[FR] First urgent application to block dissemination of a tweet under the Act on combating the manipulation of information

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For the first time, the Paris Regional Court has dealt with an urgent application aimed at blocking the dissemination of “fake news” during an election campaign in a procedure introduced under the Act on combating the manipulation of information of 22 December 2018.

On 10 May 2019, an MEP and a Left Front senator filed a summons against Twitter under Article L. 163-2 of the Electoral Code, which was introduced under the above-mentioned Act. They requested that the platform be ordered to block the dissemination of the following tweet, which had been published on the French Interior Minister’s account on 1 May in response to news that protesters had entered the Pitié Salpêtrière hospital during a “gilets jaunes” (yellow vests) demonstration in Paris: “Here at Pitié-Salpêtrière, a hospital was attacked. Medical staff were assaulted. And a policeman deployed to protect them was injured. Unwavering support for our law enforcement agencies: they are the pride of the Republic.” On 17 May, more than two weeks after the disputed message had been published, the Paris Regional Court issued its decision under the urgent procedure.

Before examining the application, the court reiterated the reservations set out in the Constitutional Council’s decision no. 2018-773 DC of 20 December 2018 - namely, that inaccurate or misleading allegations or statements do not include partial inaccuracies or simple exaggerations, but only allegations or statements whose inaccuracy can be objectively proven. In addition, the inaccurate or misleading nature of the allegations must be “clear”, as must the risk that they might might unduly affect voting behaviour in elections. Finally, their dissemination must be deliberate, either artificial or automated, and on a massive scale.

Referring to written press articles in Le Figaro and Le Monde, the applicants claimed that the allegations contained in the disputed tweet had proved to be false and that the events had never taken place. In the court’s view, the public prosecutor’s investigation should have identified the intentions of the protesters, who appeared to have stormed the hospital gates. However, it is understood that they did not attack the intensive care unit but remained outside the building, and

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that no medical staff were injured. The judges held that, although the Interior Minister's message appeared exaggerated, it was based on real facts - i.e. the protesters' intrusion onto hospital premises. The condition that the allegation must be "clearly" inaccurate or misleading was therefore not met.

The judges then considered the requirement that dissemination be artificial or automated. They pointed out that, according to parliamentary discussions, this term referred to sponsored content - i.e. the payment of third parties to artificially broaden the dissemination of information, and content promoted using automated tools such as bots. Therefore, since there was no evidence that such methods had been used to disseminate the disputed tweet, the application did not fall under the scope of Article L. 163-2 of the Electoral Code.

Finally, the court assessed whether there was a "clear" risk that the sincerity of the vote would be affected. The applicants had claimed that the Interior Minister's message had been designed to make people believe there was a violent atmosphere and to stir up fear and chaos, which they thought was bound to disrupt the European election campaign. However, the judges stressed that the tweet had not overshadowed public debate because it had been immediately disputed in numerous articles in the written press and online, which suggested that the events had not occurred in the manner described by the Interior Minister. The different versions therefore meant that each voter could form an informed opinion, with no clear risk of manipulation.

In conclusion, the conditions laid down by the new law were therefore not met in this case and the blocking request was rejected. To the best of our knowledge, this is the only "fake news" procedure that has been launched in relation to the European elections.

Tribunal de grande instance de Paris, (ord. réf.), 17 mai 2019, Mme V. et M. O.

Paris Regional Court (urgent procedure), 17 May 2019, MMe V. and M. O.

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