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Digital Violence and the Human Rights Dimension²

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Abstract

The war in Ukraine, the pandemic, and political and economic crises have given rise to the spread of digital violence on the internet. Fake news, disinformation, hate speech, and propaganda in the digital sphere can easily spread, manipulate human consciousness, and encourage illegal behaviour. The progressive advancement of modern technologies has necessitated the development of a common regulatory framework and standards for online interaction and decisive counteraction to illegal online content. Another issue that needs to be examined is the obligation of private social media providers to balance human rights and fundamental freedoms against each other. Whether such additional means of combating online hate and incitement are effective should be a subject of thorough studies. Special attention should be also given to a study into which human rights standards are breached through digital violation and which standards of fundamental rights are infringed on as a result of digital violation.

Keywords: human rights dimension, digital violence, propaganda, Russian-Ukrainian war, hate speech.

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Przemoc cyfrowa i wymiar praw człowieka³

Streszczenie

Wojna w Ukrainie, pandemia oraz kryzysy polityczne i gospodarcze przyczyniły się do rozprzestrzeniania przemocy cyfrowej w internecie. Fake newsy, dezinformacja, mowa nienawiści oraz propaganda w cyfrowym świecie rozprzestrzeniają się w bardzo łatwy sposób, co sprawia, że stają się narzędziami zdolnymi manipulować ludzką świadomością oraz zachęcającymi do działań niezgodnych z prawem. Stały rozwój nowoczesnych technologii oznacza konieczność opracowania uniwersalnych ram regulacyjnych i standardów w zakresie aktywności w sieci, a także podjęcie zdecydowanych działań przeciwko publikacji nielegalnych treści w internecie.

Kolejnym istotnym zagadnieniem wymagającym analizy jest obowiązek prywatnych podmiotów będących właścicielami mediów społecznościowych w zakresie równoważenia praw człowieka i podstawowych wolności. Skuteczność zastosowania dodatkowych środków mających na celu zwalczanie mowy nienawiści i podżegania do nienawiści w sieci powinna stać się przedmiotem wnikliwych badań.

Szczególną uwagę należy również poświęcić analizie przypadków naruszeń standardów praw człowieka w efekcie przemocy cyfrowej, a także naruszeniom norm podstawowych praw w następstwie tej przemocy.

Słowa kluczowe: wymiar praw człowieka, cyberprzemoc, propaganda, wojna rosyjsko-ukraińska, mowa nienawiści.

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Introduction

The Russian-Ukrainian war has been going on for three years. The war has been marked not only by physical conflict on the ground, but also digital terror. Mass cyberattacks, creating bots and a significant presence of propaganda and disinformation spread through social media platforms are no less dangerous than the battle on the battlefield. The organised cybercrime activities have significant influence on the dynamics of the Russian-Ukrainian war. Organised crime has different faces⁴.

I would like to pay special attention to cyber propaganda and the role of organised crime in its spread across online platforms. The world is changing, it is becoming easy to control human consciousness via social media, as we can see on the dramatic example of the Russian Federation. But introducing responsibility and control over the spreading of illegal content⁵ is a sensitive matter as it might constitute an unacceptable interference in the freedom of speech.

The study will build on my previous work on information security and countering propaganda.⁶ I have strong professional background in Interpol, and cooperation with cyber police. Furthermore, I have contributed to effective fight against fake content⁷ as I have participated in different international projects dealing with the matter.⁸ At the same time, I have also been involved in one of major German projects “Organisierte Kriminalität 3.0” (2020–2023) as an external expert. I have

⁴ A. Sinn, *Organisierte Kriminalität? Frag doch einfach! Klare Antworten aus erster Hand*, 2023.

⁵ K. Gierhake, *The connection between freedom, security and punishment and Law: an investigation into the basics and criteria of legitimate terrorism prevention*, Berlin 2013.

⁶ S. Mazepa, *Criminal Law Provisions Countering Propaganda on Social Media in Connection with the Russo-Ukrainian War*, “OER Osteuropa Recht” 2023, 4, pp. 443–456; S. Mazepa, O. Bratasyuk, *Die Gewährleistung der Informationssicherheit in der Ukraine-Verwaltungs-und strafrechtliche Maßnahmen*, „OER Osteuropa Recht“ 2023, 4, pp. 421–442; Mazepa S., *On criminalization of propaganda in the context of the Russian-Ukrainian war: national and international experience*, „Relevant legal issues” 2022, 4, pp. 97–102 (in Ukrainian).

⁷ S. Mazepa, S. Banakh, A. Melnyk, S. Pugach, O. Yavorska, N. Golota, *An Anthological Approach to Detecting Fake in Online Media*, 2021, 10th International conference on advanced computer information technologies; M. Dyvak, M. Melnyk, S. Mazepa, M. Stetsko, *An Ontological Approach to Detecting Irrelevant and Unreliable Information on Web-Resources and Social Networks*, [in:] M. Klymash, M. Beshley, A. Luntovskyy (eds.), *Future Intent-Based Networking. Lecture Notes in Electrical Engineering*, vol. 831, Springer, 2022.

⁸ J. Mrozek, S. Banakh, S. Mazepa, *National security in the modern world: legal, technological and social communication aspects*, Elk 2021.

worked on a report on organised crime trends during the Russian-Ukrainian war.⁹ In my expert capacity, I am actively engaged in public discussions concerning legal issues of countering propaganda, hate speech, disinformation and fake content in Ukraine¹⁰, Germany¹¹, and Austria.¹²

Definition of digital violence

The rapid scientific and technological progress, the global informatisation, the development of existing and the creation of new information and communication technologies come with numerous advantages, but also with a number of disadvantages. Thus, the rapid increase in the amount of information and its volume has led to an information explosion, which resulted in information overload – a perfect breeding ground for information and psychological influence. Having strengthened the available information tools, humanity has done almost nothing to prepare the population for this. Timid words about media literacy cannot help solve the problem. The danger of fire requires firefighting measures. Similarly, the danger of exposure to colossal information streams requires the creation of perfect mechanisms to protect human consciousness. Digital violence – which can also be called information violence – is new and has an unlimited impact.

First of all, let's understand what violence is and what the meaning of digital violence is. World Health Organization has defined violence as “the intentional use of physical force or power, threatening or actual, against oneself, another person, or against a group or community, which results in or has a high probability of injury, death, psychological injury, malformation, or poverty.” This definition includes the very intention to commit an act of violence, regardless of the outcome it creates. However, in general, anything that leads to harm or injury can be described as violence – even though it might not have been intended as an act of violence (by or against a person). The essence of the construct of violence is grounded on two firmly rooted phenomena – the intention to commit violence and the primary

⁹ Project *Organisierte Kriminalität 3.0*, https://www.internationales-strafrecht.uni-osnabrueck.de/forschung/kooperationen_und_abgeschlossene_projekte/ok_30.html

¹⁰ Propaganda in Russian-Ukrainian wartime: criminal justice response, <https://www.wunu.edu.ua/news/22916-vebnar-propaganda-in-Russian-Ukrainian-wartime-criminal-justice-response.html>

¹¹ Official meeting of German government (NRW) with human rights defenders <https://www.land.nrw/node/21465>

¹² 2023 European Law Institute Annual Conference (Vienna): (as a Chair of Ukrainian Hub, I've organized and moderated a Discussion on Information Security of Ukraine). Available from: <https://www.europeanlawinstitute.eu/hubs-sigs/hubs/ukrainian-hub/ukrainian-hub/ukrainian-hub/news/2023-eli-annual-conference-ukrainian-hub-held-a-webinar-on-information-security-of-ukraine/>

evil in man as the spiritus movens of violence, a noumenon that always means pain for the victim of violence.¹³ In our opinion, the concept of violence includes a negative load and encompasses all forms of physical, psychological, and economic suffering. In our study, the spread of fake content, disinformation, propaganda, and hate speech on social media is considered as a type of digital violence. Then we can identify the rights that are infringed upon or violated by digital violence, such as the right to privacy, freedom of expression, right to dignity, right to safety, etc.

In a broader definition, violence is an energetic impact on the organs and tissues of the human body, their physiological functions, through the use of material environmental factors (mechanical, physical, chemical and biological) and/or impact on the psyche through information influence, committed against or beyond the will of the person, capable of causing death, physical and/or mental injury, as well as limiting the freedom of expression or action of a person.¹⁴ The main features of information influence are: a) organisation; b) purposefulness; c) use of special information tools and technologies; d) goal – to make changes in the consciousness or information and technical structure of the object.¹⁵

Information and psychological influence is a purposeful, mostly organised process of penetration into the consciousness of a person (society), which is carried out through the combined use of special information tools and technologies and psychological techniques, and is aimed at changing individual and/or group mental phenomena and/or the mental or physical state of a person. This is a purposeful interference with the natural course of mental processes, the main tools of which are information and information technologies, methods of handling information, as well as verbal, non-verbal, and paralinguistic psychological means. Information and psychological influence is aimed at individual or social consciousness, is carried out by information and psychological or other means and causes transformation of the psyche, change of views, opinions, attitudes, value orientations, motives, stereotypes of a person in order to influence their activities and behaviour. Its ultimate goal is to achieve a certain reaction, response, behaviour (action or inaction) of a person that meets the goals of such influence.¹⁶

In addition to its social effects, social media also has serious effects on individual relationships. The perception of interpersonal communication over a network

¹³ Ž. Bjelajac, A. Filipović, *Specific characteristics of digital violence and digital crime*, „Pravo-teorija i praksa” 2021, 38(4), pp. 16–32.

¹⁴ O.M. Ihnatov, *Nasylstvo yak sposib vchynennia zlochynu: poniattia ta sutnist*, „Forum prava” 2010, 3, pp. 144–151.

¹⁵ O. Samchynska, V. Furashev, *Informatsiine nasylstvo, informatsiina manipuliatsiia ta propahanda: poniattia, oznaky ta spivvidnoshennia*, „Informatsiia i pravo” 2021, 1(36), pp. 55–65.

¹⁶ O.O. Niemtseva, *Struktura informatsiino-psykholohichnoho vplyvu*, „Derzhava ta rehiony. Seriia: Sotsialni komunikatsii” 2015, 4, pp. 42–47.

as unlimited freedom has revealed the concept of digital violence today. It can be said that there is a wide range of forms of digital violence, such as eavesdropping, watching, taking private photos and videos of individuals without permission, attacks on trade secrets and bank accounts, harassment against women and children, insults, attacks by political or group members, and interpersonal intolerance.¹⁷

Misinformation and fake news about the war in Ukraine, the coronavirus pandemic and other current topics are stirring emotions around the world. Especially on social media platforms such as Facebook, Twitter, and YouTube, people share unverified news that spreads quickly. Such information polarises society, leads to increased separatist sentiments, and poses a potential danger to the national security of the state. The purpose of the article is to show how the development of new technologies and the protection of fundamental human rights collide.

Types of digital violence

In this paragraph, we propose a certain classification of digital violence. By object, we can distinguish the following types:

- 1) against women
- 2) against children
- 3) against the LGBT community
- 4) against minorities
- 5) against former partners

For example, according to the Ukrainian legislation and cases of violations of women's rights in the digital environment,¹⁸ it can be concluded that such violations are committed in the form of actions that can be qualified as domestic violence (Article 126-1 of the Criminal Code of Ukraine), death threats (Article 129 of the Criminal Code of Ukraine), sexual violence (Article 153 of the Criminal Code of Ukraine), violation of equality of citizens based on their race, nationality, region, religious beliefs, disability, and other grounds (Article 161 of the Criminal Code of Ukraine), violation of the secrecy of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or via computer (Article 163 of the Criminal Code of Ukraine), violation of privacy

¹⁷ E. Kara, G. Kirpik, A. Kaya, *A research on digital violence in social media*. IGI Global, 2022, pp. 270–290.

¹⁸ *A mechanism for protecting women's rights violated in the digital environment (national experience)*. Available from: <https://jurfem.com.ua/mekhanism-zakhystu-prav-zhinok-zyfrove-seredovysche/>.

(Article 182 of the Criminal Code of Ukraine), domestic violence, gender-based violence (Article 173-2 of the Code of Administrative Offenses), mobbing (Article 173-5 of the Code of Administrative Offenses), etc.

By the content of information disseminated online:

- fake information
- disinformation
- propaganda
- hate speech
- slander and insults
- crimes of denial

By form:

- text
- pictures
- memes
- photos
- video

Propaganda, such as war denial, is spread using bots. This information influences people, who in turn repost it. People are also starting to share Russian narratives on social media about denazification and the US-EU showdown in Ukraine. This raises the question of whether a person can really say whatever they think about the war in Ukraine. This raises two questions: how to counteract the influence of propaganda as a form of digital violence and where is the line between what is acceptable and what is not.

In a project studying digital extremism, researchers created fake profiles and linked them to extremist groups as part of an experiment. One particularly interesting aspect of the study is the role of memes and whether their use could constitute a crime under Ukrainian national law.¹⁹ In our opinion – it is, because both text and image can incite people to hatred and aggression. In criminal cases, an expert is appointed in each case to determine whether the meme examined contains prohibited content.

¹⁹ S. Harrendorf, P. Müller, A. Mischler, *Das Zeitalter des digitalen Extremismus? Einige Befunde zu politisch extremer Kommunikation in Social Media*, 2020, pp. 411–420.

Digital violence and the human rights dimension

In this paragraph I would like to share some insights about how to find the balance between the right to hate, lie, criticise and the freedom of expression – and consider when these actions can potentially become a crime.

Obviously, there should be a clear line that would distinguish between expressions as a need for tolerance or prevention of destructive social phenomena, as a proclamation of truth and expression of hatred, as a moral imperative of the society, etc. Since such criteria are not clearly regulated, the right to freedom of expression is sometimes seen as a valuable heritage and sometimes as a dangerous tool. It can be a tremendous source of empowerment, but it can also lead to abuse. According to the relevant Council of Europe standards, the question is not whether to restrict the exercise of the right to freedom of expression, but rather how to do so and to what extent. For this reason, the Council of Europe does not regard the right to freedom of expression as absolute and does not consider it separately. Instead, it places it in a system of closely interrelated human rights.²⁰

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) 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 through public authority and without frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinematographic enterprises.
2. The exercise of these freedoms, insofar as it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law in the interests of national security, territorial integrity or public safety, for the protection of order or the prevention of crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information or for maintaining the authority and impartiality of the judiciary and are necessary in a democratic society”.²¹

²⁰ O. Lvova, “Hate Speech”. Available from: <https://vsirazom.ua/cabinet/hate-speech-diskriminaciya-chi-obmezheniya-svobodi-slova-analitichna-rozvidka/>.

²¹ W. Schabas, *The European convention on human rights: a commentary*, Oxford Commentaries on Interna, 2015.

Thus, there is a competition of rights – the human right to equality and the right to freedom of thought and expression. It is important to determine how to recognise discrimination and attacks on human dignity, and when there is a restriction on freedom of thought and expression.

Countering propaganda and hate speech online: positive experiences of some countries.

Some countries, such as Germany, are leading the way in the fight against hate speech on social media. Since 2017, the German legislator has adopted a bill called Network Enforcement Act (“Netzwerkdurchsetzungsgesetz” or “NetzDG”) which entails that all social media platforms (but especially Facebook) are obliged to take down posts comprising hate speech. The NetzDG was passed to combat terrorist and extremist content online. By virtue of the NetzDG, Facebook is given the responsibility to balance privacy with freedom of expression on its own. Under the NetzDG, Facebook is responsible for balancing privacy and freedom of expression independently. The platform must offer a complaint mechanism that allows users to request the removal of hate speech comments within 24 hours. Additionally, it is required to apply the same standards and balancing principles as a state court when assessing content. Yet, unfortunately, the sanction mechanism may cause a problem for an impartial and non-arbitrary balancing act. In trying to avoid any kind of fines, Facebook may be more willing to actually delete also pseudo hateful comments, even though there might not be an actual infringement of the right to personality and moral integrity, simply for economic purposes in order to minimise the risk to be subject to a fine. Thus, the German law itself does not necessarily serve the rule of law. Particularly, the exact procedures are not fully transparent but rather opaque. At this point, one might ask whether the German state has delegated its obligation to ensure freedom of expression and protect the right to personality onto Facebook in the sense that Facebook now takes over the very same constitutional responsibilities. This does not solve the problem, and the methods adopted remain highly vague and cannot be measured against any gathered legal acquis²².

As a result of an intermediary analysis of the complaints Facebook received and the follow-up protest, some scholars have come to the conclusion that the NetzDG works well in practice. The numbers (usually 30 % deletion rate) taken from the transparency report that Facebook is obliged to issue every six months

²² S. Kološa, *Facebook and the Rule of Law*, 2020, Available from: https://www.zaoerv.de/80_2020/80_2020_2_a_509_531.pdf.

do not enhance transparency in the sense of the rule of law, as only the overall numbers are to be published. When analysing the meaning of these figures, one must take into account e.g. how the complaint mechanism actually works. Unlike other platforms (such as Twitter), complaints are not extremely intuitively useable by the members.

The two ways of regulating social media platforms call for the crucial question of the role of the state in having the final saying in the disputes at hand. The horizontal amplification of the application of basic rights still allows state courts to adjudicate the balance between e.g. the right to reputation and the right to freedom of expression – and to set the standards for society. Recent developments show an ambivalent will in domestic lawmakers to have a bigger say in Facebook's decisions on the actual human rights issues. Having earned some fame beyond the borders of German jurisdiction, the Network Enforcement Act of 2017 allows for the platform to establish its own mechanism to solve complaints in matters concerning hate speech and reputation. Facebook is thereby awarded some form of competence to shape both freedoms that is usually reserved for the state powers. This delegation of power bears the question whether the classical rule of law is still upheld or whether a new form of rule of law comes into place.

Fake texts and multimedia content have become commonplace and seem more and more realistic. This increases the danger of society becoming a victim of targeted disinformation. Therefore, it is all the more important to reliably detect manipulated content.

The ATHENE research area called REVISE – Reliable and Verifiable Information through Secure Media – approaches this in many ways: on the one hand, innovative algorithms for reverse content search are designed to detect forms of text or recordings misuse. On the other hand, automated methods for recognising synthetically created content make it possible to uncover deepfakes, for example. In addition, a common practise is to collect and evaluate content from disinformation campaigns as can be observed in the context of crises and conflicts. These resources are used to derive patterns to develop effective methods for the early detection of corresponding campaigns.

The results will also help answer legal questions, because there is still a deep gap between the legal regulations, their interpretation, and the technical solutions available.²³ Information violence is a targeted influence on the consciousness of a person (group of persons) against their will, which is carried out with the use of information tools, information technologies, and psychological techniques, as a result

²³ ATHENE National Research center for Applied Cybersecurity, <https://www.athene-center.de/en/research/research-areas/revise>.

of which the information freedom of the object of influence is violated and which can cause harm to the life and health of the person (group of persons) being influenced.²⁴

Conclusion

It is imperative to highlight the role of civil society organisations, governments, tech companies, and academia in advocating for human rights-based approaches to combating digital violence.

Such violence may be:

- ❑ hidden or overt,
- ❑ always against the will,
- ❑ violates freedom,
- ❑ non-physical in nature,
- ❑ resulting in possible physical consequences.

Freedom of speech is a fundamental right in a democratic society and is the basis for the development of every person. The existing judicial decisions of the European Court of Human Rights have led to the development of certain criteria for determining the correctness and appropriateness of restrictions on the freedom of speech. This is a necessity in a democratic society, which is provided for by law and proportionate to the legitimate aim pursued. Thus, the state's restriction of freedom of speech is justified if it is based on morality and meets the above criteria. At the same time, the law in force may restrict the freedom of speech in exceptional cases that relate to extremely important areas of society, provided that such restriction can benefit the entire society. Therefore, citizens should be aware that any violated right must be protected and restored, as there are legal grounds for this.

With regard to personal freedom, criminal law imposes restrictions on personal freedom in order to preserve public order and the rights of others. One such restriction is the introduction of criminal liability for digital violence. Despite numerous international efforts, there is still no comprehensive binding instrument to address the abovementioned types of digital violence. However, some of its characteristics are now widely accepted and recognised by the United Nations and the European Union.

The proliferation of digital violence, including fake news, disinformation, hate speech, and propaganda, has been exacerbated by the war in Ukraine, the pandemic,

²⁴ O. Samchynska, V. Furashev, *Informatsiine nasylstvo, informatsiina manipuliatsiia...*

and recent political and economic crises. These forms of digital violence manipulate public consciousness and incite illegal behaviour. The development of modern technologies calls for a robust regulatory framework to manage online interactions and counteract illegal content. The responsibility of private social media providers to balance human rights and fundamental freedoms is crucial and demands comprehensive studies to assess the effectiveness of measures against online hate and incitement.

Digital violence involves various forms of harm facilitated through information and communication technologies. This phenomenon includes the intentional dissemination of harmful content, which impacts psychological and social well-being, infringing on rights such as privacy, freedom of expression, dignity, and safety. The study explores the definitions and classifications of digital violence, emphasising the need for mechanisms to protect human consciousness from information overload and psychological influence.

Digital violence manifests itself in various forms and targets specific groups, including women, children, the LGBT community, minorities, and former partners. It includes fake content, disinformation, propaganda, hate speech, slander, and crimes of denial, presented in the form of texts, pictures, memes, photos, and videos. The regulation of such content raises questions about the balance between freedom of expression and the need to counter harmful propaganda.

The human rights dimension of digital violence involves a delicate balance between freedom of expression and the need to protect individuals from harmful content. The European Convention on Human Rights acknowledges that freedom of expression is not absolute and must be balanced with other rights, such as equality and dignity. This balance is crucial in recognising discrimination and ensuring that restrictions on expression are justified and proportionate.

Countries like Germany have implemented laws such as the Network Enforcement Act (NetzDG) to combat hate speech online. While effective in some respects, such laws also pose challenges in maintaining transparency and ensuring that platforms do not overreach in restricting content. The development of innovative technologies for detecting and countering disinformation is essential in addressing the evolving nature of digital violence.

In conclusion, combating digital violence requires a multifaceted approach involving civil society organisations, governments, tech companies, and academia. Ensuring that measures to counteract digital violence respect human rights and fundamental freedoms is vital. The protection of the freedom of speech while imposing necessary restrictions to prevent harm is a delicate balancing act that must be carefully managed to uphold democratic values and public safety. Legal frameworks and technological solutions must evolve in tandem to address the complexities of digital violence effectively.

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