

## **CRoLEV Short Essay Competition – First Award Winning Essay**

**“Critically discuss the state of the Rule of Law and Democratic Values in the EU in light of widespread disinformation and propaganda.”**

### **'Reinforcing the Rule of Law by Combating Disinformation: An Unreliable Path to Democratic Stability in the EU'**

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Waves of fake news have proliferated around the world in recent years. Though strategically spreading propaganda can be traced back to ancient times, technological advancements and swifter communication have laid the groundwork for more developed, subtle and far-reaching disinformation tactics. Its prevalence has caused observers to link it to the worrisome democratic decline rippling through the European Union. Thus, it becomes pertinent to analyse the extent to which propaganda undermines democratic values and the rule of law in Europe.

Disinformation involves intentionally disseminating falsehoods, and when politically motivated, amounts to propaganda.<sup>1</sup> Social media is often considered the key source of fake news as it lacks the scrutiny restraining traditional media and allows practically unregulated access regardless of expertise or social authority.<sup>2</sup> The direct, simple and unchecked accessibility has rendered this new public sphere a favorable political tool for populists,<sup>3</sup> since it aligns with the ideological pre-eminence they give to effecting the people's unrestricted will.<sup>4</sup> Development of AI tools that convincingly falsify content has made discerning user-generated opinions from intentional interference even more onerous, accordingly decreasing the effectiveness of discrediting or fact-checking attempts.<sup>5</sup>

The popularity and accessibility of this digital expanse of information, does not seem to translate into trust, with EU citizens still finding traditional media sources like television, radio and written press, including their online presence, more reliable than novel digital news platforms and social media.<sup>6</sup> Yet despite fake news often being

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<sup>1</sup> Linda Monsees, 'Information disorder, fake news and the future of democracy' (2023) 20(1) *Globalizations* 153, 154.

<sup>2</sup> European Parliament, 'Disinformation and propaganda– impact on the functioning of the rule of law in the EU and its Member States' (EP Study 2019) 53-4, <[https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL\\_STU\(2019\)608864\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608864/IPOL_STU(2019)608864_EN.pdf)> accessed 2 May 2024.

<sup>3</sup> Nicole Ernst and others, 'Extreme parties and populism: an analysis of Facebook and Twitter across six countries' (2017) 20(9) *Inf Commun Soc* 1347, 1350.

<sup>4</sup> Hanspeter Kriesi, 'The Populist Challenge' (2014) 37(2) *West European Politics* 361, 363.

<sup>5</sup> Judit Bayer and others, 'Disinformation and propaganda: Impact on the functioning of the rule of law in the EU and its Member States, 2021 update' (EP Study 2021) 114, <<https://op.europa.eu/en/publication-detail/-/publication/1ccf7ac0-5260-11ec-91ac-01aa75ed71a1#>> accessed 2 May 2024.

<sup>6</sup> European Parliament, 'Flash Eurobarometer–Media & News Survey 2023' (3153/FL012EP, 2023) 40-43.

viewed as deriving from online sources, the term is still used to criticize ‘mainstream media’ or invalidate the authority of political adversaries.<sup>7</sup>

Along with fundamental rights, rule of law and democracy are ‘indivisibly interconnected’ and underpin the Union.<sup>8</sup> The existence of democratic mechanisms is ineffective without ways to oversee the government’s functions and hold involved actors accountable.<sup>9</sup> Rule of law backsliding is especially imminent if prevalent disinformation is combined with restricted media freedom and pluralism, and lacking legal repercussions for exploitative State actors.<sup>10</sup>

While rule of law is improving in some Member States that apply the Commission’s recommendations, others, predominantly eastern and southern European States, are falling behind. Many continue evading recommended safeguards that reduce political influence on the judiciary, revealing questionable appointment procedures, disciplinary proceedings or ‘abuse of law’ offences that can sway judicial decisions;<sup>11</sup> similar concerns exist regarding the prosecution service’s independence.<sup>12</sup> The majority of citizens also believe corruption to be widespread,<sup>13</sup> with immunities for high-ranking officials augmenting the possibility of corrupt practices,<sup>14</sup> while *lacunas* in conflict-of-interest and lobbying provisions leave States vulnerable to external interference.<sup>15</sup> General issues with checks and balances, like insufficient consultation during law-making, also occur.<sup>16</sup>

Freedom and pluralism in the media are crucial for preserving rule of law and democracy. Still, media sources in many Member States remain at risk of political meddling.<sup>17</sup> Concerns over practical independence of media regulators, media ownership transparency, allotment and quantity of government advertising, and public service media independence persist in several Member States.<sup>18</sup> Countries like Poland show critical risks of backsliding, exemplified by its Constitutional Tribunal’s likely breaches of EU law and foundational values.<sup>19</sup> Under the guise of guaranteeing national security, disquieting instances of spyware usage against

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<sup>7</sup> Monsees (n 1) 158-9.

<sup>8</sup> Sergio Carrera and others, ‘The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards an EU Copenhagen Mechanism’ (CEPS Study, 2013) 30.

<sup>9</sup> *ibid.*

<sup>10</sup> EP Study 2019 (n 2) 53.

<sup>11</sup> Commission, ‘2023 Rule of Law Report’ COM(2023) 800 final (ROLR) 6.

<sup>12</sup> *ibid.* 7.

<sup>13</sup> Commission, *Special Euro barometer 534-Citizens’ attitudes towards corruption in the EU in 2023* (EU 2023) 8.

<sup>14</sup> Commission, ‘2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland’ SWD (2023) 821 final, 18-9.

<sup>15</sup> ROLR (n 11) 15.

<sup>16</sup> ROLR (n 11) 23-4.

<sup>17</sup> Konrad Bleyer-Simon and others, *Monitoring media pluralism in the digital era* (Research Project Report, CMPF 2023) 2-9.

<sup>18</sup> ROLR (n 11) 19-21.

<sup>19</sup> Commission, ‘The European Commission decides to refer Poland to the Court of Justice of the European Union for violations of EU law by its Constitutional Tribunal’ (Press Release, Brussels, 15 February 2023).

citizens and journalists have also been noted.<sup>20</sup> Consequently, some States are clearly vulnerable to democratic deterioration and demonstrate systems that facilitate news falsification.

The impact disinformation can have on democracy is multi-faceted. Meaningfully contributing to public debate presupposes transparent public policy and alternate options,<sup>21</sup> which necessitates the dual right to express oneself freely and receive information on public interest issues.<sup>22</sup> Despite the internet's capability of engaging more citizens in public discourse, its propensity for isolating similar-minded individuals engenders extremist viewpoints and is conducive to political polarization.<sup>23</sup>

Some European political parties have implemented the questionable practice of online micro-targeting. Directing political information at citizens based on existing beliefs can exacerbate extremism and polarize the political landscape, while simultaneously allowing parties to misrepresent their goals by selectively promoting intentions or refraining from communicating policies to groups unlikely to concur.<sup>24</sup> The resulting fragmented ideas and lacking transparency leave citizens poorly informed and undermine the efficacy of public debate and deliberation processes crucial for democracy.<sup>25</sup> The possible threats to democratic stability caused by entrenching such echo chambers appear to outweigh the advantages of micro-targeting like increased public participation in politics,<sup>26</sup> or facilitated opportunities for smaller parties.<sup>27</sup>

In a postmodern risk society plagued by uncertainties, populist politicians can exploit fears by distorting issues and supplying seemingly simple solutions that gain them support to avoid time-consuming and elaborate democratic safeguards.<sup>28</sup> Unlike facts refuting false statements, disinformation is structured as narratives that evoke emotions and resonate with consumers, who typically seek this information to affirm their own social identity.<sup>29</sup> Online platforms also utilise algorithms that cater to users' preferences, thus perpetuating 'confirmation bias' that locks people into bubbles and

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<sup>20</sup> ROLR (n 11) 27.

<sup>21</sup> EP Study 2019 (n 2) 62.

<sup>22</sup> *Bladet Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, 20 May 1999) para 62.

<sup>23</sup> EP Study 2019 (n 2) 63.

<sup>24</sup> Frederik Borgesius and others, 'Online Political Microtargeting: Promises and Threats for Democracy' (2018) 14(1) Utrecht LR 82, 87-9.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid 84-5.

<sup>27</sup> European Parliamentary Research Service, 'Social media in election campaigning,' (Briefing, 21 March 2014) 3, <[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140709/LDM\\_BRI\(2014\)140709\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140709/LDM_BRI(2014)140709_REV1_EN.pdf)> accessed 2 May 2024.

<sup>28</sup> EP Study 2019 (n 2) 65.

<sup>29</sup> Claire Wardle and Hossein Derakhshan, 'Information Disorder: Toward an interdisciplinary framework for research and policy making' (CoE Report DGI(2017)09) 77-78.

prevents exposure to dissenting opinions.<sup>30</sup> Inevitably, narratives inconsistent with liberal democracy have emerged in the EU, with States like Hungary long-seeking to shift towards alternative systems due to key policy disagreements.<sup>31</sup>

The self-destructive nature of democracies can be mitigated by endorsing 'militant' democracy which permits restricting rights to combat a threat of authoritarian overturn.<sup>32</sup> This requires a complex balancing act to ensure counter-attacks remain democratic, which exposes their temporary and mitigating character rather than an infallible obstruction to regress.<sup>33</sup> Thus, the people's own mass opposition becomes decisive for effective resistance.<sup>34</sup> Efforts to democratically counter backsliding rule of law are inherently rooted in appealing to reason not emotions, and therefore require a convincing display of the system's accomplishments.<sup>35</sup> Reassuring citizens is pivotal since the tendency of emotional beliefs eclipsing facts is often explained as an 'ordering device' through which people understand the complexities of modern society and reduce anxiety.<sup>36</sup>

Though research demonstrates that fake news influences media content,<sup>37</sup> there is no evidence conclusively linking potential resultant polarization to voting patterns or to suggest consumers actually believe presented falsehoods.<sup>38</sup> A significant amount of disinformation online is designed to profit through virality, and because clickbait often relies on dissenting consumers spreading news by criticizing it, the chief concern is 'junk news' permeating public discourse and leaving less room for beneficial debate rather than truly misleading individuals.<sup>39</sup> Additionally, more than quantity or veracity, emotionalism can cause people to instinctively share overheard experiences as their own to express a common 'partisan identity',<sup>40</sup> thus making retellings more convincing due to the intimacy of associating with a social group.

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<sup>30</sup> Alessandro Bessi and others, 'Users Polarization on Facebook and Youtube' (2016) 11(8):e0159641 PLoS ONE 1, 7 <<https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0159641&type=printable>> accessed 2 May 2024.

<sup>31</sup> 'Hungarian PM sees shift to illiberal Christian democracy in 2019 European vote' (*Reuters*, 28 July 2018) <<https://www.reuters.com/article/us-hungary-orban/hungarian-pm-sees-shift-to-illiberal-christian-democracy-in-2019-european-vote-idUSKBN1KIOBK/>> accessed 4 May 2024.

<sup>32</sup> Karl Loewenstein, 'Militant Democracy and Fundamental Rights I' (1937) 31(3) *APSR* 417, 422-3.

<sup>33</sup> Aziz Huq and others, 'The Coming Demise of Liberal Constitutionalism?' (2018) 85 *UCLR* 239, 253.

<sup>34</sup> *ibid.*

<sup>35</sup> Loewenstein (n 34) 428.

<sup>36</sup> Kathrin Braun, 'Unpacking post-truth' (2019) 13(4) *Critical Policy Studies* 432, 432.

<sup>37</sup> Chris Vargo and others, 'The agenda-setting power of fake news: A big data analysis of the online media landscape from 2014 to 2016' (2018) 20(5) *New Media Soc* 2028, 2042-5.

<sup>38</sup> Monsees (n 1) 155.

<sup>39</sup> Tommaso Venturini, 'From fake to junk news: The data politics of online virality' in Didier Bigo and others (eds), *Data Politics: Worlds, subjects, rights* (Routledge 2019) 126.

<sup>40</sup> Francesca Polletta and Jessica Callahan, 'Deep stories, nostalgia narratives, and fake news: Storytelling in the Trump era' (2017) 5 *AJCS* 392, 400-1.

Most research on disinformation effects still centers on ‘facticity’ and disregards affective consequences,<sup>41</sup> prioritising reducing fake news without addressing the issue of people’s emotional dependency on false promises to alleviate economic insecurity and perceived abandonment by one’s government.<sup>42</sup> Disregard for structural problems that augment people’s susceptibility to disinformation is compounded when some Member States overly praise ‘media literacy’ which, though undeniably important, employed alone ignores emotional aspects and unrealistically suggests improved critical thinking will ensure consensus and preclude political contestation.<sup>43</sup>

Similarly, attempting to label and eliminate fake news can undercut democracy. Permitting governments to censor speech to preserve democratic values involves problematically distinguishing between valid opinions and not, and thus efforts are better directed at creating a pluralistic environment with all views equally represented and accessible.<sup>44</sup> Pursuing a ‘rational consensus in the public sphere’ is utopian, and conversely, permitting consistent contestation of political opinions is essential for democracy.<sup>45</sup> As a result, more focus ought to be given to establishing spaces for pluralistic politics and debate to develop a well-functioning democratic society capable of confronting complex civil concerns instead of securing a disputable truth.<sup>46</sup>

Political contestation is further limited if disinformation is posed as a security threat, justifying legislative intervention.<sup>47</sup> Contrarily, the biggest threat stemming from disinformation in the EU appears internal, since government actors themselves promulgating propaganda renders legislative safeguards easy to circumvent or weaponise,<sup>48</sup> and instances of organised political disinformation exist in the Union.<sup>49</sup> However, as previously discussed, proving propaganda undermines people’s confidence in the Union and democracy generally, is difficult.

Consequently, though backsliding rule of law and prevalent disinformation both constitute prevailing issues in the Union, it is empirically onerous to draw a causal link between the two. Undoubtedly, disinformation can contribute to an environment that facilitates democratic decline. Yet excessive focus on preventing disinformation is both a slippery slope democratically, and deflects attention away from examining

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<sup>41</sup> Jason Young, ‘Disinformation as the weaponization of cruel optimism: A critical intervention in misinformation studies’ (2021) 38 *Emot Space Soc* 1, 2.

<sup>42</sup> *ibid* 6.

<sup>43</sup> Monsees (n 1) 162.

<sup>44</sup> EP Study 2019 (n 2) 64.

<sup>45</sup> Johan Farkas and Jannick Schou, *Post-truth, fake news and democracy: Mapping the politics of falsehood* (Routledge 2019) 6-7.

<sup>46</sup> *ibid*.

<sup>47</sup> Monsees (n 1) 160-1.

<sup>48</sup> EP Study 2021 (n 5) 111.

<sup>49</sup> See for example, ‘Government: Brussels only sees pro-migration countries as adhering to rule of law’ (*About Hungary*, 19 November 2020) <<https://abouthungary.hu/news-in-brief/government-brussels-only-sees-pro-migration-countries-as-adhering-to-rule-of-law>> accessed 4 May 2024.

prevalent structural issues that push people towards accepting unfounded promises to alleviate existential uncertainties.



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## CROLEV SHORT ESSAY COMPETITION

### ESSAY TITLE

**Critically discuss the state of the Rule of Law and Democratic Values in the EU in light of widespread disinformation and propaganda.**

The essay must not exceed 2000 words including footnotes (maximum 5 pages).

### SUBMISSION DATE

**10TH MAY 2024, 14:00 EEST**

Open to all undergraduate and postgraduate students  
and the general public in Cyprus.

For any further information, the prizes and the  
submissions procedure please send an email to:  
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