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This report is prepared by the **Coalition of NGOs for UPR Moldova**, whose expert examination is focused on **access to information and freedom of expression, media freedoms**.



Civil Rights Defenders is an independent expert organization founded in Stockholm in 1982 with the aim of defending human rights, in particular people's civil and political rights, while also supporting and empowering human rights defenders at risk.

Since 2004 Civil Rights Defenders has empowered hundreds of human rights defenders in Moldova. We provide financial and organisational support to human rights organisations operating in Moldova.

Address: 67 Sciusev Str., floor 3, Chisinau, Moldova; MD 2012; www.crd.org



JURISTI PENTRU DREPTURILE OMULUI

The main statutory purpose of the Public Association "**Lawyers for human rights**" is to secure effective implementation of the ECHR in Moldova. To achieve this purpose, LHR represents persons at the ECtHR, informs the legal community and media through press-releases about the essence of this jurisprudence, maintains and

develops database of Moldovan judges and prosecutors www.magistrat.md.

Address: 2 Vlaicu Pirca lab Str., office 13, Chisinau, Moldova, MD 2009; www.lhr.md.



Centrul pentru Jurnalism Independent

Independent Journalism Center. Registered as an NGO in 1998, the Independent Journalism Center (IJC) has been promoting the development of viable, independent and professional news media in the Republic of Moldova. It has become a strong voice in both national and regional media

development. Throughout the years, it has trained and consulted thousands of individuals in Moldova, and it has contributed to the adoption of laws aimed at improving the media environment in the country. The Center has earned a good reputation among the local and international community, diplomatic missions and donor organizations. The IJC is a member of two international organizations – the IFEX and the SEENPM.

Address: 53 Sciusev Str/, Chisinau, Moldova, MD 2012; www.media-azi.md.



Since 2008 the non-commercial partnership “Information and Legal Center “Apriori” has been working in Transnistria in the human rights field, promoting freedom of speech and belief by increasing the level of legal culture of citizens.

The Information and Legal Center “Apriori” was one of the first organizations, which opposed to block and close access to sites and forums in Transnistria in 2013. Now, the organization organizes annually public discussions and interactive activities to attract attention to the problem of freedom of speech and right to non-discrimination in Transnistria.

Address: 1-63 Mileva Str., Tiraspol; www.apriori-center.org.



The Association of Independent Press (API) is a civic association created to support the politically non-affiliated media in Moldova, founded in 1997 by representatives of the first independent newspapers in the country. After 19 years of existence, the API is acknowledged as one of the

most important media organizations in Moldova that promotes and offers assistance to the independent press. The API is appreciated for its media campaigns in various public interest areas, its advocacy actions aimed at developing the media, defending freedom of expression, access to information, promoting self-regulation of journalism, etc. The API is a national resource center that contributes to developing the independent press in Moldova by increasing professionalism of journalists and enhancing the quality and viability of the independent press.

Address: 41/5 Bucuresti Str., Chisinau, Moldova, MD 2012; www.api.md.



PILIGRIM-DEMO

«Pilgrim-Demo» was established in 2003 as a result of the free will of young people for the protection and realization of social, economic, creative, age and other interests and rights of young people from ATU Gagauzia Republic of Moldova. In 2015 Pilgrim-Demo revised its mission and strategic goals.

«Pilgrim-Demo» from Gagauzia is an independent, nonprofit, nonpolitical organization whose mission is: promoting democratic values and human rights in ATU Gagauzia: through supporting effective civic participation, civic control and expertise.

Address: Pobedy str., 11, 3rd floor, MD-3805, Comrat, Moldova: <http://pilgrim-demo.org.md>

Relevant UPR recommendation from the 1st cycle:

- 1. Make efforts to fully guarantee freedom of expression and information, in accordance with Moldova's international obligations;*
- 2. Take steps to protect critical and independent media.*

Access to Information

The national legislation creates favourable conditions for exercising the right to information guaranteed by the Constitution of Moldova and the Law on Access to Information adopted in 2000. However now media representatives encounter difficulties in accessing information necessary for them to cover correctly and objectively topics of public interest.

Law enforcement practice by state officials does not correspond to international standards. These include refusals or delayed responses to requests for access to information and formal, incomplete responses, which provide no details and information required. In many cases refusals are motivated by public officials as being state or trade secrets, making reference to other legal provisions that contradict the Law on Access to Information, in particular the Law on State Secret and the Trade Secret Law.

Pursuant to the Law on Access to Information: a) every citizen of the Republic of Moldova; b) foreign nationals who are domiciled or reside in the Republic of Moldova; c) stateless persons who are domiciled or reside in the Republic of Moldova, may request official information. Given this defective and uninterpretable norm, cases when some officials refuse to provide information of public interest on the grounds that legal entities would not be subject to request of information are frequent. The Law on Access to Information also prohibits to foreign nationals to request official information, a fact that is contrary to human rights standards.

Information on income, wealth and interests of officials is stored in the databases of the SE "Cadastru" and the State Registration Chamber, the SE SIRC "Registru" under the Ministry of Information Technology and Communications. Although pursuant to the Law, information about founders of companies is public, media organizations have obtained electronic access to the register of companies just a few years ago, for a fee, and in some cases even for excessive and unjustified charges. Some time ago, the Prime Minister's Economic Council made public, through the eGovernment service, the register of companies offering free access to people who need such data. However, the register contains no data about founders of companies and they may be obtained for a fee.

Access to information on public procurements is still difficult, even though in the recent years there have been some reforms in this area. Thus, some public institutions continue to keep secret data about the public procurement. The Association for Efficient and Responsible Governance (AERG) and the Center for Investigative Journalism (CIJ) have requested from several institutions information on the public procurements. Thus, the State Enterprise "Calea Ferata" and the Agency for Land Relations and the SE "Cadastru" did not respond at all to the letter of members of the monitoring team who requested access to

information on public procurements. Meanwhile, other institutions, including the National Bank of Moldova and the State Chancellery, refused to provide access to files on public procurements, invoking trade secret or confidentiality of information, and that the law does not oblige them to provide access to such information.

Access of journalists has been restricted to plenary sessions after reopening of the Parliament in 2014, which had been devastated after protests in April 2009. After renovation of the Parliament building, journalists stay in a specially equipped room, with two monitors on which they watch in real-time the sessions of MPs, but they are not allowed to stay in the session hall, and the contact with MPs is intermediated. Therefore, the media are offered images selected by directors of sessions, which is a serious violation of the right of access to information.

Authorities of the Gagauz autonomy do not ensure the access to information neither with nor without request and use bad practices in this field. Most of the information related to the decision making process which should be provided without request by publishing on the official web pages of the authorities of Gagauzia is not available and in some cases even not provided when it is requested. For instance, in 2015 the People's Assembly of Gagauzia refused to provide the information on the decision making process at the lawful request of the local NGO Pilgrim-Demo.

Recommendations:

1. Adjust the Law on State Secret and the Law on Trade Secret and law enforcement practice to international standards, norms of the Moldovan Constitution and the Law on Access to Information;
2. Ensure compliance with the principle of maximum access to information in Moldova including its autonomous region Gagauzia, i.e. any information held by a public institution should be publicly available and exceptions should be clearly defined;
3. Ensure mandatory publication of information in Moldova including its autonomous region Gagauzia, i.e. public institutions should not only provide information on request, but should also publish documents of public interest;
4. Introduce procedures facilitating access to information, i.e. requests for access to information should be subject to rapid processing, and officials should be trained to be able to formulate official responses, so that they contain clear information accessible to citizens including in the language guaranteed by the law;
3. Cancel official fees imposed by the SE "Cadastru" and the State Registration Chamber, which should be paid by journalists for provision of public information.
4. Amend the Parliament Regulation so as to ensure access of media representatives to the session hall of the Parliament.

Freedom of Expression

In Gagauzia (territorial autonomy in the Republic of Moldova) the years 2013-2015 were marked by the limitation of freedom of expression and access to information due to practices and behavior of the regional authorities. The regional public broadcaster "Gagauz Radio Televizionu" experiences interference

of the People's Assembly of Gagauzia in its activity. Also, in 2013 and 2016 the People's Assembly of Gagauzia made at least two attempts to amend the local audiovisual law of Gagauz autonomy. However, the judiciary cancelled the amendments introduced in 2013. The recent amendments introduced on March 1, 2016 wait for the Governor's approval. Civil society asked the Governor of Gagauzia not to approve the amendments and return them back to the People's Assembly of Gagauzia for improvement since it will result in removing barriers for direct influence of the regional authorities on media outlets.

In Transnistria freedom of expression is very poor. Alternative sources of information are subjected to persecution and interference in their activities. For instance, in May 2013 about 10 local websites, including the extremely popular Transnistrian Social Forum and the official website of the party "Motherland" have been closed and blocked. For publishing a video of a survey made on socially significant topics among the residents on the streets of Tiraspol (corruption and transparency in government decisions) KGB officers tried to blame the NGO Apriori for distortion, and then issued the warning with a threat of closing the organization.

Recommendations

1. Ensure exercise of the right to freedom of expression in Gagauzia and independence of regional public broadcaster "Gagauz Radio Televizionu";
2. Take steps to prevent introduction of the amendments in the local audiovisual law of Gagauz autonomy, which are contrary to international human rights standards.
3. Take concrete steps to ensure exercise of freedom to expression in Transnistria and provide protection to those who are subjected to persecution for expressing their opinions.

Freedom of the press

In 2012-2016, the Moldovan authorities have not elaborated and implemented initiatives to guarantee loyal competition on the media market. Media experts have been flagging their concern about the delay in implementing the necessary media reforms as well as the reluctance of the state in promoting them¹. The citizens' right to fair and objective information is vitiated by lack of concrete steps of authorities to protect critical and independent media in Moldova.

The Mass Media Forum 2015 held in October 2015 in Chisinau, identified a series of constraints for media development in the Republic of Moldova at various levels, including legal constraints, a series of problems of management and institutional development, some constraints in educational process for the media sector and media content constraints and problems². Legal framework in the media sector is not adjusted to international standards, and the transposition of the UN and EU norms on democratic journalism into the national legislation and

¹ "Reforms in Mass Media from 2009 - 2013: from Promises to Actions", Study of the Objectives and Priority Actions for Mass Media within the Moldovan Governments' Programs from 2009 to 2013, Association of Independent Press (API), Chisinau 2014: <http://api.md/upload/files/studiu-REFORMELE-en-WEB.pdf>

² Roadmap for mass media development in the Republic of Moldova, adopted by Media Forum 2015: <http://mediaforum.md/upload/Roadmap%20for%20mass%20media%20development%20in%20the%20Republic%20of%20Moldova.pdf>

practice is very slow. Diversity and pluralism of views in media program are directly influenced by the improperly high media concentration and lack of transparency as regards the most relevant aspects, which are crucial for development of independent media, like real owners of several influential media outlets; operation of commercial advertising market; distribution of frequencies/licenses for operation in broadcasting field, etc. One of constraints is vulnerability of decision-makers to personal, corporate, political-ideological or economic-financial interests and lack of policies to encourage internal and external investments in media sector development and to boost the economic growth of independent media outlets.

Other problems that cumber the operation of independent press in Moldova include journalists' difficult access to public interest information, which slows down the development of investigative journalism; reduced impact of the *Law on Freedom of Expression*³ caused by courts and journalists failing to recognize the law, and of the *Law on Privatization of Public Periodicals*⁴ that has not been fully implemented and is "bypassed" by some public authorities, especially at local level, which continue to finance from public money some loyal media outlets, in the lack of transparency and without public tenders. The information about the real media owners, advertising revenues and newspaper circulation as well as truthful data about the readership is poorly accessible, which creates conditions for unfair competition. This competition may also be determined by concentration of most advertising in the capital city as well as the fact that the placement of advertising from the public funds is not subject to the audit of publications. Or, the existing legal framework does not ensure the necessary transparency when public funds are allocated to the media and this affects the development of the press and creates unequal conditions for accessing the public funds, including the sources used for advertising in one form or another from the public funds by the subsidized institutions and businesses. The commitments undertaken under the government programs to ensure optimal conditions for the operation of media outlets, including introduction of tax benefits and other forms of indirect subsidizing of the media, have remained dead letter, and all the attempts of the civil society to promote certain legal and regulatory initiatives in this sense have not had the expected effect.

Recommendations:

1. Develop and adopt the Strategy for media development in Republic of Moldova together with media NGOs and the action plan of implementation thereof;
2. Adopt a new Law on Sponsorship and Philanthropy;
3. Improve the law enforcement practice of the Law on Privatization of Public Periodicals, and imposition of administrative sanctions on persons who have failed to ensure implementation of the Law within the set time frames;
4. Develop and adopt the Law on State Aids for Periodical Publications and develop a program for indirect subsidy of distribution of socially important print media, by covering with public budget money eventual increases in distribution tariffs;

³<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=335145&lang=1>

⁴<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336636&lang=1>

5. Amend the Tax Code and the Law on State Budget with provisions on fiscal stimulation of investments in development of media institutions and other facilities, namely local/regional media institutions.

Media Ownership Transparency and Media Concentration

Media concentration is not a new phenomenon for Moldova, but lately it has started to grow, gaining alarming dimensions. Its increase was due to the lack of transparency in the most important and crucial dimensions for the development of the media, such as the distribution of frequencies/licenses for activities in the audiovisual sector and the degree of media ownership concentration, especially in the audiovisual sector. Following the amendment of the Broadcasting Code in March 2015, the legislation became responsible for governing the media transparency matter, and from November 2015, the TV companies are obliged to make public the names of their owners. Nevertheless, the threat posed to media pluralism by the monopolization of the entire media sector has not disappeared along with the revealing of the real owners/beneficiaries of the TV and/or radio stations. This is caused by the existence of some ambiguous rules, which leave room for interpretation as regards the number of the broadcasting licenses a natural or legal person can hold in the same administrative territorial unit. This is interpreted in different ways by the members of the Broadcasting Coordinating Council (BCC), but also by the experts from the media legislation area. Moreover, according to the latest amendments to the Broadcasting Code, BCC is tasked with verifying the authenticity of the statement regarding the true owner of the broadcasting license. Therefore, the persons who hold influential financial resources, have clear political or economic interests and own several media institutions, can concentrate the media into their own hands or of certain interest groups, violating the consumer's right to information and freedom of opinion. Besides the audiovisual and print media, the online news platforms have also become a subject of interest and concentration for the media institution owners. Thus, the public has access to the same information, even though it is received from various media sources, being thus deprived of the diversity of opinions. The media concentration threatens not only the pluralism, but also the commercial competition. Thus, there is a risk that the political or the economic centers will achieve dominant positions in shaping the public opinion. The national legislation, such as the Broadcasting Code (Art. 7 paragraph 5, Art. 23 paragraph 3 letter b), etc.)⁵, the Law on Advertising (Art. 7)⁶, the Competition Law (Art. 11 paragraph 1)⁷ contain provisions that only prohibit the concentration, but foresee no mechanisms or levers for preventing and combating it, neither some sanctions for those who are violating those articles.

Recommendations:

1. Amend the Broadcasting Code and the Competition Law so as to ensure the following:
 - a. Limit the number of licenses a natural or legal person can hold;

⁵ http://lex.justice.md/document_rom.php?id=041D82D8:3A07C731

⁶ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311557&lang=1>

⁷ <http://lex.justice.md/md/344792/>

- b. Invest the relevant authorities with supervisory functions, in order to prevent and combat the media concentration, and if necessary, punish those who have violated the legal provisions;
- c. Make the Broadcasting Coordination Council responsible for verifying the statements regarding the owners of the broadcasting licenses;
- d. Ban the use of other names by the real owners of the audiovisual companies;
- e. Regulate the situations where certain broadcasters take dominant positions in shaping the public opinion;

Propaganda through the media

Lately, the phenomenon where media and propaganda go hand in hand and aims at inducing the auditor to adopt a new way of thinking, is gaining more and more ground in Moldova. With a view to achieving their goals, the propagandists use different information manipulation techniques, which are more frequently observed primarily when relating about internal events of major political importance and foreign policy issues related to various conflict situations. Here we also refer to the propaganda disseminated by the Russian Federation throughout the former Soviet space, which has become more prominent during the last years, particularly after the armed conflict onset in eastern Ukraine. However, the reduced capacity to protect the national information space against the invasion of foreign media products and to ensure the information sovereignty of the state is one of the problems brought into discussion lately both by the civil society and the politicians.

Through the broadcast content, some media institutions support and promote the political line of their owners and present the reality in a distorted manner. Often, the information comes from a single source, the facts are exaggerated, the information is commented, and labels are used to the detriment of the balanced information and the pluralism of opinions. The most common deviations from the professional standards relating to the balanced representation of facts and the objective reflection of the reality are committed by the TV stations with bigger audience gains⁸.

Recommendations:

1. Task the Broadcasting Coordinating Council with the preparing of some additional legislative acts, mandatory for the radio broadcasters, which would supplement certain gaps in the legislation and be aimed at preventing and combating manipulation and propaganda.
2. Charge the Broadcasting Coordinating Council with the responsibility of monitoring if the manner in which the foreign channels are retransmitted in Moldova complies with the domestic and European norms relating to the correct, objective and pluralistic information and ex-officio investigations when necessary.

⁸ http://media-azi.md/sites/default/files/CJI_Media_Monitoring_Report_Nov.2015-Jan.2016_RO.PDF

3. Draw up, evaluate and adopt a special law on the protection of the Moldovan information space, which would also stipulate the conditions under which the foreign broadcasters are accessing the local broadcasting market.

The Law on Advertising

The Law on Advertising, in force since 1997, does not correspond to the media market reality, does not cover all the existing services in this space and does not provide the necessary legal framework to ensure transparency in the management of the commercial advertising market. All these factors lead to unfair competition and monopolistic practices on the market. The unfair competition existing on the advertising market from Moldova is caused primarily by the fact that the advertising agencies are distributing advertisement flows and, consequently, money flows, without taking into account the audience figures, circulations or views.

The Government has committed itself to develop a new Law on Advertising since 2010. In 2014, the Ministry of Justice, commissioned by the Government, has drafted a bill, some provisions being consulted with the civil society. However, it was not approved by the Parliament, certain provisions being included into a draft amendment of the Law on Advertising from 1997. Thus, several matters that should ensure a proper functioning of the market have been ignored.

Recommendations:

1. To repeal the Law on Advertising from 1997 and approve a new bill that would ensure transparency and fair competition in the advertising market.
2. Formulate specific provisions regarding the unfair competition prevention.
3. Complete the Competition Act, which would counteract the media ownership concentration and protect the fair competition in the advertising market.
4. Form a national authority, preferably a self-regulatory one, which would be responsible for assessing the contents of the messages/calls that are made by the instrumentality of the advertisement.