

# Russian Bans on ‘Fake News’ about the war in Ukraine: Conditional truth and unconditional loyalty

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[journals.sagepub.com/home/gaz](https://journals.sagepub.com/home/gaz)**Elena Sherstoboeva**

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**Abstract**

This article examines Russia’s practice of the ban introduced by the so-called ‘fake news laws’ during the war against Ukraine. It blends doctrinal legal with discourse analysis to study how and why Russian courts have applied the laws, which epistemology of knowledge they have constructed while limiting fake news about the war and what implications this has for freedom of expression and public debate of the war within Russia. The dataset covers 446 Russian court decisions from 2022 to 2023. A historical approach is utilised to discuss the results in connection to the Soviet Communist ideology. The article argues that Russian courts have used the laws to make truth in Russia conditional and loyalty unconditional, actualising the Soviet principles of ‘partyiness’, ‘objectivity’ and ‘scientificality’. It demonstrates how courts construct a mythologised reality about the ‘imaginary’ ‘military operation’ to help the government monopolise the public debate and misrepresent the war against Ukraine within Russia.

**Keywords**

Russia, fake news, disinformation, Russia-Ukraine war, freedom of expression, censorship, media law

**Introduction**

Russia’s invasion of Ukraine, the largest military conflict in Europe since World War II (WWII), has caused grave global concerns. Launched on 24 February 2022, the invasion

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posed an immediate threat to peace, security, and human rights worldwide, producing a complex humanitarian crisis and the risk that nuclear weapons would be used. The United Nations (UN) General Assembly condemned the ‘aggression against Ukraine’ and demanded its immediate cessation (UN General Assembly, 2022). Despite international condemnation and unprecedented sanctions imposed on Russia by the United States, European Union (EU) and their allies, the most recent poll results showed a high level of public support among Russia’s population for Putin’s and the Russian army’s activities (Levada Center, 2023). Still, it remains largely unclear what Russians support, that is, the real war or the vision portrayed of it by Russian president Vladimir Putin. Putin called the invasion a ‘special military operation’ undertaken for peace-making purposes to ‘demilitarise and denazify Ukraine’ in order to protect Russia’s security and the people of the Donbas (Putin, 2022) and claimed that the war was unleashed by ‘the collective West’ (TASS, 2022).

Notably, studies are still lacking on the Russian regulation against the so-called ‘harmful lies’, known as the ‘fake news laws’, and its role in Russia’s ‘cognitive politics’ during the war (Dutton, 2023) and the stark plunge in free speech and independent journalism in Russia (Reporters Without Borders, 2023; Kaye, 2022). Since the military invasion of Ukraine began, almost all independent Russian media have been closed, blocked, and/or marginalised by being labelled ‘foreign agents’ (Reporters Without Borders, 2023). Access to over 10,000 websites has been blocked, according to a Russia-based non-governmental organisation (NGO) *Roskomsvoboda* (OVD-Info, 2023). It has also yet to be established how Russian bans on fake news interrelate with ‘aggressive disinformation’ about the war allegedly spread by the Russian government (Council of the EU, 2022; Fassihi, 2023).

This article studies Russian case law on fake news bans during the Russia–Ukraine war. It examines the epistemology of knowledge constructed about the war by Russian courts, what language courts use to describe and justify this epistemology, how such courts deal with those dissenting from it, and the implications for exercising the right to freedom of expression, a precondition for democracy and peace. Alongside the doctrinal legal method, the article applies discourse analysis (DA) to examine the dominant narrative constructed by Russian courts on fake news around the conflict in Ukraine. It also studies how this narrative may be intertwined with the official Soviet Communist ideology, Marxism–Leninism, to discuss how the new construct is situated historically and culturally.

Russian legislation and case law have been initially analysed in Russian and then translated into English by the author, a native Russian speaker. Appropriate notes are made if other translations are cited. The Russian statutory notion of ‘not credible information’ (*nedostovernaja informacia*), which imprecisely conveys the meaning of the Russian bans, is replaced with the term ‘fake news’ used by Russian courts, which better reflects the broad nature of Russian limitations.

This article argues that the Russian fake news laws and their application make the truth conditional and largely reflect the Marxist–Leninist principles of *party*ness, *scientific*ness and *objectivity* used in the USSR to guide media workers. As in Soviet times, the current Russian regime had to construct an ‘alternative’ mythologised reality about the war, supported by judicial discursive practices, to monopolise public debate and deal

with those who disagreed. Conditional truth and what it constructs significantly threaten freedom of expression and democracy in Russia, helping the Russian government to wage the war and maintain public support for the regime's power and the war within Russia.

This article will inform the debate on the role of laws against falsities in societies and modern cognitive politics. It may also benefit independent investigations of war crimes, particularly against Russian nationals who openly opposed the invasion.

The analysis has several limitations. It only studies formal discourse and does not examine how the judicial narrative reflects the Russian media propaganda narrative, a subject that deserves a separate investigation. Neither does the article examine the direct effects on Russian public opinion of the war in Ukraine; rather, it draws some conclusions regarding the impact on public debate on this matter, implying that public opinion could be affected.

After describing the research methodology and dataset, the article studies how Russian courts have interpreted and applied the fake news laws and parameters to construct conditional truth about the war in Ukraine. Then, the article considers the Soviet roots of the modern Russian approach to further discuss the study findings and outcomes.

## **Theoretical framework and methodology**

### *Legal analysis*

The rights to freedom of expression and mass communication are formally proclaimed by Article 29 of the 1993 Russian Constitution, alongside a ban on censorship.<sup>1</sup> This article provides guarantees nearly identical to those established in the key international human rights treaties, viewing freedom of expression as the right to seek, receive, and impart information and ideas without undue government interference through any media, regardless of frontiers. Although Russia ceased to be a party to the 1950 European Convention on Human Rights (ECHR) during the invasion of Ukraine (Council of Europe, 2022), as a UN member, it has committed to adhering to its commitments regarding human rights. Freedom of expression protects many types of lies (Richter, 2018) but is not absolute. Its protection must be carefully balanced against other rights and legitimate interests. As follows from the international and the Russian Constitutional<sup>2</sup> standards, each limitation, including that to restrict false information, must be strictly necessary and proportionate and provided for by laws that establish clear parameters for constraints.

This article applies the approach suggested or used in the legal studies of various fake news laws and their applications to identify the effects on free speech, which are often controversial (see Lim and Bradshaw, 2023; Helm and Nasu, 2021; Baade, 2018; Richter, 2018). It determines the Russian legal parameters to identify 'fake news' and uses them for coding to further study Russian judicial interpretations and evaluate the outcomes.

Then, a *historical approach* is applied to interpret the Russia's legal instruments through the lenses of the Soviet context to contextualise the modern legal constructs and explore the patterns. Its design represents the study of primary and secondary

sources forming Soviet law and policy framework to limit harmful falsities, including Marxist–Leninist programme policy documents and their interpretations.

### *Discourse analysis*

Legal DA is an innovative but fast-growing direction of research. Law ‘is a fertile field for discourse analysis’ because it is highly verbal (Shuy, 2001: 437). DA has been productively used to study formal written texts, such as laws and judgements, especially those regulating defamation and hate speech (Shuy, 2001).

This article applies DA to study the dominant narrative about fake news produced by Russian law and its application in the wartime. While legal research applies to critically evaluate the use of legal notions and principles to solve social problems as legal issues, legal discourse analysis goes beyond the domain of law. It considers laws and judicial interpretations as social constructs to extract a broad range of ideas and values to address legal matters through language use ‘in context’ (Scholz, 2019: 7). DA views language as a means of power, in the hands of the powerful, through the mechanisms of coercion (Foucault, 2000, 1977), including through criminal and administrative frameworks interpreted by judges, who bring their knowledge and beliefs into legal discourses. Because dominant discourses constitute a fundamental understanding of perceived reality, as Foucault (1980) noted, the article aims to reveal what reality is constructed by Russian authorities and how.

This article examines *what* language is used and *how* it is used in Russian court decisions to ‘imperceptibly convey ideas and values’ (Hansen and Machin, 2013: 117) about fake news related to the war, its disseminators and other actors. It analyses the use of linguistic tools and expressive means in Russian judicial reasoning. The notion of intertextuality developed by Fairclough (2010) is used to look for indirect references to the Soviet context.

### **Dataset**

The core dataset covers 446 Russian court decisions on the fake news bans of which 36 are on criminal matters and 410 on administrative ones. Administrative sanctions in Russia are less severe than criminal ones because Russian administrative frameworks regulate less serious offences; yet they apply against organisations, including editorial offices and NGOs, while criminal cases may be initiated in Russia only against individuals.

Additionally, 183 administrative judgements on discreditations of the Russian army have been analysed to the extent they were used to limit ‘fake news’. As reported by OVD-Info (2022), the judiciary sometimes confused the fake news and discreditation bans, applying them interchangeably.

The decisions were made from 21 March 2022 to 22 March 2023, when the Russia–Ukraine war was under way and the Russian fake news bans had already been enforced.<sup>3</sup> Court precedent is largely irrelevant in Russia; therefore, courts of the same level are not obliged to follow preceding decisions but may do so.

The dataset was selected using Consultant Plus, a Russia-based legal database providing comprehensive access to domestic case law and available only within Russia by paid subscription. While the statistics reported by OVD-Info (2023) indicate that a higher number of cases has been initiated during the current war, the situation of the cases under-represented in Consultant Plus is unclear. As of February 2023, 139 criminal cases had been opened for the dissemination of fake news about the army. At least 49 criminal and 5846 administrative cases had been brought regarding the army's discreditation.

## Analysis of Russian case law on fake news bans

Introduced between 2019 and 2023,<sup>4</sup> the Russian fake news laws imposed general criminal and administrative bans on assorted falsities about issues of public interest, denouncing them as 'fake news'. The Russian Criminal Code's (RCC) Articles 207.1-207.2 limit deliberate fake news on matters of public interest and Article 207.3<sup>5</sup> specifically bans fake news about the use of Russia's armed forces, their military activities, and how volunteer units, organisations and individuals assist such forces in carrying out their military tasks as set by the government. Several clauses of Article 13.15 of the Russian Code on Administrative Offences (RCoA)<sup>6</sup> provide corresponding administrative bans. Additionally, RCC and RCoA prohibit the 'discreditation' of Russia's armed forces.<sup>7</sup> The maximum penalties are 15 years of imprisonment for publishing fake news against the Russian army and 7 years for discrediting the army.

Legal parameters to identify 'fake news' are mostly indefinite. The RCoA prohibits expressions that (a) concern *issues of public interest*, (b) assert *facts*, rather than opinions, (c) are *false* although (d) their falsity *was known* to defendants, and they (e) disseminated them *in public* nonetheless, (f) presenting them *as if they were true facts*. Thus, (g) they posed a *threat of harm* to rights or legitimate interests, including citizens' lives, health, or property, and public order or safety. The criminal bans are broad and significantly overlap with each other and the administrative parameters, increasing the unpredictability of the application. Still, the meanings and effects can only be seen from the courts' interpretations.

During the initial phase of the war in 2022–2023, Russian judicial application of fake news bans and their legal parameters, despite their vagueness, uniformly and systemically interpreted law in favour of the government's interference with freedom of expression. Courts used all the available bans against fake news, excluding RCC's Article 207.2 that applies only if the dissemination of fake news has caused grave consequences. Because such effects would need to be proven in court, Russian courts might not want to complicate the process with this additional requirement. Nonetheless, courts actively applied against fake news the ban on discrediting the Russian army, noting that the army was defamed merely by the fact of fake news publications about the war.<sup>8</sup> As one court clarified, 'the meaning of the law' is to understand discreditation as 'the dissemination of false, imprecise or distorted information'.<sup>9</sup> Although this clarification represented an isolated view, it was implied in other decisions to limit fake news as 'discreditation', expanding the fake news bans.

Despite numerous legal parameters for fake news, courts' rationales mainly evaluate public interest, falsity, and public dissemination ('a', 'c' and 'd') in both administrative and criminal cases. Judicial interpretations of other parameters are limited and mostly dependent on the preceding considerations. The evaluation of public interest is straightforward because it is undoubtedly present in expressions concerning the conflict in Ukraine.

Public dissemination is interpreted broadly and includes nearly any communication to more than one person online and offline, including in a school classroom. Public dissemination online covers publications on websites, including news and social media platforms. Slightly over 67% of decisions were made against social media users, particularly users of VK, a major Russian social media network. Courts qualified messaging on closed group chats as public dissemination, arguing that the Internet implies public communication,<sup>10</sup> although it is not always the case. It remains unclear how broadly this parameter could be interpreted in the future and whether it means, for example, that an email correspondence also constitutes public dissemination.

Because administrative decisions are often insufficiently detailed, it is sometimes unclear how particular facts affected the courts' application of legal rules and principles to make the decisions. Some decisions did not even specify which statements in the publications were incorrect,<sup>11</sup> occasionally failing to specify even the subject matters. These details have been restored for the analysis using the links recited in the decisions from the inspection protocols to certify that the screenshots were genuine and fake news had been publicly disseminated on particular websites.

### *Conditional truth*

The key parameter for the court analysis is statements falsity ('c') or 'non-correspondence with the reality', as the Russian law frames it. In this way, courts have constructed conditional truth, as I define it, conditioning the falsity of expressions about the war on what Russian state authorities, predominantly the Ministry of Defence, have officially reported. In other words, conditional truth is an instrument to benchmark the accuracy of public statements on matters of public interest to official government reports. Due to the importance of the 'falsity' for courts, this parameter is central for our legal and discourse analyses. As the study identified, the dominant narrative on the war in Ukraine mainly emerged in judicial interpretations of the laws and facts of cases to construct conditional truth.

Conditional truth may seem to resemble the approach provided in some international legal standards on media freedom and the provisions of the Russian Act on Mass Media adopted in 1991 to liberate post-Soviet Russian journalism. However, their approach significantly differs from the modern Russian one, despite the common assumption that official reports should be accurate due to the special duties and responsibilities of public officials to maintain public awareness. Nonetheless, the European Court of Human Rights, an international judiciary interpreting the ECHR, and Article 57, clauses 3–4 of the Russian Act on Mass Media provide journalists with a privilege, instead of a duty, not to verify the information from official reports before using it in journalistic

publications.<sup>12</sup> Thus, similarly to conditional truth, these standards encourage the media to take government information as accurate by default. Still, they are defensive of journalists, who may publish official reports without fearing legal consequences but are not obliged to disseminate it as true without prior verification.

Conditional truth established by the Russian fake news laws does exactly the opposite by obliging everyone, including the media, to rely on state information. It rejects the accuracy of any statements diverging from official reports, qualifying such deviations as ‘non-correspondence with the reality’, ‘fake news’, fiction or nonsense. While some deviations may indeed represent harmful lies, others could be genuinely true but must be banned due to their presumed falsity. Consequently, conditional truth leads to extremely controversial results.

The study uses DA to reveal how courts applied conditional truth to narrate the war as a ‘special military operation’. As a Russian court explained hearing one of the cases,<sup>13</sup> the real war is something different from what is happening in Ukraine, as it is a ‘conflict, including between states, when one political subject tries to force another to give up freedom, rights to property, resources, territory, etc.’<sup>14</sup> Moreover, ‘this special operation doesn’t have this goal and is conducted exceptionally in compliance with universal principles and international law to protect Russia’s national interests and its nationals and support peace and safety’.<sup>15</sup> Although Russian courts sometimes mention the UN legal standards, their justifications of Russia’s ‘compliance with international law’ are based on the so-called ‘Treaties on the Accession’ to Russia of the territories that the UN views as Ukrainian (OHCHR, 2023: 12). Courts link this ‘fact’ of the accession constructed by the Treaties to their vision of the ‘special operation’ on ‘peace-making’<sup>16</sup> to instigate a perception that the ‘operation’ aims to ensure Russia’s territorial integrity, public safety and human rights and fully complies with the constitutional and international and legal obligations. While courts mean the obligations in the modern Russian ‘Treaties’, rather than the UN law, the readers are rarely informed about that explicitly.

The courts construct a narrative that the ‘operation’ is conducted under ‘the Supreme Commander’s [Putin’s] leadership’ to help some ‘voluntary units’ to ‘protect ethnic Russians’ within and ‘outside Russia’ at the borders to ‘de-Nazify and demilitarise Ukraine’.<sup>17</sup> These intertextual references to ‘denazification’ allude to a strategic patriotic narrative about the USSR’s victory in the Great Patriotic War against Nazi Germany in 1941–1945, also known as the Eastern Front of WWII and is an important element of the version of reality portrayed by the courts. As Khaldarova and Pantti (2016) showed, this narrative has been consistently exploited by the state Russian media to manipulate a Russian audience’s feelings and attach a ‘fascist’ label to the Ukrainian government and Ukrainian soldiers. Although this narrative is not explicitly articulated by courts, it is implied. More direct insights may be produced by adopting the same methodology to study the practice on Article 354.1 of the Criminal Code. Adopted soon after the annexation of Crimea in 2014, it bans the public dissemination of deliberate falsities about the USSR’s activities during WWII and Great Patriotic War veterans.<sup>18</sup>

Consistent with the judicial dominant narrative, around 41% of the decisions made under the Russian fake news law that have been studied are held to deny and ban the allegations of

crimes or immoral acts supposedly committed by the Russian army on Ukrainian territory. Courts often reject statements about atrocities and alleged crimes in Mariupol,<sup>19</sup> Bucha<sup>20</sup> and other Ukrainian places,<sup>21</sup> merely asserting, without appropriate technical evidence, that the photo and video evidence is faked. Courts sometimes insufficiently analyse the statements to make general assertions that publications, for example, had ‘fictitious (fake) information about crimes, shelling of residential buildings of Ukrainian cities and killing of civilians allegedly committed’<sup>22</sup> by the Russian army in Ukraine and the ‘Donetsk and Luhansk People’s Republics’, which the courts do not consider to be part of Ukrainian territory in line with the vision of the international law in the judicial ‘reality’.

Public expressions of Russian troops do not receive any special consideration or protection, although Russian law might seem attentive to their concerns because it specifically protects the army’s reputation. According to the legal study, around 26% of the dataset’s cases prohibit ‘fake news’ about the Russian army’s casualties, losses or difficulties, including the complaints raised by current and former military service personnel just because this information mismatches the official reports. Courts have applied conditional truth to ban photos, videos and text messages sent by Russian soldiers from the battlefield that could be invoked as evidence of difficulties and violations and illustrate damage.<sup>23</sup> Conditional truth applies to prohibit the publication of statistics<sup>24</sup> or the structure of the casualties in the Russian army, including those reported by independent Russian media.<sup>25</sup> DA lets us move outside the legal analysis and see how courts use language to hinder the deviations from the lawful version of ‘reality’, for instance, by defining the divergent statistics as ‘exaggerations’<sup>26</sup> because the Russian Ministry of Defence provided lower numbers.

The legal analysis was more focused on what was categorised as fake news. This includes the statements that, apart from contract military service personnel, Russia sent conscript soldiers to the war<sup>27</sup> and offered criminals military contracts in exchange for their release from prison.<sup>28</sup> Courts also banned allegations about missing soldiers who could have been killed, noting that their personal data were faked.<sup>29</sup> Consequently, conditional truth creates a misrepresentation that the war will not cause both peoples, the Ukrainians and the Russians, to make large sacrifices. This and other misrepresentations, alongside the restrictions to challenge them, may affect the public vision and support of the war and government in Russia because of the narrow limits to freely exercise the right to seek, receive and impart information, which is an inherent part of the Russian Constitutional and international guarantees for freedom of expression.

Conditional truth also applies to opinions. Courts have systemically misinterpreted opinions as the assertions of facts to match the legal parameter ‘b’ and, consequently, condition their veracity on Russian state information.<sup>30</sup> The examples of ‘false statements of facts’ include opinions that the war is ‘illegal’ and not ‘ours’<sup>31</sup>; that Russian military criminals ‘should be isolated’<sup>32</sup>; that Russia needs a referendum to recall President Putin<sup>33</sup>; and that as the Russian army ‘cannot defend itself’, how can it ‘defend anyone else?’<sup>34</sup> as well as concerns about economic consequences for Russia, including sanctions and inflation.<sup>35</sup> Courts viewed these items as assertions of false facts because these statements misrepresented the ‘special operation’ and the army, disinforming the public. In these cases, courts have ruled out the application of the Constitutional



Article 29 that does not protect false allegations of facts but guarantees the right to freely express opinions in Russia in line with the international vision of this element of freedom of expression.

A similar rationale has been used to apply a discreditation ban on symbolic speech, including anti-war protests. Courts often rule that anti-war protesters not only discredit the Russian army and government but also disinform society as the 'special military operation' is not a war.<sup>36</sup> Still, courts banned anti-war posters merely as 'discreditation' without explicitly noting they are false. 'Discreditation' also covers satire and cartoons, for example, those drawing parallels between Putin with Hitler or the main Russian military symbol 'Z' with the swastika used by the Nazi Party to suggest that they convey the same values.<sup>37</sup> Courts made no comments on the falsity of these comparisons, but it was implied: the courts could argue that the statements might confuse the audience by providing the incorrect comparisons of two completely different parties and persons from different historical periods. Nonetheless, it should be made clear that, from the Russian courts' perspective, the 'truth' does not require the statements to be the most exact display of the reality. As the truth is 'conditional', it must comply with the dominant narrative constructed by courts based on official information.

Conditional truth applies to limit media freedom, too. In the cases against Russian editorial offices and journalists, courts have made nearly no attempts to examine their information sources or verification process. They have not tried to balance the freedom of mass communication guaranteed in Constitutional Article 29 and the 1991 Act on Russian Mass Media against other rights and interests supposedly threatened by journalistic 'fake news' publications. Courts refer to the Article and Act only to reiterate the increased responsibility of journalists for false and illegal publications, as in the case of the now defunct *Novaya Gazeta*.<sup>38</sup> Courts consistently use conditional truth against publications reposting or referring to foreign media stories,<sup>39</sup> especially Ukrainian, but also Czech, Polish and British, sometimes emphasising that they lie. By virtue of the power of formal judicial discourse, this generalisation becomes an implied social commitment to abstain from reading and trusting foreign media information, including on the war, which may affect its public perception and support among Russians.

Courts presume that all the defendants knew their statements were false but disseminated them nonetheless, presenting the falsities as true facts (legal parameters 'd', 'e' and 'f'), on the premise that the defendants had been properly informed by Russian officials through the mainstream media,<sup>40</sup> particularly national TV,<sup>41</sup> which is totally state-controlled. The defendants were sometimes questioned as to whether they had watched TV<sup>42</sup> or heard what Russian officials reported in advance of them spreading 'lies'. The explications made by applying DA to the language used to restate the judicial dialogues with defendants have exposed the evidence of the courts' condescending and contemptuous tone, implying the presumption of guilt. Courts use expressive language to reinforce the pressure directed to the defendants to confess and to the readers to feel deterrence. In this sense, Russian criminal judgements are almost performative acts conducted by judges to support their version of reality. As a result of the pressure, many defendants pleaded guilty immediately<sup>43</sup>; some, however, still noted they neither meant to cause

any harm nor wanted to discredit anyone. Nonetheless, apart from rejecting to admit guilty pleas as a mitigating factor, courts also always identify a *threat of harm* (parameter 'g') in fake news publications to various degrees. Sometimes, courts use exorbitant hyperboles to describe the potential outcome of fake news, particularly with anti-war calls, as violent, uncontrolled chaos accompanied by social panic.<sup>44</sup> Thus, courts imply that accepting conditional truth is a prudent duty for Russians; it is socially desirable as a guarantor for peace within the country.

### *Unconditional loyalty and Russia's haters*

In all criminal and some administrative cases studied, courts have assumed that the defendants *maliciously* disseminated fake news because they intended to mislead the Russian population due to their '*political*', '*ideological*' or '*national hatred*' of the Russian army's representatives and its Supreme Commander Putin. Developing the meaning of hatred, courts characterise Putin and the army representatives as Russian nationals who protect all Russians against foreign Nazis. Therefore, disseminating 'fake news' to present Putin and the army '*in a negative light*' or criticising their 'activities' in Ukraine implies for courts *alienation from* or even *betrayal of* a Russian nation. In an appeal case of Altan Ochirov,<sup>45</sup> a former employee of the Elista city council, the court described Russian army soldiers as those 'identifying themselves with a Russian nation and supporting the Russian government'<sup>46</sup>; yet, Ochirov had published fake news to mispresent them as Russia's 'enemies' driven by his 'political hatred, expressed in contemptuous, unfriendly and aggressive attitude towards the current Russian executive and legislative authorities and the Armed Forces', 'which led to undermining their [the army] authority and discreditation at the public'.<sup>47</sup> As seen, courts discursively connect conditional truth with unconditional loyalty to the Russian army and authorities through their belongingness to the Russian nation, implying that such loyalty is required from all Russians and even the slightest criticism cannot be tolerated.

The idea of 'haters' is central to the courts' perception of 'reality'. Courts develop the theme of hatred by framing fake news as a dangerous information 'warfare' used by 'unfriendly foreign states' implying that they are in fact Russia's enemies because they 'intentionally' produce 'fake' news to discredit the government and army.<sup>48</sup> Courts have weaponised foreign news media outlets, viewing them as platforms to disseminate warfare; the 'haters' are not the originators of the content but have been influenced by it. Courts discursively warns the public, meticulously edifying that fake news disseminated by the haters may be extremely hazardous. In the case of a schoolteacher, G.,<sup>49</sup> a court ruled that she 'maliciously conveyed' fake news to her pupils, driven by hatred of the Russian army and Putin produced by her consistent consumption of foreign news media, including German ZDF, Deutsche Welle, ARD Tagesschau; BBC News as well as Czech and other foreign media. As the court added, she read Western media while knowing that 'cyberwar was unleashed against Russia'.<sup>50</sup>

In the case of the journalist and popular blogger Veronika Belotserkovskaya,<sup>51</sup> the court noted that she published fake news while 'outside Russia' and was exposed to foreign media information. Therefore, she was driven by her political hatred while

‘experiencing personal animosity and hostility’ toward the representatives of the highest state authorities [implying Putin] and Russian nationals, including the Armed Forces, whose views on conducting Russia’s foreign policy are ‘alien to her [...]’.<sup>52</sup> In other words, a natural result of living abroad and/or consuming foreign news media information is alienation from the Russian nation that logically resulted in her hatred toward the army and authorities; therefore, she published fake news to discredit them and mislead the audience. The haters’ alienation explains a lack of unconditional loyalty and the conditional truth in their publications and justifies their isolation, including imprisonments and bans on travelling abroad and accessing the Internet. Many offenders are given probation terms to ‘correct’ their knowledge and opinions.

### Soviet roots

The modern Russian approach is not new; to a certain degree, it actualises the so-called Marxist–Leninist principles developed and used to guide Soviet media workers throughout the Soviet period, particularly the principles of partyness, scientificity and objectivity. These principles are largely based on Lenin’s ideas of accelerating media efficiency in Soviet Russia (McNair, 1991) by determining ‘the content and methods of the press, its approach to such important events as freedom and independence, truthfulness, objectivity, tolerance and respect for other political or religious views, world outlook and ideology’ (Buzek, 1964: 56). Because the Soviet Communist Party leaders never enunciated these principles as such, their names and interpretations may slightly differ in scholarship. Nonetheless, they contrast with modern universal principles for professional journalism, which imply impartiality, balance and pluralism of information and ideas (and which are reflected in freedom of speech jurisprudence in international human rights law).

In line with the principle of partyness, or partiality, Soviet journalists ought to be partial and objective in ‘passionately’ defending ‘the truth’ by spreading ‘scientific knowledge of Marxist–Leninist ideology to serve the truthfulness, and bias elimination’ (Skulenko, 1987). Because the Communist Party was viewed as the vanguard of the proletariat, whose worldview Marxism–Leninism ‘scientifically’ and ‘objectively’ represented in a ‘correct’ way, the Party had a monopoly on the power to interpret the ideology. Consequently, public expressions in Soviet times were conditioned by the Party’s logic. Truth in the USSR became a relative concept and was usually opposed to ‘Western lies’. Partyness implied *unconditional loyalty* to the Communist Party and its policies: it meant ‘by definition politically correct’ (Ellis, 1999: 10). An artificial ideological construct of ‘belongingness to a Soviet nation’, or *homo sovieticus* (Ellis: 14) was mythologised to prescribe what a correct national ought to do, read, think and write. A multilayered system of Party control ‘became the foundation for the Soviet mechanism of control over the content, political tendency, and ideological acceptability of the publications’ (Paasilinna, 1995: 39).

Starting from the first Soviet Russia 1917 Decree ‘On the Press’,<sup>53</sup> which was used to shut down most dissenting outlets, Soviet law strictly banned assorted counter-revolutionary and (later) anti-Soviet falsities – or ‘fake news,’ in modern terms – viewing such crimes as

deliberate attempts to discredit the regime. In 1926, these bans became a part of Article 58,<sup>54</sup> a repressive legal instrument to silence anti-Soviet sentiments by any means, including capital punishment.<sup>55</sup> Many examples of ‘anti-Soviet propaganda or agitation’ included statements of facts and opinions, political jokes, satire and folksongs (Strelyanny, 1953). Although criminal law was liberalised after Stalin’s death, criminal bans<sup>56</sup> on the dissemination of ‘deliberate falsities’, ‘discrediting the Soviet state and public order’, and distribution, production and storage of any works containing such falsities were abolished only on the eve of the USSR’s collapse and the end of the Soviet regime.<sup>57</sup>

Although modern Russia is by far not the only country applying fake news laws, Russian courts implementation of these laws reflects the themes and methods found in the Soviet system. The construction of a false reality, or a myth, through restrictive state pressure justifiable under the protection of national interests and great-power ideas while counteracting ‘Western’ biases, is a historical pattern deeply enrooted in Soviet history and culture that is currently actualised by courts to adversely affect the Russians’ perception of the present war in Ukraine, curtailing free speech and democracy in Russia. More comparative insights on the use of Russian and Soviet Russian frameworks for official propaganda and restrictions should also be identified and more lessons should be drawn when respective opportunities for democratisation re-emerge in Russia.

## Conclusion

Russian censorship and state disinformation have raised global concerns, particularly in the context of Russia’s invasion of Ukraine. This interdisciplinary study aimed to evaluate the Russian courts’ use of fake news laws in the first year of the invasion, its connection to Soviet roots and implications for free speech in modern Russia.

This article has shown that Russian courts made the truth conditional and loyalty to the government unconditional to establish a state monopoly on public debate and inquiries on matters of public interest in Russia, including the war in Ukraine, and restrict dissent under the labels ‘fake news’ or Russia’s hatred. The legal analysis has revealed no attempts to balance free speech and the free press with competing interests by engaging with the Russian Constitutional or international legal instruments. Instead, Russian courts have used conditional truth and unconditional loyalty to construct a myth about an ‘imaginary’ war to misrepresent it as a peace-making ‘special operation’ that causes little harm and goes in line with ‘international law’. The DA highlights the significance of that mythmaking to construct this new ‘perceived reality’, in Foucauldian terms, and deter from its divergencies by weaponising fake news, its distributors, Western media and allies of Ukraine. Instead of contributing to free speech and reliable information about the war, Russian courts justify the war and amplify Russian state disinformation and propaganda about it. They oblige all Russians to do the same in their public statements and watch Russian TV to stay on top of the myth’s developments. The study emphasises that, under conditional truth and unconditional loyalty, the judiciary is limited in protecting justice. Its role comes down to upholding any government’s viewpoint, regardless of its meaning and value. If this viewpoint aims

to justify and propagate the war, judges must interpret laws to advocate it accordingly and restrict alternative perspectives.

While the Russian approach echoes Marxist–Leninist principles and their relative vision of the truth, it does not merely reproduce the Soviet roots with the totality of myth-making, control practices and fundamental ideological constraints. It adapts them to the needs of the modern Russian government to consolidate state propaganda and censorship amid the war, which would not necessarily be socially supported in Russia without such consolidation. The article points out that Russian fake news laws play a significant role in Russia’s cognitive war against its population. Apart from producing devastating effects on Russian free speech and democracy, they assist the Russian government to increase public support for Putin and the war in Ukraine.

These results should hardly be viewed as unexpected and are generally consistent with most previous studies and reports indicating Russia’s increasing censorship and pointing out the controversial effects of the use of domestic fake news laws. They are also not necessarily generalisable. If conditional truth and unconditional loyalty are identified in other laws or in related court practices, however, they may be global or regional post-truth trends. Conceptualising them as distinctive instruments for information verification, the article suggests repeating this study in other contexts, especially those with a communist ideological background, to compare the outcomes. While considerably expanding the research and our understanding of the role of the judiciary in forming public discourse, the paper recommends further investigations into these issues. Judicial mythmaking would be a fruitful area for research; the use of the DA lens has been significant in this analysis, enriching doctrinal insights.

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## Notes

1. Article 29 of the Russian Constitution states:

1. 'Everyone shall be guaranteed the freedom of ideas and speech.
2. Propaganda or agitation instigating social, racial, national, or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious, or linguistic supremacy shall be banned.
3. No one may be forced to express his views and convictions or to reject them.
4. Everyone shall have the right to freely look for, receive, transmit, produce, and distribute information by any legal means. The list of data comprising state secrets shall be determined by a federal law.
5. The freedom of mass communication shall be guaranteed. Censorship shall be banned'.

Constitution of the Russian Federation, adopted at National Voting (1993, 12 December) [official translation]. Available at: <http://www.constitution.ru/en/10003000-01.htm> (accessed 10 August 2023).

2. Article 29(2) of the Russian Constitution states: 'The propaganda or agitation instigating social, racial, national, or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious, or linguistic supremacy shall be banned'.

Article 55(3) of the Russian Constitution states: 'The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring the defence of the country and security of the State'.

Constitution of the Russian Federation [official translation]. Ibid.

3. The latest disinformation ban set up in Article 207.3 of the Russian Criminal Code was introduced by Federal Law of the Russian Federation of 4 March 2022 No. 32-FZ.
4. On 18 March 2019, Russia passed Federal Law No. 27 'On Amending the Code of the Russian Federation on Administrative Offences', as well as Federal Law No. 31 'On Amending Article 15.3 of the Federal Law "On Information, Information technologies and information security"'. See Federal Law 'On Amending the Code of the Russian Federation on Administrative Offences' No. 27-FZ (2019, 18 March). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_320399/](https://www.consultant.ru/document/cons_doc_LAW_320399/) (accessed 10 August 2023); Federal Law 'On Amending Article 15.3 of the Federal Law "On Information, Information technologies and information security"' No. 31-FZ (2019, 18 March). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_320401/](https://www.consultant.ru/document/cons_doc_LAW_320401/) (accessed 10 August 2023).

The disinformation ban set up in Article 207.3 of the Russian Criminal Code was introduced on March 4, 2022, by Federal Law of the Russian Federation of March 4, 2022 No. 32-FZ. See Federal Law 'On Amending the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation' No. 32-FZ (2022, 4 March). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_410887/](https://www.consultant.ru/document/cons_doc_LAW_410887/) (accessed 10 August 2023).

5. Article 207.3 of the Criminal Code bans public dissemination of malicious falsities on 'how Russia uses its armed forces or how the forces perform tasks assigned to them by state bodies to 'protect citizens and maintain peace' or how volunteer units, organisations or individuals assist the armed forces in performing these tasks'.

Article 207.3 of the Criminal Code of the Russian Federation No. 63-FZ (1996, 13 June).

- Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/](https://www.consultant.ru/document/cons_doc_LAW_10699/) (accessed 10 August 2023).
6. Article 13.15, Clauses 10, 10.1 -10.2 and 11 of the Russian Code of Administrative Offence No. 195-FZ (2001, 30 December). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/](https://www.consultant.ru/document/cons_doc_LAW_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/) (accessed 10 August 2023). Articles 207.1-207.2 of the Criminal Code of the Russian Federation No. 63-FZ (1996, 13 June). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/](https://www.consultant.ru/document/cons_doc_LAW_10699/) (accessed 10 August 2023).
  7. Article 20.3.3 of the Russian Code of Administrative Offence No. 195-FZ (2001, 30 December). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_34661/300eb21d6921afe5e35e2f6b48059e7cd2851c01/](https://www.consultant.ru/document/cons_doc_LAW_34661/300eb21d6921afe5e35e2f6b48059e7cd2851c01/) (accessed 10 August 2023); Article 280.3 of the Criminal Code of the Russian Federation No. 63-FZ (1996, 13 June). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/82573487625d1338934d3d8b93bab0aeb6d1067/](https://www.consultant.ru/document/cons_doc_LAW_10699/82573487625d1338934d3d8b93bab0aeb6d1067/) (accessed 10 August 2023).
  8. See, for example, Decision of the Akhtubinsky District Court of the Astrakhan Region on the case No. 2a-2256/2022 of 30 December 2022.
  9. Judgement of the Koptevsky District Court of the City of Moscow on the case No. 5-445/2022 of 20 May 2022.
  10. Decision of the Ussuriysky District Court of Primorsky Krai on the criminal case No. 1-801/2022 of 2 August 2022.
  11. Decision of the Uletovskiy District Court of the Trans-Baikal Territory on the case No. 2a-190/2022 of 15 April 2022.
  12. *Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 68; *Mityanin and Leonov v. Russia*, § 109.
  13. Judgement of the Miass City Court of the Chelyabinsk Region on the case No. 5-714/2022 of 18 April 2022.
  14. *Ibid.*
  15. *Ibid.*
  16. See, for example, Decision of the Dzerzhinsky District Court of the city of Perm on the case No. 2a-2665/2022 of 28 June 2022.
  17. See, for example, Decision of the Ingodinsky District Court of the city of Chita on the case No. 2a-1319/2022 of 6 July 2022.
  18. Article 354.1 of the Criminal Code of the Russian Federation No. 63-FZ (1996, 13 June). Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/be763c1b6a1402144cabfe17a0e2d602d4bb7598/](https://www.consultant.ru/document/cons_doc_LAW_10699/be763c1b6a1402144cabfe17a0e2d602d4bb7598/) (accessed 19 August 2023). See more in: Richter A., *Disinformation in the media under Russian law*, IRIS Extra, European Audiovisual Observatory, Strasbourg, June 2019, pp. 18–21.
  19. Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022; Decision of the Basmanny District Court of the City of Moscow on the criminal case No. 01-0001/2023 of 6 February 2023; Judgement of the Simonovskiy District Court of the City of Moscow on the case No. 05-2557/2022 of 20 July 2022; and Decision of the Sterlitamak City Court of the Republic of Bashkortostan on the criminal case No. 1-14/2023 of 22 February 2023.
  20. Decision of the Oktyabrskiy District Court of the city of Irkutsk on the case No. a-2547/2022 of 1 June 2022; Judgement of the Koptevsky District Court of the City of Moscow on the case No. 5-438/2022 of 9 June 2022; Decision of the Blagoveshchensk City Court of the Amur Region

- on the case No. 2a-6574/2022~M-5773/2022 of 15 September 2022; Decision of the Pervomaisky District Court of the city of Penza on the criminal case No. 1-339/2022 of 17 October 2022; and Decision of the Nizhny Novgorod Regional Court on the case No. 12-1657/2022 of 5 October 2022.
21. Decision of the Central District Court of the city of Chita on the case No. 2a-3548/2022 of 30 May 2022; Decision of the Kyrinsky District Court of the Trans-Baikal Territory on the case No. 2a-108/2022 of 5 May 2022; Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022; Decision of the Blagoveshchensk City Court of the Amur Region on the case No. 2a-6574/2022~M-5773/2022 of 15 September 2022; Decision of the Klin Town Court of Moscow Region on the case No. 2a-3581/2022 of 7 November 2022; Decision of the Central District Court of the city of Chita on the case No. 2a-2918/2022 of 26 April 2022; and Decision of the Akshinsky District Court of the Trans-Baikal Territory on the case No. 2a-234/2022 of 11 August 2022.
  22. Decision of the Akhtubinsky District Court of the Astrakhan Region on the case No. 2a-2256/2022 of 30 December 2022; and Decision of the Zabaikalsky District Court of the Trans-Baikal Territory on the case No. 2a-386/2022 of 18 July 2022.
  23. See, for example Decision of the Ussuriysky District Court of Primorsky Krai on the criminal case No. 1-801/2022 of 2 August 2022.
  24. Decision of the Nalchik City Court of the Kabardino-Balkarian Republic on the case No. a-6876/2022 of 16 December 2022 and Judgement of the Abakan City Court of the Republic of Khakassia on the case No. 1-912/2022 of 17 November 2022.
  25. Decision of the Primorsky Regional Court on the case No. 12-373/2022 of 27 September 2022.
  26. Decision of the Ussuriysky District Court of Primorsky Krai on the case No. 2a-1548/2022 of 21 March 2022.
  27. Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022.
  28. Decision of the Akshinsky District Court of the Trans-Baikal Territory on the case No. a-112/2022 of 12 April 2022.
  29. Decision of the Uletovsky District Court of the Trans-Baikal Territory on the case No. 2a-190/2022 of 15 April 2022.
  30. Decision of the Klin Town Court of Moscow Region on the case No. 2a-3581/2022 of 7 November 2022.
  31. Judgement of the Kogalym City Court of the Khanty-Mansi Autonomous Area – Yugra on the case No. 5-831/2022 of 23 May 2022.
  32. Judgement of the Koptevsky District Court of the City of Moscow on the case No. 5-438/2022 of 9 June 2022.
  33. Judgement of the Koptevsky District Court of the City of Moscow on the case No. 5-445/2022 of 20 May 2022.
  34. Judgement of the Krasnoarmeyskiy Town Court of the Saratov Region on the case No. 5-5/2023 of 21 February 2023.
  35. Judgement of the Koptevsky District Court of the City of Moscow on the case No. 5-445/2022 of 20 May 2022.
  36. Decision of the Klin Town Court of Moscow Region on the case No. 2a-3581/2022 of 7 November 2022; Judgement of the Sergiev-Posad Town Court of the Moscow Region on the case No. 5-736/2022 of 21 March 2022; Judgement of the Partisan City Court of Primorsky Krai on the case No. 5-278/2022 of 16 May 2022.



37. Judgement of the Eighth General Jurisdiction Court of Cassation No. 16-5057/2022 of 18 July 2022; Judgement of the Seventh General Jurisdiction Court of Cassation No. 16-4674/2022 of 1 September 2022; and Judgement of the Third General Jurisdiction Court of Cassation No. 16-7051/2022 of 26 December 2022.
38. Judgement of the Simonovsky District Court of the City of Moscow on the case No. 05-4015/2022 of 14 September 2022.
39. See, for example, Decision of the Khiloksky District Court of the Trans-Baikal Territory on the case No. 2a-152/2022 of 13 April 2022; Decision of the Nalchik City Court of the Kabardino-Balkarian Republic on the case No. a-6876/2022 of 16 December 2022; and Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022.
40. Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022; Decision of the Pervomaisky District Court of the city of Penza on the criminal case No. 1-339/2022 of 17 October 2022; and Decision of the Sterlitamak City Court of the Republic of Bashkortostan on the criminal case No. 1-14/2023 of 22 February 2023.
41. Decision of the Basmany District Court of the City of Moscow on the criminal case No. 01-0001/2023 of 6 February 2023 and Decision of the Pervomaisky District Court of the city of Penza on the criminal case No. 1-339/2022 of 17 October 2022.
42. Decision of the Leninsky District Court of the city of Penza on the criminal case No. 1-184/2022 of 3 August 2022.
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44. Decision of the Zabaikalsky District Court of the Trans-Baikal Territory on the case No. 2a-386/2022 of 18 July 2022.
45. Appellate decision of the Supreme Court of the Republic of Kalmykia No. 22-623/2022 of 23 December 2022. The information on the first instance decision is available here: <https://russianfreepress.com/2022/10/18/employee-of-the-elista-administration-was-given-3-years-in-prison-in-the-case-of-fake-about-the-army/>
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