, challenging *inter alia* the traditional notion of direct participation in hostilities established under international law.”<sup>6</sup> It means that despite the fact that the real armed conflict is well regulated by international humanitarian law, which includes the defence of the civilian population, providing the same protection in the virtual world is tougher than it can seem from the first sight due to the many nuances that should be taken into account. As a consequence, diverse escalations of armed conflicts put into question a variety of freedoms and rights in the context of

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<sup>3</sup>Kopečný, O. (2021). Warfare and Institutional Communication on Social Media in 2020 Nagorno – Karabakh Conflict. [Master’s thesis, Charles University]. CU Digital repository <https://dspace.cuni.cz/bitstream/handle/20.500.11956/150342/120398596.pdf?sequence=1&isAllowed=y>.

<sup>4</sup>*Ibid.*, p. 7.

<sup>5</sup>Brooking, E. T., Singer, P. W. (2018). *Likewar: The Weaponization of Social Media*. Eamon Dolan Books.

<sup>6</sup>Fisenzou, I. (2019). Blurred Lines: Social Media in Armed Conflict. *Legal Information Management*, 19 (1), 65 – 67.

discussions and transmissions of information related to these events.<sup>7</sup> One may argue that the data transmissions should be restricted in the course of such events for the safety and security reasons, but on the other hand, it would limit the freedoms and rights of those people, who create the content.

This research is not only indicating that social media has a great impact on the events happening in the world, but as well it emphasises the significance of the control of the content that is being published in the social media networks, with special accuracy during the armed conflicts. This paper argues that at the moment the content in social media is not regulated sufficiently in the context of liability of the stakeholders during armed conflicts. The paper subsequently checks who should be liable for the oversight: the government or the social media platforms. However, this thesis does not focus on one specific example of the armed conflict throughout the whole paper, rather there are many different contemporary conflicts taken into account. In the first part of this thesis, there is an explanation of difference between and interrelation of traditional and contemporary media, as well as on the role of the social media platforms on the people's life and especially during the armed conflicts. The research will be completed utilising the literature on the topic in order to understand the basics and some single statistics to demonstrate the usage of the online platforms as news makers.

The second part of the thesis goes in depth on the different regulations including the European legislation and international one, investigating factors that can affect governments and social media, when they try to establish the control over the content, and analysing, whose liability is it to control the content on the social media platforms. The chapter will be conducted using the qualitative legal research method that includes a comparative method, in order to compare with each other different regulations from the European law, concerning, for instance, the fundamental rights and their limitations, digital and information society services, and the international law, including international humanitarian law or normative documents related to hate speech or civil and political rights, and to compare the capabilities of the states and the enterprises themselves to control the shared in the social media information. The gathered data is further interconnected with the legislation by means of a normative discourse analysis with the aim to understand how the regulations should be implemented and how they are exercised *de facto*. The final chapter of this

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<sup>7</sup>Benedek, W., Fischer – Lessiak, G., Kettemann, M., Schippers, B., Sisu, M., Viljanen, J. (2022). Governing Information Flows During War: A Comparative Study of Content Governance and Media Policy Responses After Russia's Attack on Ukraine. GDHRNet *Working Paper*, 4. Hamburg: Verlag Hans-Bredow-Institut.



thesis will analyse the findings of the previous two chapters and further discuss the main claim of the research.

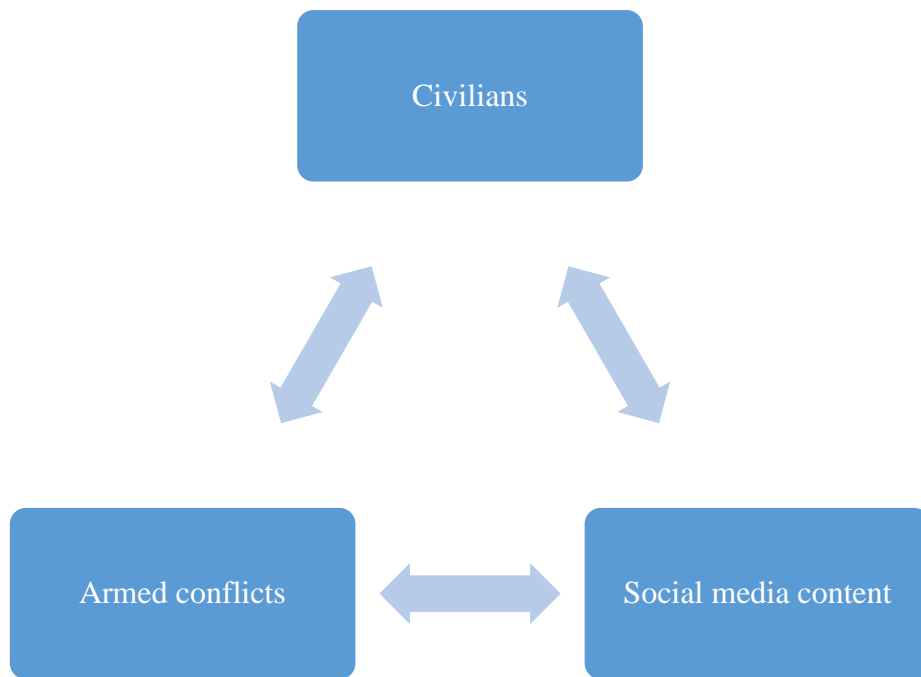


Figure 1. Simplified figure showing interrelation of main relevant to this thesis parties

# 1. SOCIAL MEDIA

## 1.1. Definition, Differentiation from and Interrelation of the Traditional and Contemporary Media

### 1.1.1. Traditional Media

Nowadays there are two main types of media: the traditional one, which was established earlier, and the contemporary one, which emerged relatively not so long ago. Under the traditional media one is used to understand the regular news sources such as radio, television, newspapers, etc. Despite the fact that both of these types of media are distinct, they have a common function, which is the transfer of information to the larger audience. In the traditional media there are three steps of the transfer of information: firstly, it is being produced by the content creators, which are the traditional media forms, then it is being distributed from the producers to the consumers and finally, it is being exhibited directly to the audience; but the development of digital technologies has changed this path, what resulted the opportunity to present the content directly and immediately to the final user.<sup>8</sup> The path of information transmission in the traditional media is complex, time consuming and needs human resources in every transfer phase.

Human resources make the traditional media distinct from the social media, because in order to be recruited and participate in content making there people need to have a special training and preferably a talent to compose and exhibit information in an impressive manner. The media employees can not directly publish their texts or exhibit the information to the audience in any other way. For example, in the newspapers or journals of the traditional media before the information gets published it needs to be collected, cross-checked that it is not false, afterwards the text is being written on the base of this assembled information, which should be as a rule later on read through and approved by one of the publishers, only when it is approved, it will be sent to the print. It means that prior to the news reaching the public, it has to go through many people, who process the information in different stages. Nonetheless, the main author, who is responsible for the exhibition of this information is as a rule a journalist.

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<sup>8</sup>Napoli, P. M. (2019). *Social media and the public interest: Media regulation in the disinformation age*. Columbia University Press.

Journalists as the main individuals behind the presentation of data to the audience put their lives at stake and face many risks due to their job. The information they publish might not be pleasant for everyone, thus they might attack both in the physical and in the psychological way the authors, who solely want to inform the usual readers about events and issues. It was mentioned in Butkovskyy's paper that 44% of mass media journalists in Ukraine in 2020 "faced threats, attacks, physical violence and cyberbullying".<sup>9</sup> In the light of diverse ongoing protests and various armed conflicts in recent years it is not a rare case, when journalists are being arrested.

### 1.1.2. Social Media

However, the development of technology has created new sources for getting up to date information on current situations in the world. For example, the newspapers do not print that much as before anymore, instead the fast flow of information all around the world made them adapt themselves and create digital newspapers or special websites with news, which is constantly updated. As well, social media platforms became another place, where it is possible to highlight the ongoing events and involve as many people as there are users registered on these platforms. Moreover, as Johnson *et al.* noticed: "Social Media technologies have ushered in a new era of connecting communities; however, at the same time, these Social Media technologies are playing a key role in fueling divisions in the communities."<sup>10</sup> Here it becomes questionable how social media networks should be defined and as a result treated.

The term "social media" is defined by LexisNexis as follows: "Internet-based platforms which allow for interactions between individuals or the broadcast of content to the wider world and which are far more interactive than traditional broadcast media."<sup>11</sup> In his turn, Napoli argues that there are two ways of how can social media platforms be classified: as "media companies" or as plainly "technology companies"; and therefore, depending on the classification there is a different level of restrictiveness of the regulations applied to them, in particular in case of being categorised as a media company, there would be stricter rules and norms imposed on it.<sup>12</sup> On the one hand, the social media networks do not create content themselves, they only play the role of the platforms

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<sup>9</sup>Butkovskyy, Y. (2020/2021). Censorship in Ukrainian journalism during the war against Russia: fighting against propaganda or threat to freedom of speech? [Master's thesis, Universitat Pompeu Fabra]. UPF Digital Repository [https://repositori.upf.edu/bitstream/handle/10230/52403/Butkovskyy\\_2021.pdf?sequence=1&isAllowed=y](https://repositori.upf.edu/bitstream/handle/10230/52403/Butkovskyy_2021.pdf?sequence=1&isAllowed=y).

<sup>10</sup>Johnson, N., Reisslein, M., Turnbull, B. (2022). Social media influence, trust, and conflict: An interview based study of leadership perceptions. *Technology in Society*, 68, 101836.

<sup>11</sup>LexisNexis Commercial expert (n.d.) *Social media definition*. LexisNexis. Retrieved March 10, 2023, from <https://www.lexisnexis.co.uk/legal/glossary/social-media>.

<sup>12</sup>Napoli, P. M. (2019), *supra nota* 8, p. 10.

or provide the technological means to the authors to share information with each other. Thus, one might believe that social media should not be treated as a media company, because it does not produce and is not directly liable for the content it contains.

On the other hand, social media networks can be recognized as media companies considering the fact that these networks should have to some extent the control over the information that is disseminated on their platforms. In addition, present day people often use social networks instead of the traditional media sources to read the news about the current situation in the world, even if the new media is providing purely the technical means for that. Although, according to Ali and Fahmy: “this ‘event-driven news’, however, was initially spontaneous and appeared devoid of official sources within the traditional media setting, thereby seemingly creating news stories that fell outside the framework of traditional media.”<sup>13</sup> One of the prominent new media features is the almost absolute absence of well-trained journalists, as a substitute the main authors are the regular citizens, which skip all the steps described under the chapter about traditional media and that have the possibility to use these social networks. From time to time the authors of the shared information might be even unknown.

In a like manner, Collins *et al.* in their turn argue that news reported on the classical media platforms as radio, television, newspapers etc. has author and its accuracy is checked by the trained and licensed journalists, meanwhile news shared in the social media is fake and fabricated, because there is no specific author and the information is propagated solely for gaining the financial benefit.<sup>14</sup> In fact, both of the media forms can be accused of propagating information, which can lead the publishers to financial gains, because for the classical media it is their job, what should be later on remunerated. Nonetheless, fake news became a larger problem with the emergence of social media, where the news spread within seconds and often create difficulties in finding the initial author.

Kopečný has added to the mentioned above remarks from his side that the social media networks do not have territorial borders, what leads to the fact that there is no common sense of what can be shared, because the cultures of the people, who will read the published content, are different, as

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<sup>13</sup>Ali, S. R., Fahmy, S. (2013), *supra nota* 1, p. 6.

<sup>14</sup>Collins, B., Hoang, D. T., Hwang, D., Nguyen, N. T. (2021). Trends in combating fake news on social media – a survey.

well as the way of acceptance of one or another information, in other words what can be acceptable for one person, might be not acceptable for another that comes from other culture, society, etc.<sup>15</sup> On the contrary, the news published in the classical media is not always, but often, meant to be for a specific public, for instance, there is a low probability that the newspapers printed in Estonian will be read somewhere else than Estonia. Therefore, the news in this event will probably be written in an acceptable for Estonian culture way, which is not the case of social media with significantly less cultural restrictions.

On the other hand, the contemporary media still to some extent has the control over content that is shared on its platforms and, thus, can choose and decide, what will be published on its platform and what will not be shared.<sup>16</sup> All of the social media networks have made their own regulations that millions of users need to consent before making their profile there. Although, accepting does not always mean that they will follow these rules. Thus, these networks have special employees, who check the publications, what will be explained in more detail later on in this thesis. Consequently, one might argue indeed that the new media, in specific social media, needs to be classified and treated in a same way as the traditional media with the same restrictions.

Even though, another point of view, which claims that it is purely the technology company, what signifies that the enterprise is not creating any content, but rather is giving the possibility to the users, which are the people, to share their own content and facilitate the access to it for others, what makes it different from the traditional media, also has a chance to exist.<sup>17</sup> The main aim of the social media platforms is not to share any news or highlight the events, but allow people to communicate with each other in a more simplified manner, in particular giving the opportunity to keep in touch no matter the distance and without the time frame. As a result, many questions arise, whether or not it should be held liable for the content people publish.

At the same time the fast content sharing should not be perceived purely as something terrible and in no way prohibited on the platforms. While news can be seen in the context of the traditional media as a rule solely in specific times and is not updated constantly every second, then Patrikarakos argues that there are no other places than the social media networks to see in real time

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<sup>15</sup>Kopečný, O. (2021), *supra nota* 3, p. 7.

<sup>16</sup>Napoli, P. M. (2019), *supra nota* 8, p. 10.

<sup>17</sup>*Ibid.*, p. 13.

the course of the warfare events as dramatically.<sup>18</sup> Since there are millions of users all over the world and all of them can participate in the content making, there can be a huge amount of visual and textual data about the ongoing warfare or any other similar violent event posted by the users that are involved in these happenings circulating around the social networks.

### **1.1.3. Interrelation of Traditional and Contemporary Media**

Although, there is a huge amount of data, including unethical, shared every day both on social media platforms and in traditional media, the restrictions related to content making create a lot of discussion. For example, Mill and Rapaport noted in their book that even in cases when it might be immoral people should have and exercise their freedom of thought, which is necessary in the authors' opinion for human dignity.<sup>19</sup> This opinion is highly supported by the legislative acts of the European Union (further - EU). Namely, the Charter of Fundamental Rights of the European Union (further - CFREU) starts with Article 1 about human dignity: "Human dignity is inviolable. It must be respected and protected."<sup>20</sup> At first glance sharing content might be related only to the freedom of expression, but after going deep into details, any derogation of the freedoms might lead to violation of human dignity in whole. It is important to take into consideration that people both create and consume the media, therefore the essential human rights will always be highlighted during the discussions about the media.

Furthermore, Foster argues that social media is considered to be an intermediary between the news suppliers and the consumers and thus, due to the development of digital technologies there can be to some degree a competition between the traditional media and the social media networks, which sometimes leads the traditional news suppliers to use their power in the market and restrict the newcomers.<sup>21</sup> These are mostly more conservative traditional media sources. Indeed, the generality was forced to adapt themselves with the technological developments. Many of them started sharing their content additionally in the Internet or social media, because it allows them to stay competitive and gain more audience. According to the statistics published by Eurobarometer almost one third of people use social media and 43% use online news platforms to get access to the news (see Figure 2). Meanwhile, as it can be seen in *Figure 2* TV is still in the leading position among the media sources in the context of access to the news.

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<sup>18</sup>Patrikarakos, D. (2017). *War in 140 characters: how social media is reshaping conflict in the twenty-first century*. Hachette UK.

<sup>19</sup>Mill, J. S., Rapaport, E. (1978). *On Liberty*. United States of America: Hackett Publishing Company, Inc.

<sup>20</sup>Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

<sup>21</sup>Foster, R. (2012). *News Plurality in a Digital World*. Oxford: Reuters Institute for the Study of Journalism.

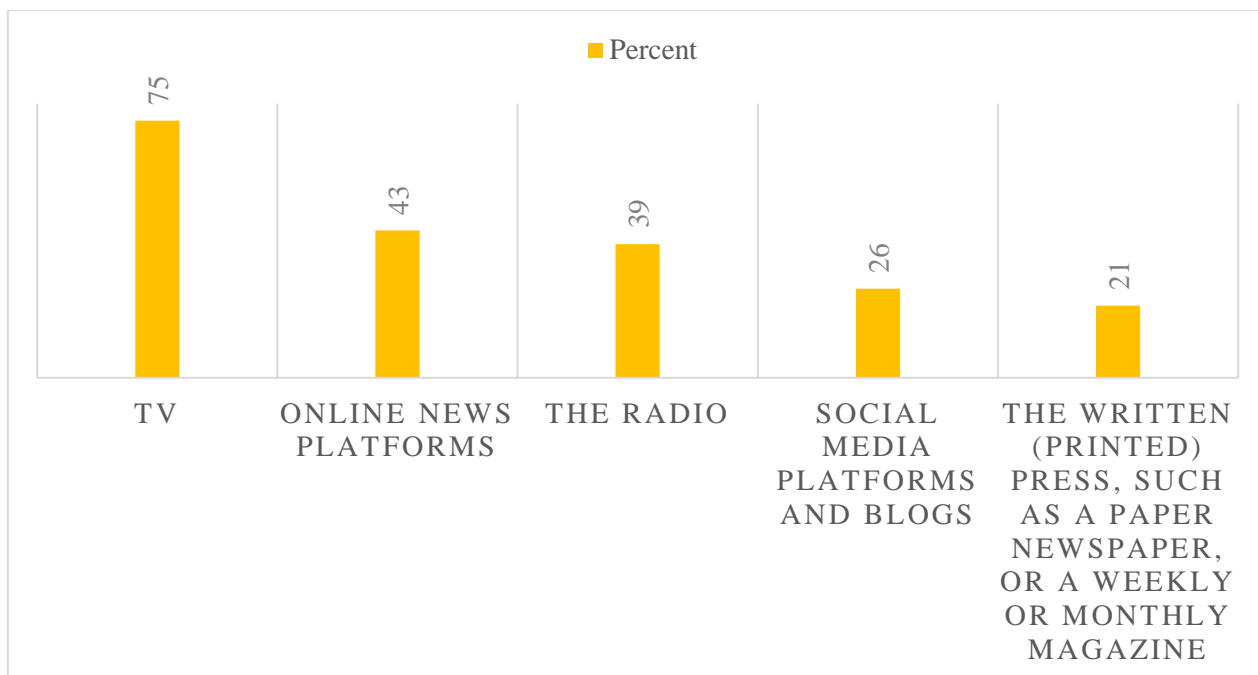


Figure 2. Most used media outlets to access news

Source: Eurobarometer (2022). Media & News Survey 2022 [Online]. Retrieved March 18, 2023, from <https://europa.eu/eurobarometer/surveys/detail/2832>.

In Foster's opinion, the social media platforms should be approached together with and in a similar manner as the traditional media platforms in order to create and encourage the media plurality for the customers.<sup>22</sup> The same approach would create the same legal framework for all types of media, as a result eliminating the privileges that one or another type might have and creating the same rights and responsibilities. At the same time, people would not lose the media plurality. Moreover, Napoli adds that there is also similarity between the traditional media and the social media platforms, in particular, both of them analyse and provide the audiences with the content they want or demand, however social media does it faster due to the technological features as algorithms.<sup>23</sup> That feature makes it possible in the present day to treat social media platforms as technology companies rather than media, which was explained earlier in this thesis.

## 1.2. Social Media's Effect on People's Life

Media plays an important role in the progress of a democratic society, because any kind of media is closely tied with the freedom of speech, which is a required condition for ensuring the

<sup>22</sup>*Ibid.*, p. 14.

<sup>23</sup>Napoli, P. M. (2019), *supra nota* 8, p. 10.

democracy and applies both for the information that the society is receiving and refusing through the blockage, although it is limited to one or another extent in every society due to the different norms and values.<sup>24</sup> There is a thin border between restricting the media, because it is against the common values of a specific society, and blocking it, because it spreads the unwanted opinion or position. It is tightly related to the fact that citizens in turn are playing an important role in spreading the news, because they can become witnesses of some impressive event by chance, capture everything on their smart devices and later on disseminate it in the social media.<sup>25</sup> Even if they do not witness any events, people have a nature to spread the news that they receive daily. Thus, in order to have control over the disseminated information, the incoming flow of the data should be carefully selected. However, with the emergence of the social media platforms, it became almost impossible, whereas the traditional media sources are still often claimed to be under the oversight.

One of the reasons why people prefer social media to access the news, is that it is not necessary to wait until the news will be translated, for instance, on the TV or radio. Since many people take part nowadays in distributing the information among the society, it became easier to follow the events in social networks. In his book Patrikarakos noticed that when he arrived to the eastern part of Ukraine in spring 2014 he paid attention to the circumstances that Twitter had more up-to-the-minute information about what is happening in the world, in particular in that part of Ukraine, rather than world news giants as New York Times, for example.<sup>26</sup> This phenomenon was also mentioned by Allcott and Gentzkow: “An individual user with no track record or reputation can in some cases reach as many readers as Fox News, CNN, or the New York Times.”<sup>27</sup> Especially, in this way it is more convenient to follow the events that are happening abroad on the grounds that it becomes possible to get acquainted with the situation, which may be not highlighted by one’s local media, from the so called first row seat, which is also beneficial for the usual citizens that are involved in these events and are able to demonstrate to the world the ongoing situation. Additionally, Baum *et al.* mentioned a study, which demonstrated that social media users tend to share fake data faster, in particular, if it is related to the politics.<sup>28</sup> In this manner, people of Iran,

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<sup>24</sup>Butkovskyy, Y. (2020/2021), *supra nota* 9, p. 11.

<sup>25</sup>Ali, S. R., Fahmy, S. (2013), *supra nota* 1, p. 6.

<sup>26</sup>Patrikarakos, D. (2017), *supra nota* 18, p. 14.

<sup>27</sup>Allcott, H., Gentzkow, M. (2017). Fake News in the 2016 Election. *Journal of Economic Perspectives*, 31 (2), 211 – 236.

<sup>28</sup>Baum, M. A., Benkler, Y., Berinsky, A. J., Greenhill, K. M., Lazer, D. M. J., Menczer, F., Metzger, M. J., Nyhan, B., Pennycook, G., Rothschild, D., Schudson, M., Sloman, S. A., Sunstein, C. R., Thorson, E. A., Watts, D. J., Zittrain, J. L. (2018). The science of fake news. *Science*, 359 (6380), 1094 – 1096.



for instance, realised that they can share what is happening in their country sanctioned by the western countries with the audience outside of it by technical means.<sup>29</sup>

Nevertheless, the initial aim of social media was to make it easier for users to socialise more often or to a lesser degree entertain themselves by means of these networks, but the way it is used now is totally different from what it was supposed to be. Napoli mentioned in his book some impressive gathered statistics based on what 68% of Facebook users, 74% of Twitter users and 32% of YouTube users use these social media platforms as news sources.<sup>30</sup> Users share information with their circle of friends and their acquaintances, who might share it often further, so at the end one publication might reach a greater public than it was initially conceived to reach. For most of these users it is easier to trust this information, because it is shared by people they know and who as a rule are involved in the events. Consequently, another supplementing study that was mentioned by Alrasheedy *et al.* demonstrated that about 62% of people entrust social media when it comes to reading the news, as well, for example, a large proportion of electors trusted the fake statements spread during the US Presidential elections in 2016.<sup>31</sup> Even if the news were fake, they were already shared by some users, so that people, who were connected to them, disseminated it further.

As a result one might come to the conclusion that people, who are involved in diverse situations happening in the world, become more active during this time and the number of shared content in social networks increase. As an illustration, during the protests in Egypt in 2011 the usage of Facebook increased by 29%.<sup>32</sup> People in Egypt used social media to show the world what is happening there, whereas other users all around the world began to use these platforms more to get acquainted with the events. At the same time, it is beneficial not only for the regular citizens, but also for the journalists. This content from the social media that users witnessed and further shared as Bossio and Sacco have noted might be used by the international news organisations in order to cover the ongoing events, as for example it was done during the Arab Spring.<sup>33</sup> It has its own advantages, as for instance, spending less on payments on a specific journalist and other employees, who work on the visual content, that have to be in the country concerned during this

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<sup>29</sup>Ali, S. R., Fahmy, S. (2013), *supra nota* 1, p. 6.

<sup>30</sup>Napoli, P. M. (2019), *supra nota* 8, p. 10.

<sup>31</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

<sup>32</sup>Ali, S. R., Fahmy, S. (2013), *supra nota* 1, p. 6.

<sup>33</sup>Bossio, D., Sacco, V. (2015). Using social media in the news reportage of War & Conflict: Opportunities and Challenges. *The journal of media innovations*, 2 (1), 59 – 76.

time or there is no such time waste, because every publication can be reached within the seconds. On the other hand, the information is not properly checked, whether it is true or not.

An illustrative example of how the misleading and unchecked information taken from the social media and highlighted by the international news organisations can change the massive opinion towards some country or some event is a story about the fake blog called “A Gay Girl in Damascus”, which narrated about a lesbian American Syrian girl Amina Araf that was seen as an individual loud voice against the repressive regime of Bashar al-Assad in Syria and that turned out to be a fictional character created by American.<sup>34</sup> Such stories provoke emotions in the audience and lead to prejudice about a certain country, in this case about Syria, or the type of politics there. Even if the concerned country tries to exonerate itself, it would be extremely hard due to the reason that it would be hard to beat the first emotion together with the first impression that the audience had. However, not only one’s reputation can be damaged, but as well many other harmful effects can be caused. In particular, information that is disseminated in social media can also have a negative impact on the audience including on their emotional, social and mental health.<sup>35</sup> Users get addicted to social media, they crave strong emotions, which might be too difficult for their mental health to manage later on. The virtual reality becomes their actual one. Most of the times it happens by reasons of the border between the one’s own private space and the outer world, which fades step by step due to the reason that people are able to participate in the social life and in the various transnational events without going out of their homes, what leads to the thought-provoking actuality that a warfare can be close to anybody even if the physical military actions take place far away.<sup>36</sup>

### **1.3. Social Media as a Tool during Armed Conflicts**

In order to go further and get a better overview of the topic, it is necessary to check up front the definition of the armed conflict, which means the following: “This general expression covers confrontations between

a. two or more States (See International armed conflict);

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<sup>34</sup>*Ibid.*, p. 17.

<sup>35</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

<sup>36</sup>Chernobrov, D. (2022). Diasporas as cyberwarriors: infopolitics, participatory warfare and the 2020 Karabakh war. *International Affairs*, 98 (2), 631 – 651.

- b. State and a body other than a State (See War of national liberation);
- c. State and a dissident faction (See Non-international armed conflict);
- d. two or more organized armed groups within a State (See Non-international armed conflict).<sup>37</sup>

It means that the armed conflict can be both international and non-international, including states and non-state actors. Nevertheless, it might become uncertain for one, how social media can be related to these confrontations, which is discussed in this subchapter.

Dardari *et al.*, for example, have explained in their article that the role of social media platforms in the armed conflicts has expanded with the development of digital technologies in a way that present day it is used to spread fear, hatred, and fake information both on purpose and not, which as a result straight or in a roundabout way influence the ongoing on the ground conflict.<sup>38</sup> In other words, earlier the armed conflicts were solely highlighted both in social and in traditional media as the events that are happening for informative reasons, whereas currently the information, not always genuine, related to the confrontations are often used to manipulate the audience and the society in whole. It can be also confirmed by the rising activity of the users, which was mentioned in the previous subchapter, especially the states' governments are becoming livelier on the official social media accounts for the sake of promoting their stance on the situation concerning them.

Alrasheedy's *et al.* complemented this argument with their article claiming that governments often use social media as a tool for distributing fast to the broader audience information that is useful for their agenda.<sup>39</sup> Therefore, the social media platforms are exploited by the governments as places, where they can publicly defend themselves and manipulate the audience to take their side during the conflicts or other controversial questions. The best way to convince people is to publish impressive claims and visual content that will catch the eye of the public and make them feel strong emotions. In a like manner Briant and Chernobrov have mentioned in their article that the states can use the media platforms in their favour by means of propaganda, as for instance the United States of America (further – the USA or the US) used media in every conflict since the war of independence to have an impact on the foreign policy and to ensure the support for their actions

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<sup>37</sup>Bouvier, A., Quintin, A., Sassòli, M. (n.d.). Armed conflict. In *How Does Law Protect in War?* ICRC. [https://casebook.icrc.org/a\\_to\\_z/glossary/armed-conflict](https://casebook.icrc.org/a_to_z/glossary/armed-conflict).

<sup>38</sup>Dardari, A., Levsen, N., Setian, A., Peake, J. (2021). *Social Media, Content Moderation and International Human Rights Law: The Example of the Nagorno-Karabakh/ Artsakh Conflict*. The Promise Institute for Human Rights. <https://law.ucla.edu/sites/default/files/PDFs/Promise/Social%20Media%2C%20Content%20Moderation%20and%20International%20Human%20Rights%20Law.pdf>.

<sup>39</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

from people.<sup>40</sup> These are just some of the outstanding examples of successful direct use of the social media platforms by the governments during the conflicts.

After his conducted survey, Chernobrov noted another instrument that governments can use, namely the government of Armenia used diasporas during the conflict as a resource in info politics, although, it was the own initiative of many participants to fight with the disseminated disinformation by spreading their own views in the social media and as a result help in that way their homeland.<sup>41</sup> As a rule diasporas live outside of their motherland, thus they might not be aware of the real processes that are going on there, but yet in case of such countries as Armenia or any other country that has a strong feeling of patriotism rooted in their culture, even when one is not living on the territory of his or her homeland, they can be easily manipulated to fight for their land from a distance. On the other hand, some part of the diaspora may be even convinced and recruited to combat on the physical battlefield, which is frequently done by diverse terrorist organisations.

Not only governments can use social media in their favour, likewise various banned terrorist organisations such as the self-declared Islamic State of Iraq and Syria (further – ISIS or Daesh) use actively different platforms with the aim to promote themselves, gain support and recruit more participants, which was quite successful based on the fact that in just some months ISIS recruited around 30 000 foreigners.<sup>42</sup> After reading publications in social networks about the romanticised ideology, readers get inspired and blinded by these seemingly idealistic ideas and as a consequence they become those motivated warriors on the battlefield later on. In Brooking's and Singer's words, this is an illustration that the computerised war is not limited to the dramatic worldwide computer system failure, but in addition there are internet and social media, which can be the tools for organising such military campaigns by means of using the platforms for promoting themselves and their ideas and other marketing purposes.<sup>43</sup>

Moreover, Benedek *et al.* argue that sometimes the social media platforms play the role of a place to storage something, what means in case of the armed confrontations that those, who are affected in one or another way by these conflicts, might use social media as a place to keep some evidence

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<sup>40</sup>Briant, E. L., Chernobrov, D. (2020). Competing propagandas: How the United States and Russia represent mutual propaganda activities. *Politics*, 42 (3), 393 – 409.

<sup>41</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>42</sup>Brooking, E. T., Singer, P. W. (2018), *supra nota* 5, p. 7.

<sup>43</sup>*Ibid.*, p. 20.

and additionally it might be the only place, which is easily available at that moment.<sup>44</sup> Nowadays, people are used to capture with their phones everything that might seem extraordinary for them and share it immediately in their social media accounts. It is convenient in the sense that whatever happens to the smart device, the witnessed scenes can disappear from them, but they will be left and accessible as memories in the social media. During the hostilities the future of the persons involved is not certain, they may lose their lives at any moment and in these ruthless circumstances it might become troublesome to establish afterwards the real cause and specific culprit of death. The publications by these users leave a trace of the events that might be useful subsequently.

In the course of the Arab Spring in 2011 the journalists were refused of entry on the Libyan territory, thus during this period of time YouTube was the platform that assisted while reporting the news by means of shared on the platform content that affected people witnessed and posted, which as a result became the illustration of the ongoing events that the journalists were deprived from.<sup>45</sup> Accordingly, that trace is advantageous likewise for the press, because if they have no access to the content making events, their work is left undone, which can be redone by virtue of visual content that social media users share. However, the data from the social networks should be selected carefully due to the reason that it might be unauthentic. Chernobrov explained in his article that people all around the world intensively posted in the social media networks information about the repeatedly escalated armed conflict between Armenia and Azerbaijan over the territory of Nagorno-Karabakh at the end of 2020 shaping the opinion about it sometimes even with the help of the so called bots, which are considered as doubtful and unauthentic activity.<sup>46</sup> These technical tools help to create a greater visibility of any opinion, since *de facto* the activity is generated by robots, and most probably there is no real person behind hundreds of accounts.

Collins *et al.* have pointed out in their article that bots and trolls are malicious accounts in the social media, which were originally made for the companies that have many customers, so that the bots would communicate and answer their questions or inquiries, nevertheless now they are misused to spread misleading information and fake news by means of interacting on the internet in human forms.<sup>47</sup> These bots assist one party to fight with the opposite opinion of another party as a rule effectively, because at these times the number of the artificial bots exceeds the number of

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<sup>44</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

<sup>45</sup>Bossio, D., Sacco, V. (2015), *supra nota* 33, p. 17.

<sup>46</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>47</sup>Collins, B. *et al.* (2021), *supra nota* 14, p. 12.

the real users. Furthermore, during the Nagorno-Karabakh conflict the Armenian diaspora tried to target the algorithms of social media, which determines the visibility of the data they share, what in turn confirms that the social media platforms can be used as online battlefields.<sup>48</sup> It is not only a fight between human beings, but it includes in addition the usage of diverse technical features.

In a like manner Patrikarakos explained in his book that social media algorithms demonstrate the users such kind of content that it calculates they will like based on their habits, which emerge at the same time as the networks are used and what is designed with the aim to prevent these users from leaving such online communities as long as it is possible.<sup>49</sup> It leads to the fact that social media decides to some extent the content that a user will see instead of providing one with the media plurality and giving the person the freedom to choose. Consequently, these acts demonstrate that social networks are taking active part in disseminating the information, even in cases, when it is false. Collins *et al.* have explained in their article how the social media algorithms work mostly by means of recommendations depending on one's circle of friendship, belongings to diverse groups, history and other similar factors that make the person believe and not verify.<sup>50</sup> So, if one group of people are influenced by some opinion and additionally there are bots, who increase the popularity of it, then it is further spread to their connections by virtue of algorithms, leaving only a miserable chance to get acquainted with the adverse opinion.

These algorithms artificially deprive the users from having the critical-thinking and getting acquainted to the narratives of the both sides of the conflict by means of creating the so called homophily, which means that the algorithms bring together diverse individuals with the same visions and way of thinking, so that they could confirm the veracity of their opinions and would think narrowly.<sup>51</sup> Likewise it destroys the media plurality, restricts less popular views and creates an effect similar to propaganda. Other users start believing the content they see, it forms their own opinion and then they spread it further. Accordingly, social media provokes people to share the same data and this does not make it a purely technological company, but rather sort of a content maker. Butkovskyy made a survey research, which was described in his paper, intriguingly it was noted that blocking media platforms, which contain another view on situation that is claimed to be the so called propaganda or the manipulative information, might be considered by some part of the

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<sup>48</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>49</sup>Patrikarakos, D. (2017), *supra nota* 18, p. 14.

<sup>50</sup>Collins, B. *et al.* (2021), *supra nota* 14, p. 12.

<sup>51</sup>Patrikarakos, D. (2017), *supra nota* 18, p. 14.

audience as a sign that the restricted data might be true.<sup>52</sup> This opinion might be to some extent true, because if the information is false, then it would not be a problem to prove it and there would be no need for a lot of effort to censure it.

At the same time one of the participants of Chernobrov's survey noted that not taking part in such an information war could result in the situation, when only one side of the narrative would be shared, in case another party to the conflict will be involved in disseminating information in the media.<sup>53</sup> Consequently, in order to hear all the sides of diverse conflicts, it is necessary not to restrict any parties from sharing their narratives, but obviously it should be done within the frameworks of ethics and morality. Similarly, the assistance by the technological features of social media also restricts the parties involved in the conflict. It should be taken into account that the possibility to use the social media content during the armed conflicts in order to highlight the events in the news can create the diversity in the regular media, because it makes the previously unnoticed individual voices heard.<sup>54</sup> The conflicts or serious problems that otherwise would be hidden also can be highlighted by virtue of social media.

However, Chernobrov believes that the diasporas, which are related to the various armed conflicts, might have a great influence in the international arena as long as they have the possibility to lobby, protest and gain support for the actions of their state in the country they live in, for example, a long time ago established Armenian diaspora would have a considerable influence in France, at the time of Turkish diaspora having a greater effect in Germany.<sup>55</sup> The previously mentioned social networks' algorithms would assist the lobby virtually, because these diasporas have their social connections within other countries they live in, thus they are able to form the views in other nations. In the meanwhile it was mentioned in the Bossio's and Sacco's article that in case of the excessive publication of the visual content at the time of the armed conflicts, it might become considered as an entertainment rather than a part of supplementation to the news.<sup>56</sup> Users will open the social media not to get to know what is happening in the world, instead they will treat it as watching a good film at the end of the day. Patrikarakos complements the previous argument with

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<sup>52</sup>Butkovskyy, Y. (2020/2021), *supra nota* 9, p. 11.

<sup>53</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>54</sup>Bossio, D., Sacco, V. (2015), *supra nota* 33, p. 17.

<sup>55</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>56</sup>Bossio, D., Sacco, V. (2015), *supra nota* 33, p. 17.

the claim that in the modern times people prefer stories rather than arguments, because stories trigger more emotions, while arguments are dry facts.<sup>57</sup>

Fast pace of life makes people seek for the emotions and sometimes social media plays the role of intermediary for emotions between people, because for some people it is a place to get them from and for some users it is a possibility to let them out. Present-days it is quite common that people of one nation do not live on the territory of one state, but when such conflicts happen on their motherland and these diasporas can not be present on the battlefield, they begin to fight online through the social networks making the cyberspace a new battlefield, what was mentioned by Chernobrov while explaining the role of social media in Nagorno-Karabakh conflict.<sup>58</sup> These users, who are directly or indirectly connected to the ongoing confrontations, often participate in the online war letting out their feelings that appeared due to the events. Patrikarakos as well noticed that there are two wars going on at the same time: one on the real battlefield and another on the online platforms, which from time to time seems more significant for the reason that since many people take part only through the social media, they create many discussions around the real armed conflict and at the end for the public will win not that party that has more weapons, but the one that won the fight of narratives around it.<sup>59</sup> This is another type of people, who use social media to make their ordinary life more exciting by following the conflicts and empathising.

Nonetheless, there are many questions related to the quality and veridicality of disseminated visual content that arise as for instance the objectivity of it, the realness of the claimed place or date etc.<sup>60</sup> Sometimes after a while the disseminated data turns out to be older or made in another location than it was claimed. As a rule the reason behind it is propaganda or it might be done on purpose as well in order to change the course of the conflict. Liu et al. stated one of the related consequences that might arise: “Third, fake news changes the way people interpret and respond to real news.”<sup>61</sup> In a similar manner, for instance, people, who seek for humanitarian aid during the hostilities, might be misled to another direction, where their lives might be at threat of being harmed or all the more losing their lives.<sup>62</sup> The information in the media therefore both in the social and the

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<sup>57</sup>Patrikarakos, D. (2017), *supra nota* 18, p. 14.

<sup>58</sup>Chernobrov, D. (2022), *supra nota* 36, p. 18.

<sup>59</sup>Patrikarakos, D. (2017), *supra nota* 18, p. 14.

<sup>60</sup>Bossio, D., Sacco, V. (2015), *supra nota* 33, p. 17.

<sup>61</sup>Liu, H., Shu, K., Sliva, A., Tang, J., Wang, S. (2017). Fake News Detection on Social Media: A Data Mining Perspective. *ACM SIGKDD Explorations Newsletter*, 19 (1), 22 – 36.

<sup>62</sup>International Committee of the Red Cross. (2021). *Harmful Information: Misinformation, disinformation and Hate Speech in Armed Conflict and Other Situations of Violence*. ICRC. <https://shop.icrc.org/harmful-information->



traditional one can have devastating impact on the course of the conflicts and people's lives and leads to the cyber war. Information warfare creates according to Molander *et al.* the so called blurring phenomenon, which means that there might be so many misleading acts done during the new type of warfare that it is difficult to distinguish the main parties, the real events, the sources of the published data, etc.<sup>63</sup> Finding out the truth about the conflicts can take a lot of time and can remain unrevealed for ages, at the same time it brings the effects on others immediately.

Spread of false information can result more serious consequences than one can even imagine, as an illustration the International Committee of the Red Cross has explained several times in its written article about its findings that the humanitarian workers that do their job in the conflict zones can happen to be under pressure due to the fake information relating to them and under these circumstances they can be forced to leave the territory of conflict, what correspondingly will cause the disappearance of humanitarian aid to people in need in the warfare area.<sup>64</sup> Similarly, it can affect the psychological health of people. According to a fresh research conducted among the students in Czech Republic related to the latest conflict between Russia and Ukraine: "More than one-third of the participants manifested moderate to severe levels of anxiety and depression."<sup>65</sup> Thus, it is enough for one to trust and share one post of a connection on social media or for traditional media to use unverified data from social media to be able to impact hundreds of other people.

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[misinformation-disinformation-and-hate-speech-in-armed-conflict-and-other-situations-of-violence-icrc-initial-findings-and-perspectives-on-adapting-protection-approaches-pdf-en.html](#).

<sup>63</sup>Molander, R. C., Riddile, A., Wilson, P. A. (1996). *Strategic Information Warfare: A New Face of War*. Santa Monica, CA: RAND Corporation.

<sup>64</sup>International Committee of the Red Cross. (2021), *supra nota* 62, p. 24.

<sup>65</sup>Alkasaby, M. A., Antalová, N., Drobov, A., Koščik, M., Krobot, M., Peřina, A., Riad, A. (2022). Mental Health Burden of the Russian-Ukrainian War 2022 (RUW-22): Anxiety and Depression Levels among Young Adults in Central Europe. *International Journal of Environmental Research and Public Health*, 19 (14), 8418.

## 2. LEGAL REGULATIONS

### 2.1. Law Concerning Media

This thesis will not be limited by the law governing one specific state or region, rather this chapter of the research will be divided into two larger blocks: the EU law and the international law. Nevertheless, during the analysis some examples of the states will be given as an illustration to the normative documents. Moreover, this chapter will focus mainly on the content that is shared in the media and the legitimacy of restricting it. For instance, concerning the media content, Dardari *et al.*, intriguingly, expressed their opinion that there are no specific regulations that would prohibit false information being disseminated or include the right for truth.<sup>66</sup> Indeed, as it would be further explained, the main focus of the content regulations is hate speech and similar topics rather than truthfulness, especially in the context of world news that reaches a wide audience. Although, the regulations related to veracity would be useful and beneficial. At the same time, the restricting measures can excessively limit all the information that is moving between the people, while checking if it is true or not. Benedek *et al.* have mentioned in their article that France, for example, emphasises the importance of the proportionality between the measures to fight against the fake information and on the other hand, the fundamental rights, freedoms of expression and information, privacy and personal data protection.<sup>67</sup> It is extremely difficult to keep this balance taking into account that the existing normative regulations are insufficient, nevertheless the following subchapters are explaining different aspects that are being governed.

#### 2.1.1. EU Law

The starting point of the discussion of the normative part is the fundamental rights and freedoms that are tightly related to all aspects of life. Consequently, no law concerning media, no matter if it is EU law or international law, can be discussed without any reference to the CFREU's Article 11, which states: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected."<sup>68</sup> The initial nuance that has to be noted is that the expression or receipt of the opinions and ideas can not be restricted anyhow, which

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<sup>66</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>67</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

<sup>68</sup>Charter of Fundamental Rights of the European Union, *supra nota* 20, p. 14.

means that even in cases when they are wrong or deceitful. Furthermore, it means that one is allowed to get access to all the possible sources to get this data without any censor. Thus, it becomes a matter of ethics and morality of the readers, where they prefer to get the information from, in what way and whether to believe it or not. In any case, it is their choice and there should be independent media plurality. Another Article of CFREU that can not be left unmentioned in the context of media's content management is Article 21 that states the following: "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited."<sup>69</sup> In other words, it should be prohibited to impose any restrictions on media or its content solely based on having another opinion or belief, being in another language or belonging to a national minority or another nationality in whole, etc. It would be considered as a discrimination.

On the other hand, it is not prohibited to limit the above mentioned freedoms according to the first paragraph of the Article 52 of CFREU: "1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others."<sup>70</sup> Consequently, there should be a substantial reason behind those bans that the government of the Member State can impose and that outweighs all the potential harm, as it was previously mentioned similarly by France. For example, Lithuania found a solution in order to have the control over both usual media and social media during the armed conflicts by means of declaring a state of emergency that extends and allows to have a control over media content.<sup>71</sup> This so called state of emergency means a threat to the public, therefore as a consequence it overrules such basic regulations as mentioned above.

Nevertheless, these kind of limitations can not be misused, what is clearly stated respectively in the Article 54 of CFREU: "Nothing in this Charter shall be interpreted as implying any right to

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<sup>69</sup>*Ibid.*, p. 26.

<sup>70</sup>*Ibid.*, p. 27.

<sup>71</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.”<sup>72</sup> Accordingly, there is always a risk that the restrictions might be imposed by governments for other purposes than public safety or security, etc., even if these reasons were announced in broad daylight. On the other hand, Latvia and Estonia in their turn decided not to restrict directly, but rather to make some amendments to the current existing legislation referring to the threats to morality, national security and public safety.<sup>73</sup> So much as they tried to avoid the limitations, the duty to follow these rights and freedoms should be still kept in mind, when introducing the amendments to the existing legislation in order to keep pace with the rapidly changing world situations.

For instance, after the repeated escalation of the conflict between Russia and Ukraine in 2022 the EU adopted a new Council of the European Union Regulation (EU) 2022/350 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, which established the additional rules for the content governance in the Member States of the EU during the armed conflict between Russia and Ukraine, in particular it can be seen in the Article 2f: “1. It shall be prohibited for operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies listed in Annex XV, including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed.

2. Any broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies listed in Annex XV shall be suspended.”<sup>74</sup> It means that the persons, who are included in the list, in other words sanctioned, are prohibited to demonstrate the content they created to the audience on the territory of the EU as a result of the events that are going on outside of the EU itself. At the same time, it should be noted that in case of other armed conflicts there were no such radical responses and decisions made. Nevertheless, these authors are not able to express nor possibly try to justify their stance on the situation, which is most likely to be contrary to the EU’s one.

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<sup>72</sup>Charter of Fundamental Rights of the European Union, *supra nota* 20, p. 14.

<sup>73</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

<sup>74</sup>Council of the European Union Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 65, 02.03.2022, p. 1–4.

Interestingly, according to the survey mentioned in the Benedek's *et al.* article many people are worried that the current war-related ban on information in the media might become a precedent for the future similar cases, therefore as a result these measures might be misused by the governments, when the reason for such restrictions might be not necessary or questionable.<sup>75</sup> A significant part of the usual audience, who wants to avoid propaganda, the reason called by the governing bodies behind the ban, instead gets acquainted with all sides of the conflict, including participants and interested in the conflict third parties, in case of proxy war. This allows them to get the full overview of the conflict and then as a result to make their own conclusions. Though, such governing bodies' decisions deprive that part of the audience to make their own analysis, hiding a vast part of information from them, which is often still accessible by some technical means bypassing the censorship.

Despite the fact that the social media platforms argue that they do not produce the content, as a consequence they should not be liable for that, the Article 12 of the EU Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (further - Directive on electronic commerce) states the following: "1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an

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<sup>75</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

infringement.”<sup>76</sup> Thus, if social media platforms are purely giving the technical possibility to its users to transmit the information and they are not considered as media due to the reason that they do not create the content, then they still can not be exempt from liability according to this Article of Directive on electronic commerce, because they do select to a certain extent the receiver of a transmission. Namely, as it is further explained in more details, social media uses algorithms to connect the users with the content that might be of their interest.

In addition, in accordance with the EU law, in specific with Article 35 of Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market For Digital Services and amending Directive 2000/31/EC, the social media networks, especially the large ones, including such popular social media platforms as Facebook, Twitter, Instagram, etc., are obliged to mitigate the risks that emerge due to their activities and services that they provide the people with: “1. Providers of very large online platforms and of very large online search engines shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 34, with particular consideration to the impacts of such measures on fundamental rights. Such measures may include, where applicable:

- (a) adapting the design, features or functioning of their services, including their online interfaces;
- (b) adapting their terms and conditions and their enforcement;
- (c) adapting content moderation processes, including the speed and quality of processing notices related to specific types of illegal content and, where appropriate, the expeditious removal of, or the disabling of access to, the content notified, in particular in respect of illegal hate speech or cyber violence, as well as adapting any relevant decision-making processes and dedicated resources for content moderation;
- (d) testing and adapting their algorithmic systems, including their recommender systems;
- (e) adapting their advertising systems and adopting targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide;
- (f) reinforcing the internal processes, resources, testing, documentation, or supervision of any of their activities in particular as regards detection of systemic risk;
- (g) initiating or adjusting cooperation with trusted flaggers in accordance with Article 22 and the implementation of the decisions of out-of-court dispute settlement bodies pursuant to Article 21;

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<sup>76</sup>European Parliament and Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.

- (h) initiating or adjusting cooperation with other providers of online platforms or of online search engines through the codes of conduct and the crisis protocols referred to in Articles 45 and 48 respectively;
  - (i) taking awareness-raising measures and adapting their online interface in order to give recipients of the service more information;
  - (j) taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate;
  - (k) ensuring that an item of information, whether it constitutes a generated or manipulated image, audio or video that appreciably resembles existing persons, objects, places or other entities or events and falsely appears to a person to be authentic or truthful is distinguishable through prominent markings when presented on their online interfaces, and, in addition, providing an easy to use functionality which enables recipients of the service to indicate such information.
2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year. The reports shall include the following:
- (a) identification and assessment of the most prominent and recurrent systemic risks reported by providers of very large online platforms and of very large online search engines or identified through other information sources, in particular those provided in compliance with Articles 39, 40 and 42;
  - (b) best practices for providers of very large online platforms and of very large online search engines to mitigate the systemic risks identified.

Those reports shall present systemic risks broken down by the Member States in which they occurred and in the Union as a whole, as applicable.

3. The Commission, in cooperation with the Digital Services Coordinators, may issue guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.”<sup>77</sup> As it can be seen, this Article mentions content moderation, but mainly in the context of hate speech and cyber violence, which is not directly related to the armed conflicts. However, the social media platforms are allowed to take the necessary risk mitigation measures, including the adaptation of their own terms and conditions, what is actually done by them. Thus, these social networks take measures mentioned in this Article, but they do not put more effort than it is expected from them by the

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<sup>77</sup>European Parliament and Council Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102.

legislation, which leads to the conclusion that the current regulations are not specific enough, are insufficient and they need to include the state of the armed conflict in particular.

### **2.1.2. International Law**

International law and the EU law intersect in the context of basic human rights and freedoms. In its turn international law suggests to begin from an International Covenant on Civil and Political Rights (further - ICCPR), which covers more countries than CFREU and therefore can be more applicable in case of social media. ICCPR has a similar article to the Article 11 of CFREU, namely Article 19, which states the following: “1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”<sup>78</sup> This particular Article is more specific than the similar in its content Article of CFREU. Article 19 of ICCPR mentions as well the right to obtain the information from media sources of one’s choice, until it breaches the security or safety of the larger groups of people, which is often used as a reason by different states referring as well to the propaganda, when they introduce new bans on media sources.

Intriguingly, the Article 20 of ICCPR covers propaganda for war and related hostilities disparate from CFREU: “1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”<sup>79</sup> Therefore, before accusing the media platforms or any individual in disseminating propaganda, the detailed investigation should be carried out for the presence of any of the above mentioned indications of propaganda. Especially, if the accused one is attempting to explain its stance on the situation, it is not necessarily an advocacy of the

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<sup>78</sup>United Nations, General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, I-14668 UNTS.

<sup>79</sup>*Ibid.*, p. 32.



claimed hatred, etc. Nevertheless, regardless of the significance of hate speech on world security, the United Nations (further - UN) marked that the current international law does not require the countries to ban it, unless it is going to transform into a worse type of hate speech, which is incitement that provokes discrimination, hostility and violence.<sup>80</sup> Thus, the assessment whether or not the content contains hate speech that potentially might become a trigger for the armed conflict or any kind of discrimination is someone's subjective opinion due to the fact that the evaluation should be carried out before the outcome appears. It means that the result of it is not evident yet and it is rather someone's own comprehension and perception of the speech, its impact and severity that is different depending on the individual, which in turn makes it difficult to criminalise. In a similar manner, the International Committee of the Red Cross noted that propaganda, misinformation and disinformation are not prohibited during the warfare under the international humanitarian law, except if the aim of such false information is to disseminate violence amid the civilian population.<sup>81</sup> At the same time, all states have their own agenda and there is no guarantee that they will not use any of the above mentioned tools and disseminate violence in their favour. Even accusing somebody, spreading the disinformation about it and restricting the opposing media sources, later on justifying those acts innocently with the protection of the public safety or security could be a part of this agenda, which with proper conduct might be left unnoticed and play a role of a covert provocation.

The previously referred to by the Red Cross international humanitarian law governs the civilian population in the course of any armed conflict along with many other aspects of war. Since the media content during the warfare has an impact on the civilians as well on their security and safety at the time of these brutal events, the articles of International Humanitarian Law can not be pushed aside, in particular the Article 13 of Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (further – Protocol II), which states the following: “ 1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

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<sup>80</sup>United Nations Strategy and Plan of Action on Hate Speech 2019.

<sup>81</sup>International Committee of the Red Cross. (2021), *supra nota* 62, p. 24.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.”<sup>82</sup> Since it is not specified that the attack means necessarily the physical one, then the Article 13 of Protocol II might be also applicable to the attacks that are happening in the social media during the armed confrontations. In addition, if the civilians are granted protection against the dangers, which emerge from the hostilities, then it means that they should be protected not only on the battlefield, but as well in the virtual world, where the so called online warfare is also quite tense. However, it should be taken into account that this Article can be exercised only during the non-international armed conflicts.

In a similar manner, the Article 51 of Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts (further - Protocol I) also protects civilian population, but during the international armed conflicts: “1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

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<sup>82</sup>Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 08 June 1977, I-17513 UNTS.

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57 .”<sup>83</sup> Article 51 of Protocol I in comparison to Article 13 of Protocol II includes a more specific description of the prohibited attacks, which are predominantly related to the physical or military attacks. Although, Article 51 (1) and (2) could similarly to the Protocol II apply to the virtual warfare, but during the international armed confrontations.

In addition, Article 52 of Protocol I includes the protection of the civilian objects: “ 1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”<sup>84</sup> Therefore, considering the circumstances that social media platforms contain huge amounts of data of the civilians then it becomes questionable whether or not the data can be treated as the civilian object. In case of the positive answer to this question, that data could be protected under this particular Article of

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<sup>83</sup>Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 08 June 1977, I-17512 UNTS.

<sup>84</sup>*Ibid.*, p. 35.

Protocol I. Currently, according to McCormack there is no specific common understanding whether or not the data of the civilians should be considered as civilian object during the armed conflicts due to the lack of examples and practice, thus the states should determine it themselves.<sup>85</sup> The existence of the legal precedents would facilitate the determination of civilians' data present in the online environment in the context of legal definition of civilian objects. Additionally, case law would reveal many nuances that should be taken into account. For example, McCormack argues that if the data related to the civilian population is invaded during the armed conflict and as a consequence there are physical damaging effects on those civilians, then it should be considered as an attack against them, which is prohibited by the international humanitarian law.<sup>86</sup> The consequences that might occur are unpredictable. If the addresses of the civilians are revealed, then, for instance, the people locating there might be attacked, etc. At the same time, Jha *et al.* concluded in their study that "In the presence of conflict, while bribery could be utilized by the perpetrator groups to avoid legal consequences, the victimized groups can use bribery to buy protection from the corrupt state machinery and avoid prosecution."<sup>87</sup> It means that any risk to the lives of civilians might make corruption flourish within the state.

## 2.2. Control over Content

There are 3 possible parties that can be liable for the control over content published in social media. First option is the users themselves, because they are the authors of the data that gets disseminated subsequently and it is their responsibility as well to act in the legal and ethical frameworks, at least in those they consent to when agreeing to create an account. On the other hand, Alrasheedy *et al.* noted in their article that one's self-regulation is on the low level, because people are afraid that they will be socially excluded, if they do not constantly share the news that is spread all over social media or on the internet in whole.<sup>88</sup> The life pace is fast nowadays and people feel the pressure from everywhere. Hence, the stress from social media is not an exception. Not being active, not showing support to others and having the popular opinion makes users feel uncomfortable, because they think that the attitude towards them will worsen. As a result, it becomes not that important for these users whether or not the publications are verified. Intriguingly, it is as well confirmed by the

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<sup>85</sup>McCormack, T. (2018). International Humanitarian Law and the Targeting of Data. *International Law Studies*, 94 (1), 222 – 240.

<sup>86</sup>*Ibid.*, p. 36.

<sup>87</sup>Jha, C. K., Panda, B., Sahu, S. K. (2022). Institutions and conflict. *Economic Modelling*, 113, 105894.

<sup>88</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

study mentioned by Pennycook and Rand, which demonstrated that people tend to share news with bold headlines, even if they believe that the data is not completely true.<sup>89</sup> On the other hand, it was also mentioned by Alrasheedy *et al.* that the survey in the US schools revealed that most of the students can not make any difference between the real and fake statements.<sup>90</sup> As a rule, the information sounds extremely convincing and the visual content does not indicate the date and location of the place, making it hard to distinguish fake from real.

There has been a considerable number of discussions about false information these days that gave rise to many new definitions in the scientific field, which might make people confused. The most popular definitions were made public by the International Committee, which has interpreted misinformation in the following way: “Misinformation: False information that is unintentionally spread by individuals who believe the information is true or who have not taken the time to verify it. Misinformation can be spread via rumours (see definition below), a series of social media posts, etc.”; disinformation consequently: “Disinformation: Intentionally false information that is fabricated and/or disseminated with malicious intent. This can include terms such as propaganda and “information operations“.”; and mal-information accordingly “Mal-information: Information that is true but is spread with the intent to cause harm (for example, to taint someone’s reputation or play on existing social tensions).”<sup>91</sup> In addition, there is also a more general term “fake news”, which is commonly used in the discussions about the veracity of the information spread. The term was described by Lim *et al.* in the following manner: “Fake news hides under a veneer of legitimacy as it takes on some form of credibility by trying to appear like real news. Furthermore, going beyond the simple appearance of a news item, through the use of news bots, fake news imitates news’ omnipresence by building a network of fake sites.”<sup>92</sup> These definitions seem similar, yet they mean different things.

Frequently, it is difficult to track the initial source of any of the previously mentioned types of fake information. In their turn, Alrasheedy *et al.* argue that the control over the content about somebody or something can sometimes be beyond one’s control due to the viral spread of the potentially fabricated statements.<sup>93</sup> Hundreds or thousands of publications are shared every second, verifying

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<sup>89</sup>Pennycook, G., Rand, D. G. (2021). The Psychology of Fake News. *Trends in Cognitive Sciences*, 25 (5), 388 – 402.

<sup>90</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

<sup>91</sup>International Committee of the Red Cross. (2021), *supra nota* 62, p. 24.

<sup>92</sup>Lim, Z. W., Ling, R., Tandoc Jr., E. C. (2018). Defining “fake news”. A typology of scholarly definitions. *Digital journalism*, 6 (2), 137 – 153.

<sup>93</sup>Alrasheedy, M. *et al.* (2019), *supra nota* 2, p. 6.

all of them even with the help of digital tools is utopian. Therefore, one of the solutions here would be the consciousness of the users, who could try to exercise their critical thinking skills, while reading the news in social media, to avoid sharing doubtful information. Similarly, the social media platforms have established their internal rules, which usually include the prohibition of hate speech and that at least to some degree stops people from using it. Likewise, the UN has turned attention with its strategy and plan to the importance of hate speech, what can trigger the armed conflict, and has put the emphasis on confronting it in order to prevent such conflicts.<sup>94</sup> Undoubtedly, when two or more sides are using hatred towards each other, especially if the governmental bodies use it while accusing each other, it might result in the real armed confrontations thereupon.

Therewith, despite the absence of the definition of hate speech the UN has interpreted it in the following way: “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.”<sup>95</sup> During the confrontations usually the people involved in the happening from different conflict sides have more negative emotions towards each other, which result discrimination and hate speech in the online environment under each publication related to these events. Since the International Committee of the Red Cross believes that it is important to combat not only hate speech, but as well with misinformation, disinformation and mal-information, it can be seen as supplementary to the UN’s principles.<sup>96</sup> Misinformation, disinformation and mal-information that can spread as fast as light are directly related to forming opinions and therefore stimulate hatred.

### **2.2.1. The Capacity of the Governments**

The second option, who could be responsible for the content shared in social media, is governments of the states. Under the international law, which was mentioned above, the governments of all the states are the ones that are primarily liable for ensuring the fulfilment of the laws.<sup>97</sup> They should monitor that the laws are introduced and implemented in their country, because it provides stability and order there. This statement was also supported by the UN: “1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business

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<sup>94</sup>United Nations Strategy and Plan of Action on Hate Speech 2019, *supra nota* 80, p. 33.

<sup>95</sup>*Ibid.*, p. 38.

<sup>96</sup>International Committee of the Red Cross. (2021), *supra nota* 62, p. 24.

<sup>97</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>98</sup> It is clearly stated by the UN that any violation, especially related to human rights, must be addressed by the state. Therefore, the content shared in social media that is violating any regulations should be investigated and punished, the state has to at least ensure that the proper measures will be taken.

States are responsible to interpret and include the international law into their national law and as a result govern the way business is conducted in their country, thus, they regulate the performance of the human rights and the fundamental freedoms by the enterprises.<sup>99</sup> It means that since the social media networks are enterprises, which are operating worldwide, then they can be liable as any other legal entity. All the laws that exist and relate to the businesses should be applicable to social networks. However, the UN, intriguingly, noted separately how the state should support business in the context of human rights in the conflict-affected areas: “ 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;”<sup>100</sup> Hence, the state’s obligation to ensure that the legal framework is implemented does not only consist of imposing the obligations on the entities, but of assisting them in exercising these regulations.

Nonetheless, there is also another option for the governments on how to monitor the shared information. States can also try to control the content by means of blocking sites or other media restrictions.<sup>101</sup> This alternative is used by many countries nowadays due to the fact that it is the fastest and the easiest way to do it without any intermediaries as the social media networks. For example, the US created a fresh National Cyber Strategy, blacklists of “fake news” distributors, similarly they delete the fake information from the social media.<sup>102</sup> That is an example that the states can have more resources to establish the overall control to a certain degree. In its turn,

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<sup>98</sup>United Nations Guiding Principles on Business and Human Rights 2011.

<sup>99</sup>*Ibid.*, p. 39.

<sup>100</sup>*Ibid.*, p. 39.

<sup>101</sup>Ali, S. R., Fahmy, S. (2013), *supra nota* 1, p. 6.

<sup>102</sup>Briant, E. L., Chernobrov, D. (2020), *supra nota* 40, p. 20.

Armenia, for instance, created censorship in the course of the Nagorno-Karabakh conflict by virtue of amendments to the martial law, which expanded the power of the police, including that they could demand removing content from any kind of media, as well prohibited any sort of disapproval of the state's government acts.<sup>103</sup> At the same time, countries are finding diverse effective ways of dealing with the content monitoring, though sometimes misusing the measures and fighting with the media plurality and the freedom of speech.

Also, there is another interesting solution, which is often discussed and quite popular among some larger countries. Namely, both Russia and the USA create lists of the so called "foreign agents".<sup>104</sup> This definition is regularly mentioned in the news, nevertheless the meaning of it remains opaque for the audience. Dubrovsky has explained in his article that the undesirable foreign agents are the companies or individuals that have the opportunity to lobby or may have influence to some extent over groups of people in one country, but at the same time these agents are acting in the interests of another country.<sup>105</sup> Obviously, there is no government that would like to have somebody influencing the civilians not in the favour of the country's interests and the purpose of restricting them is to a certain degree understandable. On the other hand, there is freedom of speech and to choose where to get the information from.

The armed conflicts and other controversial events make those regulations stricter, but the responses of the international society are in the aftermath crossing the achievements of the democracy for ordinary citizens, who as a rule are not related anyhow to the happening events. After the special military operation, which started in Ukraine in 2022, many national authorities of different states have changed their policy towards Russia's media availability, as a result creating a so called digital Iron Curtain.<sup>106</sup> *De facto* this Curtain solely deprives the audience from reading an opposite to their governments' opinion, otherwise there is no other major effect. Similarly acted the Azerbaijani government, who blocked and slowed down the access to diverse social media, during the Nagorno-Karabakh conflict, whereas the Azerbaijanis were still able to bypass these restrictions and get the access by means of virtual private network (further – VPN)<sup>107</sup>, as well as Ukrainians did it after the ban of the Russian-owned web resources<sup>108</sup>. Censure is a

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<sup>103</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>104</sup>Briant, E. L., Chernobrov, D. (2020), *supra nota* 40, p. 20.

<sup>105</sup>Dubrovsky, D. (2015). Foreign Agents and Undesirable Organizations. *IWM Post*, 116, 21-22.

<sup>106</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

<sup>107</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>108</sup>Chochia, A., Kerikmäe, T., Shumilo, O. (2019). Restrictions of Russian Internet Resources in Ukraine: National Security, Censorship or Both? *TalTech Journal of European Studies*, 9 (3), 82 - 95.



beloved way to fight against what is claimed to be propaganda, although not the most effective one due to the existence of technical tools such as VPN and the technology literacy of people.

On the other hand, Briant and Chernobrov have mentioned in their articles some diverse opinions that nevertheless have one mutual idea, which is based on the assumption that the audience is helpless against the propaganda and for this reason the governments should take active steps in order to filter the incoming and distributed information.<sup>109</sup> The previous example has demonstrated that the mental capacity of people is underestimated by the states. There is no point in banning the opinion of the so called enemy or in other words the information, which is often called propaganda, *vice versa* the audience should be given the possibility to think differently, to analyse the information they receive and to make their own conclusions by virtue of media plurality. Undoubtedly, in times of armed confrontations the topic becomes more sensitive, hence it is necessary for the governments to assist the social networks in verifying objectively the published content.

In addition, such things as social media networks, search engines and platforms that provide people with e-mail services are vital for the conduct of one's everyday life in the modern era for the reason that these items are often tightly related to one's entrepreneurial activities, for instance, or to the access to the essential for life services as medical ones, thus limiting the admittance to them can be considered as illegitimate.<sup>110</sup> Barely was it considered by Azerbaijan in the emergency conditions when they took the decision to block and to slow down social media platforms. Nevertheless, such solutions should be avoided in similar situations. At the same time when many states are taking decisions to restrict media through various ways mentioned above, the latest news turns over such a tendency and shows the new path. In particular, news published recently in Politico highlighted that the international community is willing to move towards the world, where the internet is more open and not controlled by any state's government in accordance with the democracy's vision rather than authoritarian, what was confirmed with the just completed voting for leading one of the UN's agency, which sets and regulates worldwide standards for telecoms and tech infrastructure, followed by the US's win of Doreen Bogdan-Martin over Russia's Rashid Ismailov.<sup>111</sup>

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<sup>109</sup>Briant, E. L., Chernobrov, D. (2020), *supra nota* 40, p. 20.

<sup>110</sup>Chochia, A. *et al.* (2019), *supra nota* 108, p. 40.

<sup>111</sup>Goujard, C. (2022). *US defeats Russia to head UN telecoms agency in fight for internet's future*. Politico. Retrieved from <https://www.politico.eu/article/us-defeats-russia-to-head-un-telecoms-agency-in-fight-for-internets-future/>

### 2.2.2. The Capacity of the Social Media Platforms

The last option of who could be responsible for content monitoring are social media networks. During the time when the states have the duty to protect and fulfil the human rights and fundamental freedoms prescribed by international legislation, the businesses among which are the social media platforms are obliged to comply with these legislations and respect the human rights: “These Guiding Principles are grounded in recognition of:

- (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.”<sup>112</sup> Social media has no possibility to escape from any responsibilities by identifying themselves as the companies that provide the technical means for sharing the content.

The same Guiding Principles published by the UN identified the requirements for the enterprises in order to ensure their respect for human rights as follows: “13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>113</sup> In other words, allowing the discrimination or hate speech or any other similar act, which become more common during the armed conflicts, also by virtue of algorithms that social media platforms constantly exploit, leads to the disrespecting of human rights and means not fulfilling the substantial responsibility.

On the other hand again, while drafting the content moderation policies the social media platforms should take into account the freedoms of opinion and expression, which are protected by the international law and are applicable not only in the real life, but as well in the virtual one.<sup>114</sup> Keeping the perpetual balance between the restrictions and rights is dramatically difficult and is somewhat a matter of ethics to determine where that thin line that can not be overstepped is.

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<sup>112</sup>United Nations Guiding Principles on Business and Human Rights 2011, *supra nota* 98, p. 39.

<sup>113</sup>*Ibid.*, p. 42.

<sup>114</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

However, the UN described briefly the human rights due diligence process for reducing the risks of human rights violations for enterprises in the following way: “18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.”<sup>115</sup> Accordingly, it is purely the social media responsibility to carry out the evaluation of the possible violations risks.

In conformity with their assessments and the existing regulations the social networks create further their own terms and conditions that the users have to consent to when creating their accounts. These policies, which cover the protection of free speech, regulation of content created by the social media users and consequences in case some content does not conform to the platform rules, are similarly called as “platform law” and are extremely difficult to implement due to the enormous amount of data to be reviewed.<sup>116</sup> There are millions of users and each of them is more or less active in the context of spreading the information. In Dardari’s *et al.* opinion the social media platforms’ policies are inadequate in order to control the shared content and to react accordingly, especially taking into consideration that the violation is not always without delay evident.<sup>117</sup> Making a publication might take a few seconds, but finding out that it is breaching some rules takes more time, because it becomes evident only after it appears in the social media feed and in case any other user reports it to be against the rules.

As an illustration, in November 2020 an ear cutting video was posted in Facebook, which later on spread to other social media platforms and which was checked after a while and proved to be not authentic, by a pro-Armenia and anti-Azerbaijan page that belonged to a person living in Los Angeles asking for the donations in order to help Armenia during the war.<sup>118</sup> The video got viral before it was found out that it was violating the platform rules. Likewise, the complicated process resulted in the fake information spread and form the opinion, which assisted in collecting money, although the realness of the aim is doubtful, because it is not known if the author was related anyhow to the conflict and was the received money spent on purpose. Anyway, knowingly or not, the author collected the money by means of false information. Nevertheless, in Benedek’s *et al.* opinion the social media platforms have legal interest in controlling and removing the

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<sup>115</sup>United Nations Guiding Principles on Business and Human Rights 2011, *supra nota* 98, p. 39.

<sup>116</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>117</sup>*Ibid.*, p. 43.

<sup>118</sup>*Ibid.*, p. 43.

disseminated in their environment content, especially, if it is a war related disinformation or if it includes hostilities, violence, wounded persons etc.<sup>119</sup> Otherwise, if they determine that the content is violating regulations, but do not act accordingly, then they might become liable for it.

Even though the legal regulations and recommendations are common, the approach of every platform is different. For example, a Russian social media platform called VKontakte (further - VK) has a list of content types that the social media users should withhold from and promotes users to use the report button in case they discover that there are some rules violating posts.<sup>120</sup> Usually there is a list of what is prohibited in the platform, but VK has instead a list of undesirable content types, whereas the report button is included by most of the social media platforms. At the same time, Twitter claims to be creating a special governing platform policy that takes into account the global perspectives and interpretation of such policy in different cultures and societies.<sup>121</sup> This individualistic approach is beneficial in avoiding any additional conflicts and misunderstandings of content between people coming from different backgrounds. In its turn Facebook also has diverse detailed policies that regulate the content, which it declares to be in accordance with the international law and the UN's principles and that aims to prevent any harmful acts in the real world by means of forbidding inciting for violence content.<sup>122</sup> Although, the current laws concerning the media content are not specific enough when it comes to the armed conflicts. In addition, Facebook included in its policy the prohibition of hate speech and content that praises aggression, suffering or humiliation of other human beings.<sup>123</sup>

Even though, regardless of the established platform laws, the number of publications related to hostilities that can be found in well-known social media is still high. In the course of the Nagorno-Karabakh in October 2020 conflict Facebook disconnected 589 accounts and 7665 pages belonging to Azerbaijani people from Instagram due to their behaviour related to the ongoing conflict, whereas the numbers of removed Armenian pages and accounts were not made publically available.<sup>124</sup> Also, in the case of Myanmar Facebook has blocked pages of the armed groups located in its territory, "Yet they kept a capacity to communicate with their constituents through

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<sup>119</sup>Benedek, W. *et al.* (2022), *supra nota* 7, p. 8.

<sup>120</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>121</sup>*Ibid.*, p. 44.

<sup>122</sup>*Ibid.*, p. 44.

<sup>123</sup>*Ibid.*, p. 44.

<sup>124</sup>*Ibid.*, p. 44.

closed groups, individual profiles and sophisticated use of links and shares.”<sup>125</sup> Since the main focus of social media is hate speech, discrimination and violence, it is likely that these measures were taken not because there are any special restrictions to protect those involved in the warfare.

Intriguingly, despite the fact that Instagram belongs to Facebook, their policies are distinct from each other to some extent in a way that Instagram has its own policy that regulates the dissemination of false information on the platform, but at the same time it has integrated Facebook’s standards regulating hate speech, violence and incitement.<sup>126</sup> Trying to make social media networks a safer place by introducing additional rules that are not obligatory by law, does not mean that these rules will be implemented effectively. Therefore, the false information can be constantly seen moving from one platform to another. Even though there are many regulations that these social media platforms introduce to their communities, these rules do not incorporate Article 20 of ICCPR that prohibits propaganda of war, what therefore means that social media does not specifically forbid it.<sup>127</sup>

### **2.3. Liability**

Determining who should be liable for monitoring content in social media in the course of armed confrontations is extremely important, not only due to the fake information that is spreading, but as well because it has an impact on the progress of the conflict and puts people’s lives at risk. Users, who share online different information that can be from time to time unwelcomed by some parties, put their personal safety at stake by reason of easiness to identify and track those authors in the social media.<sup>128</sup> Similarly, in the context of the armed conflicts they can be identified, found and attacked or they might face some other analogous issues. Since social media consists of an uncountable amount of data, which is dangerous for their users, then special regulation of it during armed conflicts should be introduced. Mill and Rapaport, who formulated the Harm Principle, argued that societies should have some rules of conduct, which cause restrictions to some extent, however this kind of power might be practised legitimately against the will of some part of society members only in order to prevent the harm to others.<sup>129</sup> In other words, if there are users, who

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<sup>125</sup>Aung, N. L., Oo, M. Z., Tønnesson, S. (2021). Pretending to be States: The Use of Facebook by Armed Groups in Myanmar. *Journal of Contemporary Asia*, 52 (2), 200 – 225.

<sup>126</sup>Dardari, A. *et al.* (2021), *supra nota* 38, p. 19.

<sup>127</sup>*Ibid.*, p. 45.

<sup>128</sup>Bossio, D., Sacco, V. (2015), *supra nota* 33, p. 17.

<sup>129</sup>Mill, J. S., Rapaport, E. (1978), *supra nota* 19, p. 14.

might be harmed by reason of the information shared in social media, then it is legitimate to set out additional limitations.

Regulating the content includes in itself examination of the veracity of the publications. The facts might be checked rather manually, what is time consuming and requires a large quantity of employees, which is to some extent related to the application of the crowdsourced judgement in the process of verification, or automatically, what uses machine learning, which detects false information through both lexical and textual contents and style in which the data was shared despite the fact that the producers of the fake news are constantly changing their techniques of writing with the view to bypass this machine algorithm.<sup>130</sup> The amount of the data to verify, even when solely the reported publications are going through this procedure, is huge. Hence, the application of the technology is preferable. However, Collins *et al.* mentioned that the main issue of the fake information is that it goes viral quickly and the major triggers for that are bot and troll accounts on the social media platforms.<sup>131</sup> Accordingly, it turns out that the technology is going to fail here by reason of intelligence of bots, who as it was mentioned previously change their techniques to bypass the verification algorithms. This is why Ghorbani and Zhang argue that the news should be verified using both the digital technologies and real humans.<sup>132</sup>

Nevertheless, it should be kept in mind that if the fact checking concerns the contradicting information about some events that involves two or more conflicting with each other parties, then it is extremely tough to go through the facts' authentication procedure.<sup>133</sup> Especially if it is done manually, the employee verifying the content might be subjective, because he or she uses social media as other ordinary users and is most probably targeted by the social networks algorithms as well. Similarly, the facts concerning the hostilities are difficult to verify since the audience knows solely the information that is made publicly available by the media and there is no guarantee that it is not propaganda. Although, according to Butkovskyy the media should be independent from the governments and should not be under its control due to the reason that states can use media for benefitting their actions or restrict it in a way it would have a negative impact on society.<sup>134</sup>

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<sup>130</sup>Collins, B. *et al.* (2021), *supra nota* 14, p. 12.

<sup>131</sup>*Ibid.*, p. 46.

<sup>132</sup>Ghorbani, A. A., Zhang, X. (2020). An overview of online fake news: Characterization, detection, and discussion. *Information Processing & Management*, 57 (2).

<sup>133</sup>Collins, B. *et al.* (2021), *supra nota* 14, p. 12.

<sup>134</sup>Butkovskyy, Y. (2020/2021), *supra nota* 9, p. 11.

### **3. MEDIA FREEDOM VS CONTROL OVER DISINFORMATION**

The rivalry between media freedom and its limitations is not new and has been discussed for a long time from different perspectives. As the normative documents have shown there are specific human rights and freedoms that stand in the centre of numerous discourses, but it should not be forgotten that there are certain situations, when complete freedom is inappropriate, because it can put many other people at stake. It is actual specifically in the course of the armed conflicts during which the activity of the users in social networks is rising multiple times as well as the number of the fake information increases. In particular, given the number of armed conflicts that have recently erupted, this is especially topical. Beyond question, the appropriate measures should be taken to avoid the false data, but the main aim of it should be maintaining the safety of the people involved in the events, rather than accusing anyone in propaganda, creating an enemy and establishing the modern Iron Curtain.

In order to avoid the excess censoring of social media content and the use of it as a tool for promoting the agenda, the governments should have only limited possibilities to control it. Thus, they should be liable for ensuring the enforcement of the existing legislations and assisting the legal entities as social media platforms in following these regulations. Therefore, it would enhance the balance between the restrictions and freedoms. However, the international society in whole could consider specifying the content regulation during the armed confrontations apart from the hate speech and discrimination in the current legislations, the international humanitarian law would support it by providing the obligation to defend the civilian population during the conflicts. As for today, the current legislation is not sufficient enough. On the one hand, there is international humanitarian law, which is defending civilians, but it is defending them mostly from the physical war, while touching upon the online war indirectly. On the other hand, there is EU law, which selectively and blindly bans content only in case of those armed conflicts, where it has its own benefits. Even so, both of these societies duplicate each other in the context of human rights and freedoms with a small difference: international law complements EU law with more details and the additional article about the propaganda for war. Nonetheless, both of them seem to be more theoretical than practical, because when it comes to the social media content regulation during the armed conflicts, many questions arise.

At the same time, there are social media platforms that are creating their own platform law in conformity with the real legal framework. Nevertheless, having a strong written rule of conduct

does not guarantee that in practice it will work. The factual struggle of the social networks with the violations can be easily noticed. They are under pressure from the society to keep the freedom of speech, meanwhile under pressure from the governing bodies to follow the bans and limitations. On the other hand, there is a lack of resources to verify not every publication, but at least those that are reported. Using people increases the quality, but the process is slow, whereas using technology raises the speed, however many bots remain unnoticed. The consciousness of people would also support the entities in providing safety for them.



## CONCLUSION

During the process of writing this thesis, it became clear that most of the discussions and research are focusing on the rivalry between the freedom of speech and the government's control over media in general rather than social media, in specific in the course of the armed conflicts. Hence, this thesis has successfully demonstrated the significance of the content published on social media during the armed confrontations and that it should be covered by the legislation as well, because at the moment it is not regulated sufficiently enough. The normative discourse analysis showed that the existing legislation mostly restricts hate speech that might incite the armed conflicts or any kind of discrimination and propaganda defending hatred in the context of war and beyond that international humanitarian law focuses mostly on the defence of civilians offline, whereas touching upon the online warfare indirectly. Thus, it can be concluded that the existing international legislation and EU law are not flawless, because they are more theoretical rather than practical and they do not include any specific restrictions on the content during the hostilities, which are necessary to provide civilians with the safety and security, especially when the international humanitarian law emphasises the significance of defending the civilian population from attacks. In addition, there is no specific law that could regulate the conduct of social media network providers. As a consequence, the ordinary civilians are at danger because of the lack of proper regulation.

This thesis has demonstrated the normative side of social media content monitoring and the division of the liability between the three main players as the authors or the users themselves, the social media platforms and the governments. Similarly, it discovered the impact of the armed conflicts on social media and the further consequences on people. In addition, this paper is actual, because of the current situation in Ukraine, the tendency of reescalation of various conflicts, as for example in Nagorno-Karabakh or the one between Israel and Palestine. Since people use more and more social media as the news sources and the military stability in the world is shaky, it is the right moment to start debating on how to increase safety in real life by means of technology for people, who are involved directly or indirectly in armed confrontations. The social media networks can not manage to confront the risks alone without the appropriate cooperation with the state and with the conscious users, whose social media literacy especially during the emergency situations as

hostilities should be increased. Currently, there is no specific body, who is held liable for the content regulation in social media platforms. Thus, under the existing legislation governments, social media networks and the authors all have duties to a certain degree to collectively manage the content. There is an obvious ambiguity on who to hold liable in case the civilians are harmed as a result of data shared in social media.

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