LUMEN ET VIRTUS
ISSN: 2177-2789

FREEDOM OF THE PRESS: ANALYSIS OF THE IMPACT OF TSE DECISIONS ON THE FIGHT AGAINST FAKE NEWS IN THE 2024 ELECTIONS

https://doi.org/10.56238/levv16n47-052

Submitted on: 17/03/2025 **Publication date:** 17/04/2025

Samuel de Sousa Costa[1], Iara Barros Barbosa[2]

ABSTRACT

Freedom of the press is an essential pillar of democracy, guaranteeing the right to information and the plurality of voices in public debate. In the 2024 elections, the Superior Electoral Court (TSE) adopted more incisive measures to combat disinformation, expanding its action against fake news on social networks and holding digital platforms and political agents accountable for false content. These decisions have raised debates about the limits between regulation and censorship, especially when they have affected media outlets and press professionals. While the central objective was to protect the integrity of the electoral process, there were concerns about possible impacts on editorial freedom and the free exercise of journalism. The TSE's performance highlights the contemporary challenge of balancing the fight against disinformation with the preservation of democratic freedoms. Thus, the 2024 elections marked a milestone in the redefinition of the boundaries between institutional regulation and press autonomy in the digital environment.

Keywords: Freedom of the Press. Superior Electoral Court. Fake News. Democracy.

[1] Student of the Bachelor of Law course,
of the Higher Education Unit of Southern Maranhão (Unisulma- IESMA)
Imperatriz, Maranhão, Brazil
Email: samuelsoussa99@hotmail.com
[2] Graduated in Law,
of the Higher Education Unit of Southern Maranhão (Unisulma - IESMA)
Postgraduate degree in Public Law from PUCRS
Imperatriz, Maranhão, Brazil
E-mail: iarabarrosadvocacia@gmail.com

INTRODUCTION

This article will address the topic "Freedom of the press: Analysis of the impact of TSE decisions in the fight against fake news in the 2024 elections". From the perspective of elucidating the following problem: How has the TSE understood the limits of the press during the elections in the fight against fake news?

The general objective of this work is to analyze the TSE's understanding of the relationship between freedom of the press and fake news during the election period. And, for this, it has the following specific objectives: To explore the principle of Robert Alexy's Theory of Legal Argumentation in the context of elections; Understand the TSE's guidelines for combating fake news in the 2024 elections and Reflect on the TSE's position regarding the limits of the press in decisions.

The study of this topic is relevant since it is up to the TSE to combat the dissemination of fake news in the context of elections and has taken some important actions, such as: Updating the rule to combat disinformation in the 2024 elections, creation of the Integrated Center to Combat Disinformation, Electoral Disinformation Alert System, Program to Combat Disinformation, in addition to actions to guide citizens. Thus, the fight against fake news in the 2024 elections was the digital challenge where everything was very recent and where the tools to meet this reality had still very experimental difficulties. Disinformation is still a concrete cause of enormous damage to democracy and directly affects people's lives individually and collectively.

Celebrated on 04/02/2024, the International Day of Fact-Checking was highlighted by the president of the Superior Electoral Court (TSE), Justice Alexandre de Moraes, in the Court's plenary session. The president highlighted the legislative apparatus and resolutions and programs of the Electoral Justice to curb disinformation and *fake news* during the 2024 Municipal Elections. "The Electoral Court and the TSE take advantage of this April 2, International Fact-Checking Day, to reinforce their role in ensuring that the voter has access to all the true facts, that they know which are false facts and that they are absolutely sure that the Electoral Court will hold accountable all those who misinform, who disseminate fraudulent news, with or without the use of artificial intelligence, during this electoral period".

The president reiterated the launch at the TSE, in March, of the Integrated Center for Combating Disinformation and Defense of Democracy (CIEDDE): "The Center is already operating, interconnected online, 24 hours a day, with the 27 Regional Electoral Courts (TREs).

In addition to this, it is important to understand that the Brazilian Constitution is a complete legislation, which explicitly and directly establishes the fundamental rights of the

citizen, including freedom of expression, which is not to spread information without being checked, because the constitution does value the truth and rights of all and not just of a small group. Thus, with regard to "no law shall contain a provision that may constitute an obstacle to the full freedom of journalistic information in any media outlet, subject to the provisions of article 5, items IV, V, X, XIII and XIV" (article 220, § 1). This constitutional passage is fundamental to guarantee the free flow of information, an essential element for the functioning of democracy. However, it is notorious that there are many propagations and distortions of information in electoral periods that limit the circulation of information.

Freedom of the press and fake news have been present in the Brazilian social body for a long time, especially during election periods. And even today it contains elements that limit the "locomotion" of communication, and it becomes a great subject to be debated and instilled in the legal context, analyzing how the TSE analyzes the spread of fake news is extremely important for society.

In line with the Federal Constitution, the press becomes a pluralized characteristic, which within society it is necessary for the population to be able to debate and understand various issues issued by these binding channels, using interpretation, critical sense, and thorough analysis of the subjectivity of each news passed on, to understand which interests each information corresponds to.

Thinking in this sense, it is necessary to explain the real and fundamental importance of the democratization of information and the role of the press in strengthening democracy that, at a certain moment in Brazilian history, was curtailed and the entire nation was hostage, victim and violated by a dictatorial regime, where many rights were violated, censored and reduced. Freedom of the press promoted at that time and promotes political and social changes every day in societies, as well as improvements that begin with journalists being spokespersons, amplifying what people want to say and multi-planing their access to information, with the rigor of being the means of reproducing the truth.

Unfortunately, such issues become questionable as the country limits the press and silences many voices. This is reflected in the report produced by the NGO Reporters Without Borders, released in 2022, in which it points to Brazil in the 110th position in the ranking of press freedom, demonstrating that this nation is a place where the professional exercise of the press is restricted.(RSF, 2022)

> State interference in the media sector is a constant in practically all countries, reflecting the particularities of each society. In the Brazilian case, since the beginning of the nineteenth century, the marked differences between the first two newspapers, the Gazeta do Rio de Janeiro and the Correio Braziliense, already showed an essential characteristic to understand the evolution of the sector: at each historical moment, there will always be initiatives favored and others disfavored by

> the State. This dynamic, deeply linked to the political and economic context, varies in intensity over time, being especially evident in periods of institutional crises. (LOCATELLI, P. 02, 2024)

Thus, it is possible to perceive that the interference of the State is not a recent or isolated phenomenon. On the contrary, it is a practice that is consolidated throughout the history of humanity, adapting to the specificities of each era. In different temporal, political, economic, and social contexts, state power finds different ways to intervene in the media, whether to shape discourses, restrict freedoms, or strengthen narratives.

From this perspective, it becomes evident that freedom of the press is not an absolute or immutable value, but rather a principle conditioned by the political structures in force at each historical moment. The degree of freedom of the media usually directly reflects the type of political regime installed in the country, being expanded or restricted according to the transformations in social dynamics and power relations. In authoritarian contexts, for example, this freedom tends to be suppressed or instrumentalized.

During the period of the military dictatorship in Brazil, many rights were curtailed, and the press was no different. The media began to be used as instruments of official propaganda, with content aimed at serving the interests of those who held state power. Censorship, persecution of journalists and manipulation of information have become central mechanisms to maintain ideological control of the population. This control of the media represented an effective strategy to limit public debate.

It is worth noting that this pattern of intervention in the media is not exclusive to dictatorial regimes. Even in democratic contexts, the relationship between the State and the press remains permeated by tensions, interests, and attempts at control — even if in a more subtle or institutionalized way. Therefore, understanding this historical dynamic is essential to critically analyze the role of communication in maintaining or contesting power structures.

FREEDOM OF THE PRESS: ANALYSIS OF THE IMPACT OF TSE DECISIONS IN THE FIGHT AGAINST FAKE NEWS IN THE 2024 ELECTIONS

Referring to Robert Alexy's legal argumentation, available in the document "Estudos Eleito" (TSE, 2020), the TSE's decisions are based on a solid argumentative analysis, taking into account essential legal principles. This demonstrates that the court considers issues such as freedom of expression, the preservation of democracy, and the protection of citizens' fundamental rights when judging issues involving the dissemination of fake news during electoral elections.

The Protection of Freedom of Expression is founded by the author Ronald Dworkin (1999) and, cited by Fernanda Carolina Torres (2013), who addresses freedom of expression as a fundamental right, directly linked to the security and dignity of citizens' lives.

Dworkin's work, even though many years have passed, is still fundamental to understand the context of this theme, as he defended the need to strongly protect freedom of expression to strengthen democracy in society. It is up to the State to guarantee a peaceful and harmonious space for the free exchange of ideas, even if it is already controversial, the dialogue of divergent opinions must be ensured.

Freedom of expression is one of the pillars of democratic societies and is deeply intertwined with other fundamental rights. Its importance goes beyond the individual right to demonstrate — it works as an essential instrument for the protection and exercise of other rights, such as: the right to information, freedom of the press, the right to political participation, freedom of assembly and association, the rights of vulnerable groups, among others.

Freedom of expression guarantees access to different points of view and information, which is essential for forming opinions and making conscious decisions — whether as a citizen, voter or consumer. Without freedom of expression, the right to information is compromised. In addition, the free expression of political ideas and opinions is fundamental for citizen participation, public debates and electoral campaigns. Freedom of expression strengthens plurality and democratic deliberation.

RELATIONSHIP BETWEEN FREEDOM OF THE PRESS AND FAKE NEWS DURING THE ELECTION PERIOD

Freedom of the press is one of the structuring pillars of modern constitutional democracies. However, in electoral periods marked by intense political polarization and massive circulation of disinformation, this fundamental right faces complex challenges. The debate on the limits of press freedom in the fight against fake news, especially in the context of the 2024 Brazilian elections, highlights the tension between the right to free expression of thought and the State's duty to protect the integrity of the democratic process.

The work of Ronald Dworkin (1999) contributes significantly to this analysis by arguing that individual rights, such as freedom of expression, should be interpreted in the light of the principles of dignity, equality and political participation. For the author, these rights are not absolute, but require consideration against other relevant constitutional values. In this sense, the fight against fake news, when based on democratic principles and

proportionality, can justify specific restrictions on freedom of the press, as long as these interventions are not arbitrary or censorious.

The Superior Electoral Court (TSE) itself, especially in the 2024 elections, began to adopt this type of approach, reinforcing the idea that the performance of the Electoral Justice must seek a balance between guaranteeing freedom of the press and curbing the instrumentalization of media channels for the purpose of electoral manipulation. Between March 1 and 15, 2024, the TSE's Infojuri, a report prepared by the Jurisprudence Dissemination Section (Sedjur/Cojuleg/SGIC), brought summaries of decisions that discuss, among other topics, the competence of the Electoral Justice in combating disinformation and the accountability of actors who use digital platforms to spread fake news with a direct impact on the electoral dispute (BRASIL, 2024c).

This recent jurisprudence dialogues with the arguments presented by Robert Alexy (2001), for whom law should be understood as a rational discourse, guided by principles that need to be weighed in the concrete case. The fight against electoral disinformation requires, therefore, an argumentative model capable of justifying judicial intervention based on criteria of rationality, correctness, and universal acceptability. It is not a matter of curtailing public debate, but of protecting it against attacks that could compromise its legitimacy.

Authors such as Juliana Freitas and Paulo Victor Carvalho (2018) reinforce this understanding by arguing that the voter's right to freedom of information should be understood as a collective right, directly linked to the quality of the democratic process. From this perspective, the performance of the press must respect the principles of veracity and social responsibility, under penalty of becoming an instrument of disinformation with systemic impact.

In addition, studies such as those by Costa et al. (2024) show that the TSE's performance in recent electoral cycles has moved towards building a jurisprudence that differentiates freedom of the press from the abuse of freedom. This distinction becomes fundamental when it is found that not every manifestation conveyed by the media — including digital media — is protected by the mantle of freedom of expression, especially when there is an evident intention to manipulate or distort facts to obtain electoral advantage.

Thus, the relationship between press freedom and fake news in elections cannot be approached in a binary way. The institutional challenge is to build normative and jurisprudential criteria that allow the Electoral Justice to act firmly against disinformation, but without incurring in practices that compromise information pluralism and the autonomy of

journalism. The answer to this challenge depends on a constitutional reading that is sensitive to the specificities of the digital environment, the dynamics of power in society, and the foundations of the Democratic Rule of Law.

The TSE Plenary established, by majority, the competence of the Electoral Court to judge cases of offenses to the spouses of candidates, when there is a connection with electoral content, in the context of an electoral campaign. The decision took place in the representation filed by the Brazil of Hope Coalition against Radio Panamericana and the radio commentator for broadcasting disinformation about the spouse of a candidate for the Presidency of the Republic, during the 2022 electoral campaign. Rec in Rp n. 060128334, Brasília/DF, rel. Min. Nunes Marques, judged on 3/7/2024, in a jurisdictional session.

This decision by the TSE reflects an important advance in protecting the integrity of electoral campaigns and preserving the dignity of those involved in the process. By recognizing the competence of the Electoral Court to deal with offenses directed at spouses of candidates, the court not only reinforces the need for a healthy electoral environment, but also sets a significant precedent for the accountability of actions that may compromise the fairness of the election.

In this sense, the dissemination of disinformation, especially in a context as sensitive as that of elections, can have profound impacts on public perception and voters' decision-making, making it essential that such issues be treated with the seriousness they deserve.

PRINCIPLE OF ROBERT LEXY'S THEORY OF LEGAL ARGUMENTATION IN THE CONTEXT OF ELECTIONS

Robert Alexy's theory of legal argumentation is fundamental to the understanding of legal discourse and its application in democratic practice. In the electoral context, where public debate, the formulation of norms and the resolution of conflicts require rational and well-founded argumentation, the principle of argumentation developed by Alexy becomes an essential instrument. The objective of this text is to analyze the applicability of Alex's theory to elections, considering the challenges of the democratic process, the performance of the Judiciary and the need for a rational and justified discourse in the political debate.

3.1. Robert Alexy's Principle of Legal Argumentation

Robert Alexy developed his theory of legal argumentation based on the idea that law cannot be understood only as a set of norms, but also as a rational discourse that seeks the correctness and coherence of decisions. For Alexy (2021), law has a normative and discursive dimension, and it is necessary that norms be justified through a rational argumentative process.

Its argumentation model is based on principles such as: correctness and rationality of legal discourse, Universal acceptability, Principled character of law, and the application of this model to the electoral context is based on the need for a reasoned political debate, on the role of the Judiciary in the resolution of electoral disputes and in the construction of norms that guarantee justice and transparency in the democratic process. (ALEXY, 2001)

In the electoral scenario, Alexy's theory highlights the importance of rational argumentation in political discourse. Candidates, parties, and voters should engage in a debate based on plausible justifications, rather than resorting to misinformation, fallacies, or emotional speeches devoid of logical foundation. Democracy depends on the ability of citizens to evaluate arguments based on rational criteria, and Alexian theory provides a model for qualifying this process.

Another crucial point is the role of the Judiciary in the analysis of electoral conflicts. In many situations, judges and electoral courts need to decide on challenges to candidacies, abuses of economic power, fake news, and other issues that affect the legitimacy of the election. In these decisions, Alexy's theory of legal argumentation suggests that judges cannot simply apply rules mechanically, but must weigh principles and base their decisions on rational justifications that are acceptable in the democratic context.

The creation and interpretation of electoral rules must also follow a reasoned argumentative process. Electoral legislation involves principles such as equal opportunities, freedom of expression, and public morality, which often conflict. Alexy's model of legal argumentation offers a way to resolve these conflicts through the weighing of principles, ensuring that the norms are applied fairly and compatible with democratic values.

Robert Alexy's theory of legal argumentation is essential for the electoral context, as it contributes to the qualification of the political debate, the foundation of the decisions of the Electoral Justice and the construction of fairer democratic norms. In an era marked by polarization and disinformation, the need for a rational and well-structured discourse becomes even more evident. The application of the principles of Alexian argumentation to the electoral process can strengthen democracy and ensure that political and legal decisions are based on reason, impartiality and justice.

Thus, "Legal discourse, as a practical discourse, must meet rational requirements of justification, and it is essential that its decisions be based on rational principles and arguments." (Theory of Legal Argumentation, 1983). This quote reinforces the importance of a political and legal debate based on reason and adequate justification, essential principles for the legitimacy of elections and the democratic process.

TSE GUIDELINES TO COMBAT FAKE NEWS IN THE 2024 ELECTIONS

The dissemination of fake news has become one of the main challenges for democracy in recent years, especially during election periods. The Superior Electoral Court (TSE) recognized this threat and, for the 2024 Municipal Elections, reinforced its commitment to combating disinformation. The guidelines adopted by the TSE seek to protect the integrity of the electoral process, ensure the transparency of information, and hold accountable those who spread fake news.

One of the TSE's main concerns for 2024 was the use of artificial intelligence (AI) in the dissemination of false content. The popularization of generative AI tools has made it easier to create manipulated videos, audios, and images, which can deceive the electorate. In response, the TSE prohibited the use of these technologies to produce misleading content, especially the so-called "deepfakes", which simulate speeches and actions of public figures in a realistic way.

In addition, the Electoral Court determined that any campaign material that uses AI to modify or create content must be clearly identified, ensuring that the voter is aware of the manipulation. This measure aims to minimize the impact of fake news and prevent the spread of misleading information about candidates and the electoral process.

Social networks and messaging apps play a central role in the spread of fake news. Therefore, the TSE has established partnerships with companies such as WhatsApp, Facebook, Instagram, TikTok, Google, Telegram and X (formerly Twitter). These agreements aim to facilitate the identification and removal of false content, in addition to creating mechanisms that prevent rumors from going viral.

Each platform has committed to taking specific measures. WhatsApp, for example, reinforced the limitation of the massive forwarding of messages, while TikTok and YouTube started to display warnings about official information about the electoral process. Telegram, which in previous elections was criticized for allowing the rapid spread of fake news, has also pledged to act more rigorously in removing misleading content.

To strengthen the fight against fake news, the TSE created the Integrated Center for Combating Disinformation and Defense of Democracy (CIEDDE). The body brings together several institutions, including representatives of the Public Prosecutor's Office, the Federal Police, and information technology specialists, to monitor and combat disinformation in real time.

CIEDDE's function is to identify patterns of dissemination of fake news, verify complaints made by citizens, and coordinate actions to prevent the spread of false content.

In addition, it promotes educational campaigns to raise awareness among the population about the risks of fake news and the importance of checking the veracity of information.

Another important guideline of the TSE for the 2024 elections is the expansion of the mechanisms for reporting fake news. The Electoral Court has made available a direct channel so that any citizen can report suspicious content. The complaints are analyzed by specialists, who assess whether the information is misleading and what measures should be taken.

In addition to this, the TSE reinforced that those who create or disseminate fake news may be held civilly and criminally liable. Depending on the severity of the case, the punishment may include fines and even the revocation of candidacies. This measure aims to discourage the practice and ensure that the election takes place fairly.

POSITION OF THE TSE REGARDING THE LIMITS OF THE PRESS IN THE DECI SIONS

The Superior Electoral Court's (TSE) role in combating disinformation during election periods has sparked intense debates about the limits between preserving press freedom and the need to ensure an upright electoral environment.

The TSE, throughout the most recent elections, especially in 2024, has reaffirmed its commitment to freedom of expression as one of the pillars of democracy, but it has also made it clear that this freedom is not absolute, especially when confronted with systematic practices of disinformation that compromise the collective right to truthful information and the very balance of the electoral process.

In its decisions, the Court has taken the position that the performance of the press, even if constitutionally protected, must be exercised with social responsibility, especially in sensitive moments such as elections. This understanding has led the TSE to adopt measures that seek to distinguish, in a technical and legal way, professional journalism from the deliberate production of false content.

The Court recognizes the essential role of the press as an overseer of power and as an agent of critical formation of public opinion, but also establishes that the intentional dissemination of fake news, even when made by outlets or agents that claim to be journalistic, may constitute abuse of power and violation of the fairness of the election. (BRAZIL, TSE, 2024)

Based on this principle, recent decisions by the TSE point to a position that seeks to balance the fight against fake news with undue non-interference in the editorial freedom of the media. However, this thin line between regulation and preventive censorship continues

to be a point of tension, which requires the Judiciary to be extra careful so that its decisions do not compromise the pluralism of ideas.

Thus, the TSE has adopted a posture that seeks to dialogue with constitutional principles, but also with the digital reality, where the boundaries between traditional press and new channels of disinformation become increasingly diffuse. An emblematic example of this concerns the limits of the press in combating fake news in the 2024 elections, when Minister Alexandre de Moreais highlighted that all those who disseminated false news, with or their use of artificial intelligence, would be held responsible and, in addition, approved resolutions to discipline the elections, including the prohibition of deepfakes. (BRAZIL, TSE, 2024)

METHODOLOGY

To structure this Course Completion Article, it was necessary to prepare a research that would help the community to understand the seriousness of the topic and how it can affect the future of young people and adults. Therefore, the article is based on a bibliographic review research, with a qualitative and jurisprudential aspect. Thus, the scope of the work was defined, with the definition of the theme presented above in the introduction, the problem, the objectives and now the work methodology, the path that was traced to reach the results disclosed here in this work. Regarding this bias, the study will be during the year 2024 understanding and exploring the impact of fake news and how the TSE lists the argumentation in decisions.

As a parameter, recent to technological transformations and the use of new tools for the propagation of *fake news*, in February 2024, in which the TSE regulated, in an unprecedented way, the use of AI, the Court amended Resolution No. 23,610/2019, which deals with electoral propaganda 2024, we will analyze the impacts at the end of this year's elections to support the research.

In addition, the research was defined based on articles published in the last ten years to understand the little bit of fake news and other more recent ones from the last five years to understand the aspects of fake news in the last elections, at various levels of analysis.

To carry out this scientific research, strict criteria for inclusion and exclusion of articles were defined. Studies published since 2013 were included, but the reference of Ronald Dworkin, from 1999, and Robert Alexy (2001) needed to be included. Dworkin (1999) due to being a classic work on the right to freedom of expression and, from it, other important researches were based on it and Alexy (2001) because it is a work that develops

the theoretical basis of legal argumentation. But regarding the TSE's fight against fake news, it used especially the surveys published between 2020 and 2024, in Portuguese, which directly addressed topics related to disinformation in the Brazilian electoral process, focusing on institutional and technological measures adopted to confront this phenomenon.

In addition, papers that presented empirical analyses, systematic reviews or relevant theoretical discussions, published in academic journals or annals of recognized congresses in the area of communication, political science and law, were also selected. Opinion articles, duplicates, texts that dealt with disinformation in non-electoral contexts or in countries whose political and institutional scenario was too different from Brazil's were excluded, making it difficult to compare.

The searches were carried out primarily in the Scielo, Scopus, Web of Science and Google Scholar databases, using strategic combinations of keywords, such as "fake news", "electoral disinformation", "Superior Electoral Court", "2024 elections", "electoral justice and social networks" and "combating disinformation in Brazil". The choice of these words took into account their recurrence in recent academic productions and their ability to direct research to materials aligned with the object of study. Thus, the results were refined and greater precision in the selection of articles can be guaranteed. This process allowed us to identify a representative set of publications that contribute to the understanding of the role of the TSE in combating disinformation.

Along the way of this research, some limitations arose regarding the period in question being very recent and the specific bibliography of these years in question is published in a smaller volume. But the limitations did not prevent production, they only strengthened the need and importance of producing even more on the subject.

RESULTS AND DISCUSSIONS

The performance of the Superior Electoral Court (TSE) in combating disinformation in the 2024 elections reaffirms a trend observed since the 2018 election: the displacement of the legal debate on freedom of expression to the center of democratic disputes in Brazil.

In its most recent resolutions, the TSE reinforced its commitment to electoral integrity, adopting specific measures against the use of artificial intelligence for the production of deepfakes, requiring the identification of the use of AI in electoral content, and holding authors and platforms responsible for the dissemination of false content (BRASIL, 2024a; 2024b).

These actions reveal a paradigm shift, in which the Judiciary starts to act as a regulatory agent of information in a digital environment marked by the pulverization of sources and the weakening of traditional journalistic authority.

In this context, it becomes inevitable to discuss the limits of the press's performance in the face of such regulations. The tension between the right to information and the duty to curb disinformation requires a sophisticated argumentative effort from the TSE, as proposed by Robert Alexy (2001), for whom the application of the law should start from a weighing of principles, based on practical rationality and legal argumentation. The Court, by imposing restrictions on the circulation of certain content, including those broadcast by agents who self-declare themselves as the press, is justified by the supremacy of the collective right to truthful information over the individual right to free expression, whenever this proves to be instrumentalized for the purpose of manipulating the electoral process (COSTA et al., 2024).

This balance is, however, delicate. Marilena Chauí (1989), when discussing "competent discourse", points out that the control of public language can legitimize subtle forms of domination. It is up to the Electoral Court to distinguish the legitimate control of disinformation from the risk of censorship. The precedents of the TSE have sought to preserve the exercise of journalism as indispensable to democracy, but demanding editorial responsibility and commitment to the veracity of the facts (BRASIL, 2020).

The idea that freedom of the press should not be confused with a license to disseminate untruths is reinforced, as they can impact and even alter the public perception of candidacies, government programs and institutions.

The studies by Neisser, Bernardelli, and Machado (2018) contribute to this discussion by warning that digital lies do not operate in a diffuse way, but in a structured way, often articulated with economic and political interests, as revealed in scandals involving political marketing companies and irregular use of data, such as the case denounced by Patrícia Campos Mello (2020; 2018). Thus, jurisdictional control over these practices is not only a normative option, but a requirement for the survival of representative democracy itself.

On the other hand, it is necessary to recognize that the fight against disinformation cannot be the exclusive delegation of the Judiciary. The construction of a political culture that is more critical and resistant to information manipulation necessarily involves public policies for media education, strengthening professional journalism and the responsibility of digital platforms. As the report by Reporters Without Borders (RSF, 2022) points out, press freedom is under global pressure, and Brazil is no exception. Thus, any regulation that aims

to contain abuses must be accompanied by mechanisms of transparency, review and dialogue with civil society, under penalty of compromising the very good that is intended to be protected.

In view of this, the analysis of documents, decisions and studies shows that the TSE has moved towards building a jurisprudence that values informational pluralism, without giving up the constitutional duty to protect the electoral process from illicit practices. The challenge lies in ensuring that the instruments created to combat fake news do not inadvertently become tools for restricting press freedom and democratic debate.

CONCLUSION

From all the information collected and discussed in this article, it can be seen that disinformation causes a phenomenon that is highly harmful to society and democracy. All of this is increased with the power exercised and established by digital platforms, which can even distort the truth and even make people question the reliability and integrity of institutions. They may even bring risks to the constitutional rights now conquered.

Thus, it is initially necessary to understand what fake news is, how it is proposed, and how it is sustained and strengthened within society. It is a way of disseminating content and manipulating information that took a breath in the 2016 elections in the US and, in Brazil, gained space and power in the 2018 elections.

In this process, two points became evident: one that the dissemination of news can indeed harm democracy, but also that the TSE at times extrapolated its action, thinking about the correct application of the principle of proportionality. Without forgetting the fundamental character of the right to freedom of expression, it was evident that its curtailment by the TSE, in some cases, failed to follow the logical path of weighing proposed principle of proportionality. This also represents a risk to democracy, under the justification of its own protection.

In addition, fake news can increase various types of violence, such as politics, questioning spaces already conquered at the cost of a lot of struggle and social combat. This adds to the need for even greater efforts to combat this type of urgent situation.

The guidelines adopted by the TSE in 2024 reflect an ongoing effort to combat disinformation and ensure the integrity of the electoral process. The responsible use of technology, cooperation with digital platforms, and the creation of reporting mechanisms are key strategies to address this challenge. Even so, the success of these measures depends on the awareness of the population, which must be attentive to the information it consumes

and shares. Combating fake news is not only a duty of the TSE, but a collective responsibility in defense of democracy.

REFERENCES

1. Alexy, R. (2001). *Theory of legal argumentation* (Z. H. S. Silva, Trad.) (2nd ed.). São Paulo: Landy.

2. Brasil. Tribunal Superior Eleitoral. (2020). *Estudos eleitorais*, 14(1). Retrieved March 20, 2024, from https://bibliotecadigital.tse.jus.br/xmlui/handle/bdtse/6827

3. Brasil. Tribunal Superior Eleitoral. (2024a). *Approved resolutions discipline the 2024 municipal elections and combat disinformation and deepfakes*. Brasília: TSE. Retrieved April 12, 2025, from https://www.tse.jus.br/comunicacao/noticias/2024/Abril/justica-eleitoral-responsabilizara-autores-de-noticias-falsas-com-ou-sem-uso-de-ia-nas-eleicoes-diz-presidente-do-tse-1

4. Brasil. Tribunal Superior Eleitoral. (2024b). *Electoral Justice will hold authors of fake news, with or without the use of AI, accountable in elections, says TSE president*. Brasília: TSE. Retrieved April 12, 2025, from https://www.tse.jus.br/comunicacao/noticias/2024/Abril/justica-eleitoral-responsabilizara-autores-de-noticias-falsas-com-ou-sem-uso-de-ia-nas-eleicoes-diz-presidente-do-tse-1

5. Chauí, M. (1989). The competent discourse. In *Culture and democracy* (4th ed., pp. 3–13). São Paulo: Cortez.

6. Costa, I. V., & outros. (2024). *TSE's performance in combating attacks against democracy: Analysis of the limit between freedom of expression and institutional attack based on the TSE's performance*. Retrieved February 20, 2025, from https://www.repositorio.ufal.br/handle/123456789/14398

7. Dworkin, R. (1999). *The empire of law* (J. L. Camargo, Trad.). São Paulo: Martins Fontes.

8. Freitas, J. R., & Carvalho, P. V. A. (2018). The voter's freedom of information and its core of questions: Why? For what? By whom? In L. Fux, L. F. C. Pereira, & W. de M. Agra (Coords.), *Treaty on electoral law* (Vol. 4). Belo Horizonte: Fórum.

9. Instituto Interamericano de Direitos Humanos. (n.d.). *Diccionario electoral: Electoral discrimination in Latin America: On the facets of political rights*. Retrieved September 22, 2021, from https://www.iidh.ed.cr/capel/media/1440/diccionario-electoral_tomo-i.pdf

10. Locatelli, C., & Lima, M. S. (2024). The visible hand of the State: The military dictatorship and the structuring of the media sector in Brazil. *Brazilian Journal of Media History*, 13(2).

11. Mello, P. C. (2018, October 18). Businessmen fund a campaign against the PT through WhatsApp. *Folha de São Paulo*. Retrieved February 14, 2023, from https://www1.folha.uol.com.br/poder/2018/10/empresarios-bancam-campanha-contra-o-en-pelo-whatsapp.shtml

12. Mello, P. C. (2020). *The hate machine: A reporter's notes on fake news and digital violence*. São Paulo: Companhia das Letras.

13. Neisser, F., Bernardelli, P., & Machado, R. (2018). Lying in the digital environment: Electoral impacts and possibility of control. In L. Fux, L. F. C. Pereira, W. de M. Agra (Coords.), & L. E. Peccinin (Ed.), *Canvass* (pp. 51–70). Belo Horizonte: Fórum.

14. Neto, M. V. F. (2022). *Brazilian electoral process: Challenges of using digital technologies in the 2022 elections* (Dissertação de mestrado). Universidade Federal Fluminense, Niterói.

15. Oyama, L. T., & Servat, J. R. (2018). Fake news, algorithms, artificial replication and electoral criminal liability. In L. Fux, L. F. C. Pereira, W. de M. Agra (Coords.), & L. E. Peccinin (Ed.), *Canvass*. Belo Horizonte: Fórum.

16. Panho, I. A. (n.d.). *What the criticism of the political economy of communication has to say to the TSE: Massive shooting of messages and fake news in the 2018 presidential elections* (Dissertação de mestrado). Universidade Estadual de Londrina, Londrina.

17. Repórteres Sem Fronteiras. (2022). *Press freedom in countries ranking, 2022*. Retrieved March 20, 2025, from https://rsf.org/pt-br/ranking

18. Torres, F. C. (2013). The fundamental right to freedom of expression and its extension. *Journal of Legislative Information*.