



Desinformation and Fundamental Human Rights

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Abstract: The phenomenon of desinformation has escalated with the advancement of Information and Communication Technology (ICT) in recent years, manifesting and spreading much faster and easier than before. The effects of desinformation are felt in a variety of issues affecting diverse groups of citizens within society, obstructing access to accurate information and undermining democratic values. This issue is considered a matter of public interest, prompting many countries worldwide to make efforts to combat or eradicate it. One of the main dangers lies in the fact that while the media creates an authentic public space, it also contributes to the formation of a false public sphere that diminishes the essential role of the media in shaping and strengthening public discourse. Addressing the diverse types of misinformation while safeguarding fundamental rights and freedoms poses a significant challenge for democracy and European standards. There are serious concerns regarding government surveillance and control over online content, coupled with the use of extensive surveillance methods and data collection under the pretext of national security and the fight against terrorist threats, which could serve as justification for state censorship.

Keywords: misinformation; information pollution; fundamental rights and freedoms; faulty information and intentional misinformation; European standards

1. Introduction

Fundamental rights and liberties are fundamental institutions because they influence how the state can regulate individual behavior. They are constitutional in origin and, as such, regulate the limits of the state's authority to issue primary rules

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of behavior. The fact that they are constitutionally recognized does not make them fundamental, they remain fundamental because of their importance in setting the limits of state intervention in different areas. For example, freedom of contract, although not expressly mentioned in the constitutional system of the Republic of Moldova, has a significant influence in setting legislative and economic boundaries. Fundamental rights and liberties are crucial not only for individuals, but also for shaping the structure of society and the state. They represent barriers to legislation, and when the state intervenes in their exercise, it must do so only within the limits strictly necessary for that exercise.

There is broad agreement in most current legal approaches that the state has the capacity and often the responsibility to intervene to regulate the exercise of fundamental rights and freedoms. This intervention can take various forms, depending on the public authorities' perspective on the promotion and protection of these rights. The choice of one of these regimes has a variety of consequences in terms of the ways in which rights and liberties are exercised and the possibility of restricting them. Current legal approaches consider three main regimes: a repressive regime, a preventive regime and a preventive regime mitigated by prior declarations. These regimes are classified according to their degree of liberality, the most liberal being the repressive one and the other two being compatible with a liberal societal framework only under certain conditions. They are accompanied by a regime for the exercise of rights and freedoms in exceptional situations, usually defined as a state of siege or a state of emergency.

Open access to information and freedom of expression are essential elements in a democratic state. Restricting them can only be done by law. Censorship of information transmitted via digital platforms violates constitutional supremacy. Empowering certain authorities with competences of restriction and control, in the context of the declaration of a state of emergency on the territory of the Republic of Moldova, is an alarm signal for democracy. Also, the lack of an official response regarding the annulment of decisions restricting access to information and freedom of speech raises a question mark over the way in which our state authorities are acting. Considering the above-mentioned aspects, we consider that it is more than necessary to respect the fundamental law of the state, especially in the case of the establishment of a state of emergency on the territory of our state. The state of emergency must not be a pretext for the discretionary restriction of citizens' fundamental rights and liberties.

The disinformation process can have a significant impact on the protection of fundamental human rights. Disinformation can misrepresent information and influence public opinion in a way that negatively affects the enjoyment of these rights.

Protecting fundamental rights in the context of misinformation therefore involves efforts to counter and prevent the spread of false information, promote media literacy and educate citizens to help them identify and handle information correctly. This can ensure an environment in which citizens can exercise their fundamental rights in an aware and informed way.

2. General aspects of freedom of expression and the right to information as fundamental rights and liberties

Freedom of speech is regulated at the national level under Article 32 of the Constitution of the Republic of Moldova and establishes:

- Every citizen shall be guaranteed freedom of thought, opinion, and freedom of speech, image or other possible means of public expression;
- Freedom of speech may not prejudice the honor, dignity or right of another person to his or her own opinion;
- The law shall prohibit and punish by means of law any contestation and defamation of the state and the people, incitement to war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, and other manifestations that undermine the constitutional regime.

At international level, freedom of speech is provided for in: Article 11 of the Charter of Fundamental Rights of the European Union; Article 10 of the Convention for the Protection of Human Rights and Fundamental Liberties; Article 19 of the Universal Declaration of Human Rights (listed by way of limitation). Freedom of speech was declared by the UN Assembly in 1946 and has been defined as “a fundamental human right and the cornerstone of all liberties to which the United Nations is committed”.

Freedom of speech is also interpreted as freedom of information.

At the international level (interpreting the clauses of the EU Charter of Fundamental Rights), freedom of speech coexists with freedom of information and is understood as:

- The right of a person to freedom of opinion;
- freedom to receive or impart ideas and information (without interference by public authorities and regardless of frontiers).

3. Freedom of Information

Information has been explicitly provided for as a fundamental right by the Constitution of the Republic of Moldova of 1994, under Article 34, entitled Right to Information. It had the following structure, which is reproduced below:

- The right of a person to have access to any information of public interest cannot be restricted;
- The public authorities, according to their competences, are obliged to ensure that citizens are properly informed about public affairs and matters of personal interest;
- The right to information must not prejudice measures for the protection of citizens or national security;
- The public information media, whether state or private, are obliged to ensure that the public is correctly informed;
- The media shall not be subject to censorship.

By reference to the provisions of the Constitution of the Republic of Moldova, information is understood both as a right and an obligation, as follows:

- Right of access of persons to any information of public interest;
- obligation of public authorities to ensure correct information of citizens on public affairs and matters of personal interest;
- obligation of the media to ensure that the public is correctly informed.

4. Disinformation a Complex Violation of Freedom of Speech and the Right to Information

Disinformation as a complex vitiation of the process of attaining fundamental human rights, on a par with the right to information, can reach the masses of society at a faster rate and in a wider area. Capitalizing on the collaborative potential, communication, and shared production opportunities offered by the internet, these groups exploit weaknesses in the media ecosystem to amplify the visibility and reach of their messages. In addition to its positive aspects, the internet has become a fertile ground for false information. The immediacy of information delivery and interactivity offered by the internet and today's information and communication technologies make us approach disinformation and fake news in a slightly different way.

Accordingly, the right to information may be subject to restrictions in cases strictly determined by law, such as the protection of young people and national security, in accordance with constitutional restrictions on certain rights and liberties. With reference to the rights and liberties described in the Constitution as fundamental, the doctrine has developed that they are considered essential because they allow the state to regulate the conduct of individuals. According to Dan Claudiu Dănișor, rights do not acquire the status of fundamental just because they are mentioned in the Constitution, but the need to include them at constitutional level reflects the fact that they are fundamental in essence (Dănișor, 2017, p. 20).

The European Commission issued on 24 June 2018 a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled *Combating online disinformation: a European approach*. The Commission considered that citizens are exposed to disinformation and that a democratic society is based on a properly informed citizen's public debate. New technologies were seen as disseminating information rapidly, but also bringing with them the disadvantage of "undermining trust in institutions through numerous disinformation campaigns". In the context of these circumstances, the European Commission has made it clear that the authorities have an obligation not to intervene and not to censor freedom of speech (in

whatever form: online, offline). Protection is extended even to potentially harmful content¹.

At its plenary session of 19 September 2018, the European Economic and Social Committee adopted the following opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Fighting online disinformation: a European approach. According to the conclusions and recommendations set out in point 1.1, 'in the European Union, freedom of information and freedom of speech are inviolable, even if they are used without respect for EU principles and become a weapon'. It was considered that disinformation is "used as an extreme form of media abuse with the aim of influencing social and political processes" (sponsored disinformation).

On 28 November 2018, on the basis of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018² Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 was published. Thus, "media literacy" is proposed, which should aim at "equipping citizens with the critical thinking skills needed to use discernment, to analyze complex realities and to recognize the difference between opinions and facts"³.

Internationally, the Code of Best Practices against Disinformation by platforms such as Google, Facebook, Twitter was signed in October 2018. Subsequently, these platforms generated reports on the whole process of disinformation⁴. In a study carried out on the implementation of the Code of Practice against Misinformation, it was found that the use of social media has led to disinformation, especially during election periods, which has led to the development of "propaganda campaigns"⁵.

¹ Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "Legal content, even when allegedly harmful, is generally protected by freedom of expression and must be treated differently from illegal content, in which case the removal of the content can be justified" - <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52018DC0236&from=RO>, accessed 10.10.2023.

² <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32018L1808>, accessed 10.10.2023.

³ Recital (59) from Directive (EU) 2018/1808, cit. over.

⁴ <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>, accessed 10.10.2023.

⁵ <https://www.imapmigration.org/sites/default/files/Publications/202007/Studyfortheassessmentoftheodeofpracticeagainstdisinformation.pdf>, accessed 10.10.2023.

As information following the statistical data (according to Facebook - Facebook report on the implementation of the Code of Practice for Disinformation), in Romania, the total number of political ads (period March-September 2019) was 14,898, and the amount paid for the promotion of articles online was 856,362 euros. Via the Facebook platform, through complex analysis tools, certain pages and digital groups were closed, with reports of “biased news published under false signatures”¹.

The Council of the European Union, in the context of information from the institutions, bodies, offices and agencies of the European Union, issued conclusions on 19 December 2018 on issues related to the digital sphere. In this regard, it was stated that “it is the duty of States to ensure the sustainable output and visibility of professional journalism in order to combat disinformation”².

Following the adoption at its plenary session of 20 March 2019 of the opinion of the European Economic and Social Committee on the Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - Action plan against disinformation³. On the basis of point 1.1., the Committee considers the definition of disinformation as ‘verifiably false or misleading information that poses a threat to democracy and causes public harm’. In point 2.2, the Committee considered that freedom of speech should not be a pretext for the dissemination of false news⁴. Point 4.8 calls for ‘real media literacy’ as ‘the key to the future of democracy in Europe’⁵.

The European Commission communicated on 30 April 2019 to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions a Communication entitled Europe in May 2019: preparing for a more united, stronger and democratic Union in an increasingly uncertain world. Contribution of the European Commission to the

¹ “Page administrators and account holders typically posted about local news and political issues, such as biased news published under fake signatures in support of a particular political party. They also shared divisive content and promoted content hosted by several domains posing as news sites” – <https://about.fb.com/news/h/removing-cib-uk-and-romania-translated/>, accessed 10.10.2023.

² Idem, pct. 39: “Strengthen the European media ecosystem to ensure the sustainable production and visibility of professional journalism as a way to empower citizens, protect democracy and effectively combat the spread of disinformation”.

³ Which can be consulted on https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=uriserv:OJ.C_.2019.228.01.0089.01.RON&toc=OJ:C:2019:228:TOC, accessed 10.10.2023.

⁴ Idem.

⁵ Idem.

informal meeting of EU-27 leaders in Sibiu (Romania) on 9 May 2019¹. The protection of European democracy has been examined in the sense that it can be achieved by combating disinformation, which in turn would lead to the defense of freedom². It was also proposed to set up the Early Warning System, a system set up to combat disinformation³.

The impact of Information and Communication Technology (ICT) has intensified the phenomenon of disinformation in recent years, amplifying its accelerated spread and ease of propagation. The consequences of this disinformation are reflected in a range of problems affecting different categories of citizens, undermining access to accurate information and the fundamental values of democracy. This problem is recognized as one of public concern, prompting many countries to work to counter or eliminate this threat. A significant danger lies in the dual nature of the media. While it establishes an authentic public space, there is a risk that it may also foster the development of a deceptive public space, thereby compromising the crucial role of the media in molding and fortifying the public sphere (Moraru, 2008).

The development of a common set of strategies to deal effectively with various forms of disinformation without compromising freedom of speech is a major challenge for democracy and European standards. There are serious concerns about government surveillance and control of online content, together with the use of large-scale surveillance methods and data collection, under the guise of national security and the fight against terrorist threats, which can become a justification for the imposition of state censorship. There are efforts to achieve greater transparency in the policies adopted by online service providers to combat disinformation spread through their platforms. Particular attention is being paid to adequate information on content standards, especially in relation to political advertising, as these messages have a significant impact on people and exert significant political influence.

¹ Idem.

² https://eur-lex.europa.eu/resource.html?uri=cellar:c9d88b70-6cd0-11e9-9f05-01aa75ed71a1.0003.02/DOC_1&format=PDF, accessed 10.10.2023.

³ Idem – “To protect European democracy, it is essential to combat disinformation, in parallel with the defense of media freedom and pluralism”.

5. Disinformation Concerning the Right to Free and Fair Elections.

To ensure free and fair elections, it is crucial to have accurate information about parties, candidates and other relevant factors when voters exercise their right to vote. Inaccurate information has the power to influence people's voting decisions, and numerous international reports have shown how the results of elections and referendums can be affected by disinformation.

Guaranteeing not only our right to choose, but also the right of people to be chosen. Disinformation has the potential to influence elections and undermine confidence in electoral processes. We are not just talking about the phenomenon of disinformation or fake news, but also about other practices that can be likened to fake news, such as journalistic errors, spreading unsubstantiated rumors, conspiracy theories, or even political satire that can be confused with disinformation. Unfounded or false information presented by politicians and their rivals, as well as journalistic content that, while not false, may confuse voters, is also in question.

The dissemination of false information about election contestants can essentially give advantages to some contestants, and false information about technical aspects of the electoral process can undermine confidence in the authorities and in the fairness of elections. In Moldova, however, we do not have adequate tools to accurately assess the impact of misinformation on voter turnout. Although there are international reports and election monitoring by international organizations, a precise tool to measure the impact on voter turnout is lacking.

The protection of a right must be careful not to violate other rights, because we often have to seek a balance between different rights. This balance can be difficult to achieve, but not impossible. In particular, when discussing freedom of speech, it is essential to avoid censorship. When the authorities try to block certain websites or ban certain online content, these actions must be constantly scrutinized. In various situations, there is a risk of violating fundamental rights such as freedom of speech, the right to information, the right to health and the right to privacy. Striking a balance can be complicated, but not impossible.

Furthermore, the presence of an increasing number of trolls promoting populist ideas on social media platforms often influences our opinions without us realizing it. For example, in countries such as the UK, the US, Brazil and Hungary, there has

been a rise in populist tendencies in recent years, which is correlated with the increasingly extensive use of social media by both voters and politicians.

Initially it was mentioned that there are violations of the right to information, the right to express your opinion fairly and the obligation to distribute accurate information, including online. In relation to trolls, we recall the situation when Facebook reacted by blocking numerous fake accounts, a common practice today, where users can report fake accounts or incorrect information to the companies running the social media platforms. In this context, it seems that citizens are not aware of their rights being violated, often taking actions without realizing that they may influence other people or events. Trolls become active in various situations, be it social issues, elections or shaping public opinion. In 2018, 73% of respondents in the EU were concerned about online disinformation campaigns. This reflects the awareness of the existence of disinformation in the online space. For example, 76% of respondents believe that the rules applied in the media should be extended to the online environment, a suggestion that may imply that there is a lack of clear rules for the online environment in Moldova, which may explain the sustained activity of trolls (Puiu, 2022).

Studies show that people are prone to accept information that fits their partisan views. This could explain how quickly fake news spreads. But how do we protect ourselves in such situations? When our rights or interests are affected, such as in the case of a crime, we often turn to the police or take legal action. But how do we defend ourselves against fake news?

6. Disinformation on the Right to Health as a Fundamental Right.

Misleading information regarding healthcare and disease prevention, such as false details about vaccine risks, has the potential to dissuade individuals from making informed medical choices that safeguard their health. This not only puts them at risk but also poses a greater threat to others. The Ebola virus serves as an illustrative example of such consequences. One of the reasons why Ebola in West Africa proved so challenging at the time was the fact that there was a lot of media coverage of the virus. What worked for AIDS could be applied to other diseases. If we are to give more examples in this situation, we remember that after the fall of the Soviet Union in the mid-1990s, the health authorities began to manage AIDS better and better and then the Ebola outbreak broke out in Africa. Some of the same

conspiracy theorists, at the time, who were spreading false information about this virus, believed that the artificial origin of AIDS lay in American laboratories, the same conspiracy theorists also used the same conspiracy theories about the Ebola outbreak on account of alleged biological weapons deployed in military research centers. There are many other examples: that fake news was also spread in the case of the Spanish flu, in the case of Ebola, and if we refer to the era in which we live - it is the coronavirus. The list of global diseases that are said to be the result of US bioweapons programs is getting longer and longer. However, as for the coronavirus, there is also the rumor that it is the product of a Chinese bioweapon (Puiu, 2022).

How are our health rights being violated?

Over the past three years, false information about COVID-19 and vaccination has been circulating in Moldova, reaching different audiences.

Disinformation has been spread mainly through religious websites, the intervention of church leaders, current and former politicians, comments on articles, social media posts and fake influencer profiles, among other sources.

The Moldovan authorities have taken significant steps to combat disinformation about COVID-19, blocking numerous online sources disseminating false information and conspiracy theories about the disease. By decision of the Extraordinary National Commission of 23 March 2020, providers of publicly accessible electronic communication services were obliged to restrict access to websites spreading untrue information about the pandemic and vaccination, using a list published by the Moldovan Intelligence and Security Service. However, not all internet providers complied, and some websites were still accessible days after the decision to blacklist them was taken.

The right to honor one's reputation. Where false information or disinformation is distributed, there are clear ways to act against it. Unlike in other situations, there is a direct legal recourse here: you can take legal action through the courts, or you can appeal to the relevant authorities to protect your right to reputation, whether personal or professional. There is a clear link between the impact of disinformation and the right to non-discrimination. Sometimes disinformation targets certain groups in society, such as migrants or certain ethnic groups, and these messages are designed to incite violence, discrimination or hostility. For example, in the context of migrants seeking asylum or moving to other countries, discrimination is not

limited to ethnic groups, but also extends to gender issues. Disinformation campaigns that discriminate on the basis of gender can hinder progress in eliminating violence against women. However, inappropriate political responses to misinformation can themselves pose a threat to the right to freedom of speech.

7. Measures Taken to Combat Disinformation

To address this issue, coordinated efforts are essential from Moldovan state authorities, the media, and civil society. All three play integral roles in information security, a pivotal component of national security. It is imperative for Moldovan authorities to formulate a comprehensive information security strategy to safeguard the nation's interests. Despite the adoption of a strategy by the Moldovan Parliament in 2019, it falls short in effectively countering or preventing disinformation¹.

It is crucial that state institutions quickly provide information to debunk false information. Usually, these answers are provided by the authorities within a maximum of fifteen working days, a delay that can create problems, as disinformation would already be widespread in society and counter-arguments would have minimal impact in combating the spread of false information. Moldovan authorities have initiated measures to enhance communication between the media and public institutions. In response to the onset of the Russian invasion of Ukraine, the Moldovan government introduced an official Telegram channel named "Prima sursă" (EN: First Source). This channel, overseen by officials from the Presidency, Parliament, and Government, serves as a platform disseminating crucial information about government decisions and actively dispelling false rumors circulating online, particularly those related to the security situation in Ukraine.

The Moldovan authorities have taken a significant step in the fight against disinformation with the adoption of the Law on Information Security, also known as the Law on Cross-Border Television. This law provided state institutions with resources to protect citizens against false information and introduced restrictions on news and analysis broadcasts from countries that have not ratified the Convention

¹ Strategy for increasing resilience to misinformation in the Republic of Moldova. https://www.ipis.md/wp-content/uploads/2021/12/ANALIZA-SI-STRATEGIA_compressed.pdf, accessed 10.10.2023.

on Transfrontier Television, including Russia. The law also introduced tougher penalties for disinformation, creating a clear distinction.

An additional significant measure was the introduction of a new penalty threshold for individuals failing to generate local content. This legal provision empowered the Audiovisual Council with the ability to suspend advertising rights for durations of up to seven days in cases where misinformation was identified. These actions, including the imposition of restrictions on advertising, prove to be effective tools in combatting the spread of disinformation and false information.

In fact, the law aims to combat disinformation, regardless of country of origin. To protect Moldova's national audiovisual space and ensure the information security of citizens, it takes strict measures against aggressive militaristic propaganda. Specifically, it bans the broadcasting of any audiovisual programs that justify wars of aggression, deny war crimes and crimes against humanity or incite hatred.

Thus, disinformation is a flaw that can disrupt and undermine the realization of fundamental human rights in such ways as:

Access to accurate information: the fundamental right to accurate information is compromised when disinformation spreads false or distorted information. This prevents people from obtaining essential information to exercise their rights in an informed and rational manner.

Freedom of speech: Disinformation can lead to self-censorship or restriction of freedom of speech when people become reluctant to express their opinions or concerns because of the risk of spreading false information.

Impact on political participation: In electoral processes, disinformation can distort public perceptions of candidates or issues, thereby influencing elections and preventing free and informed participation in political processes.

Right to dignity and security: Disinformation can lead to stigmatization, discrimination or even threats to individual or group dignity and security. False information can foster negative feelings and affect social relations.

Public trust decline: When information is manipulated or falsified, trust in institutions, the media and democratic processes can decline. This can affect the relationship between citizens and government, creating an environment of distrust and social fragmentation.

In essence, misinformation can weaken or undermine the implementation of fundamental human rights, reducing the ability of individuals to participate in an informed way in social, political and cultural processes and affecting the relationships and interactions between individuals and institutions. Combating disinformation is essential to protect and promote respect for fundamental human rights in a democratic and informed society.

8. Recommendations:

In spite of recent endeavors by Moldovan authorities to combat disinformation, additional measures are essential to safeguard the nation's information space and enhance citizens' media literacy. These recommendations should be duly considered by the Moldovan Parliament, Government, civil society, and the media to advance:

Adopt legislation requiring all media, including online platforms, to make public information about their ownership. Currently, many websites are registered outside the country, making it difficult to identify owners/publishers spreading disinformation. The Public Services Agency could draw up a list of media platforms registered in the country, increasing transparency, similar to the existing list in the audiovisual sector. Regulations should apply to information platforms (websites and portals), without limiting the freedom of speech of blogs or vlogs.

Developing media literacy skills among the Moldovan public through joint efforts of the government, civil society and the media. This would involve discussions with people from diverse backgrounds and institutionalized activities in public education. Teachers should be trained to analyze and counter disinformation in all school subjects. The Independent Press Association's STOP FALS! campaign aims to raise public awareness of disinformation and develop critical thinking.

Strengthen the editorial capacity of the media by allocating additional resources to fact-checking. The Independent Press Association and the School of Journalism provide training for journalists to identify and combat disinformation in Moldova.

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